

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3862 OF 2021

Muhammad Nawaz
Vs.
Additional District Judge, etc.

Petitioner by : Malik A. Latif Khokhar, Advocate.

Respondents by : Mr. Zubair Aslam, Advocate.

Date of hearing : 10.03.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant petition, the Petitioner (Muhammad Nawaz) has assailed the Judgment and Decree dated 19.05.2021 passed by the learned SCJ-II/Judge Family-Guardian Court, Islamabad (East), whereby Respondents No. 3 to 5's Suit for Recovery of Present and Past Maintenance Allowance was allowed and the Judgment dated 14.09.2021 passed by the learned Additional District Judge-III, Islamabad (East), whereby Petitioner's appeal against said Judgment and Decree was dismissed.

2. Facts, in brief, as per the Memo of Petition, are that the Petitioner and the Respondent No.3 (Naseem Akhter) were married in the year 1994. The parties were blessed with two children i.e. Respondents No. 4 & 5 (Faiza Bibi & Shahzaib). The parties lived a normal life for about two decades, however, thereafter their relations got strained and the Respondent No. 3 deserted the Petitioner, which resulted in litigation between the parties. The first family Suit for Restitution of Conjugal Rights was filed by the Respondent No.3 in the year 2017, which was decreed in favor of the Petitioner owing to his counter claim of Restitution of Conjugal Rights. The said decree attained finality and an Execution Petition in that regard is pending before the Family Court, Islamabad. According to the Petitioner, despite Court notices Respondent No.3 is avoiding service and is not appearing in the Court since the filing of the Execution Petition.

3. Thereafter, the Respondents No. 3 to 5 filed a Family Suit for the Recovery of Past and Present Maintenance Allowance with effect from April, 2017. The Petitioner controverted the allegations made in the Plaint through filing of written statement, however, the learned Trial Court decreed the suit of Respondents No. 3

to 5 vide Judgment and Decree dated 19.05.2021 and granted past and present maintenance allowance at the rate of Rs. 5,000/- to the Respondent No.3 and Rs. 3,000/- to each of the Respondents No. 4 & 5 per month.

4. Being aggrieved, the Petitioner challenged the said Judgment and Decree in appeal, however, the same was dismissed vide Judgment and Decree dated 14.09.2021 and Judgment and Decree of the learned Trial Court was upheld. Hence, present petition.

5. Learned counsel for the Petitioner contended that the Impugned Judgments and Decrees passed by the learned Courts below are not tenable in the eyes of the law as the Respondent No. 3 is not entitled to any maintenance when she herself deserted and left the company of the Petitioner; that Petitioner has been deprived of the loving company of his children; that Respondent No. 3 avoided joining the execution proceedings; that the maintenance allowance fixed by the learned Trial Court is exorbitant as Petitioner's income has not been considered at the time of passing the Judgment and Decree; and that the Petitioner is a laborer who works in a local hotel on daily wages and earns Rs. 800/- per day, therefore, cannot afford the expenses of Respondent No.3, who otherwise is not living with him since the year 2015-2016 for no fault of his. Learned counsel in support of his contentions relied on the Judgment titled *Muhammad Asad Khan Vs. Mst. Sadaf Niaz*, NLR 2006 Civil 1, *Saif Ullah Vs. Maimoona Almas and others*, 2013 CLC 897, *Mst. Parveen Khan Vs. Abdul Ghafoor and 2 others*, 2016 CLC 932 and *Arshad Ali Vs. Additional District Judge, Vehari and others*, 2002 CLC 1450 in support of his contentions.

6. On the other hand, the learned counsel for the Respondents No.3 to 5 argued that it is the Petitioner who left the house and Suit for Restitution of Conjugal Rights has been filed by Respondent No. 3, therefore, it is crystal clear that Respondent No. 3 wants to live with the Petitioner who is duty bound to maintain his wife, therefore, sought dismissal of the instant petition.

7. Arguments heard and record perused with the able assistance of the learned counsel for the parties.

8. Perusal of the Complaint filed by the Respondent No. 3 reveals that according to the cause of action alleged therein, the Petitioner, *inter alia*, left the house of the Plaintiff/Respondent in the year 2016 without any reason and stopped [paying]

basic expenses of the Plaintiff/Respondent, and that a Suit for Conjugal Rights was instituted in the year 2017. However, no evidence was led and not a word was stated about the Respondent No. 3's allegation with regard to the Petitioner leaving the house in her examination-in-chief.

9. On the other hand, the Petitioner stated in his examination-in-chief that it is the Respondent No. 3 who has separated from the Petitioner and who is adamant not to reunite without any reason despite the fact that Petitioner has rented a separate accommodation in Jhanda Chichi, Rawalpindi on the express wish of Respondent No. 3. He further stated that prior to that he had arranged accommodation in Gulistan Colony, Rawalpindi which also he left due to wishes of Respondents. No.3. Admittedly, no cross examination was conducted in this regard.

10. It is also noteworthy that in response to the Respondent No. 3's Suit for Restitution of Conjugal Rights, the Petitioner filed a written statement seeking Restitution of Conjugal Rights in his favor. The learned Family Court allowed Restitution of Conjugal Rights in favor of the Petitioner vide Judgment & Decree dated 16.11.2018.

11. Despite the foregoing it is the Respondent No.3 who in her cross examination on 14.01.2020 categorically admitted that she cannot live in Jhanda Chichi, Rawalpindi and voluntarily submitted that she is willing to live in Islamabad. The above statements of the parties reflect that it is the Respondent No.3 who is unwilling to reunite with the Petitioner at his current abode in Jhanda Chichi, Rawalpindi. This aspect has been completely ignored by both the lower Courts.

12. As the plaintiff, it was the Respondent No. 3's burden to establish her allegation that the Petitioner left the house which amounted to desertion that would entitle her to maintenance, however, she utterly failed to discharge such burden.

13. The evidence shows that it is the Respondent No. 3 who refuses to live with the Petitioner where he is currently living. In such circumstances this Court is of the opinion that Respondent No. 3 is not entitled to get maintenance. Both the Courts below reached an erroneous conclusion to the extent that maintenance for Respondent No. 3 has been allowed. In fact the Impugned Judgment of the Trial Court does not contain any finding or discussion with regard to the relevant facts as discussed herein above. Whereas, the Impugned Judgment of the learned

Additional District Judge-III, Islamabad (East) has concluded that the Respondent No. 3 left the house of the Petitioner, which is contrary to the record.

14. The Petitioner has not challenged the Impugned Judgments and Decrees as far as the maintenance of Respondents No. 4 & 5 are concerned, therefore, instant petition is allowed and Impugned Judgments and Decree are set aside to the extent that they have allowed maintenance for Respondent No. 3.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on _____.

JUDGE