

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P.No.4269/2019**

**MST. ULFAT RANI AND ANOTHER.**

Versus

**NASIR MEHMOOD AND ANOTHER.**

*Petitioners by:* **Mr. Ansar Mahmood Kiani, Advocate**

*Respondents by:* **Raja M. Kamran Alam Satti, Advocate.**

*Date of Hearing:* **20.02.2020.**

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**LUBNA SALEEM PERVEZ; J:** Petitioners, being dissatisfied with the judgment and decree dated 24.10.2019 as well as 17.09.2019, passed by learned Additional District Judge, and learned Judge, Family Court, Islamabad (East) have assailed the same by way of filing instant writ petition under Article 199 of the Constitution of Pakistan, 1973.

2. Facts necessary for the disposal of the case are that after dissolution of marriage Petitioner No.1 filed suit for maintenance and dowry article as well as recovery of Rs. 50,000/- before Family Court East-Islamabad, whereby, the following relief was allowed while passing the impugned order after prolong trial.

*“In view of my issue wise finding, the suit of the plaintiff is hereby decreed in her favour and the sum of Rs. 4500/- (Four thousand five hundred only) per month is hereby fixed as maintenance of plaintiff from date of desertion i.e. 07.05.2016 till expiry of iddat period i.e. 10.10.2017 and a sum of Rs. 4500/- (four thousand five hundred only) is hereby fixed as monthly maintenance of minor namely Zaka Ullah from date of desertion i.e. 07.05.2016 till date and future maintenance at the same rate with 10% annual increase. Moreover, the suit of plaintiff for recovery of dowry articles as per her list Ex-P3 or in alternate 35% depreciated value of dowry article excluding the expense incurred on construction of house and monthly expenses of minor is also decided her favour and suit of plaintiff for recovery of Rs. 42000/- is also decree in her favor. Parties shall bear their own cost. Decree sheet be prepared accordingly. File be consigned to the record room after its due completion”.*

3. Against the above order, both the parties filed appeals under Section 14 of Muslim Family Law before the learned Additional District Judge, MCAC (East), Islamabad, who after deliberating upon all the issues in detail and considering the record dismissed both the appeals, vide consolidated judgment dated 24.10.2019 in the following manner:-

*“For what has been discussed above, no misreading or non-reading of evidence, illegality or irregularity has been found in impugned judgment and decree; hence, same are upheld. Consequently thereupon, both the appeals are dismissed.”*

Hence, present writ petition.

4. Learned Counsel for Petitioner submitted that the impugned judgments are not only against the facts and circumstances of the case but result of misreading and non-reading of evidence produced before the learned trial Court. Learned Counsel further submitted that both the impugned judgments are arbitrary which have been passed in a hasty manner and are prejudicial to the interest of Petitioner as Respondent No.1 is a man of means who can easily afford the maintenance claimed. Learned Counsel lastly contended that the both the learned Courts below not only failed to consider the valuable rights and interest of the Petitioner but also failed to appreciate the documentary evidence produced before the learned trial Court. Learned Counsel prayed for setting aside of both the impugned judgments.

5. Learned Counsel for the Respondent No.1 vehemently contested the contentions of the Petitioner and submitted that he works in a furniture shop and earn Rs. 12,000/- per month. Learned Counsel stated that after taking into consideration the financial position of the Respondent No.1 the maintenance of Rs. 4500/- was fixed; whereas, during the trial, Petitioner failed to prove her contention that the Respondent is earning more than Rs. 40,000/- per month. Learned Counsel submitted that Respondent has no other income except salary drawing from the furniture shop where he works. Learned Counsel admitted that, being a father, it is his duty to take care of his child, however, being a man of low income cannot afford to pay the maintenance as claimed by the Petitioner. Learned Counsel lastly contended that Petitioner has not pointed out any irregularity or illegality in the above judgments except that the maintenance fixed at Rs. 4500/- is not sufficient, hence, prayed for dismissal of the petition as having no force.

6. Arguments advanced on behalf of learned Counsel for the parties have been heard and the documents, placed on record have also been examined with their able assistance.

7. Perusal of the record shows that the Petitioner is aggrieved with the impugned judgments dated 17.09.2019 & 24.10.2019, whereby, the maintenance of the minor has been fixed at Rs.4,500/- per month which statedly is insufficient in view of the prevailing inflation and economic conditions. On the other hand, the Respondent, pleads his incapacity to afford the maintenance amount more than what has been fixed by the Courts below on the ground of having limited means. It has now been well settled by the Courts that though it is the responsibility of the father to take care of the needs of his child, however, the capacity and ability of the father is also to be considered while fixing maintenance by the trial as well as appellate Courts which could only be ascertained after scrutinizing the material evidence produced by the parties before the trial Court in this regard, as such, the question that how much a father can afford to bear the expenditure of his children is a question of fact and cannot be determined in the writ jurisdiction under Article 199 of the Constitution. Through present petition, learned Counsel for the Petitioner has agitated the impugned judgments on account of misreading and non-reading of evidence however, failed to identify any legal error in the concurrent findings of the learned Courts below. It has been held time and again by the superior courts of the country in a number of cases that factual controversies are not to be decided while exercising constitutional jurisdiction. Reliance, in this regard can safely be placed on the case law reported as **Pakistan Wapda Employees Pegham Union Versus Member, National Industrial Relations Commission, Islamabad and others (2015 PLC 45), Faiz Bakhsh and others versus Deputy Commissioner/Land Acquisition Officer, Bahawalpur and others (2006 SCMR 219).**

8. For the reasons mentioned hereinabove, I am of the considered view that the concurrent findings of the learned Courts below given vide judgments dated 17.09.2019 and 24.10.2019 do not suffer from any illegality or irregularity warranting any interference by this Court, whereas, the points raised by the Petitioner side are purely factual in nature thus, instant petition, being devoid of any merit, is hereby dismissed.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Adnan/\*