

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
WRIT PETITION NO. 1920 OF 2022.

MUHAMMAD IMRAN.

Vs.

LEARNED ADDITIONAL DISTRICT JUDGE, ISLAMABAD, ETC.

Petitioner by : Syed Khalil ur Rehman Shah, Advocate.
Respondents by : M/s Mussadiq Hammad Mughal and Raja M. Mudassir Iqbal, Advocates.

Date of Hearing: 15.07.2022.

SAMAN RAFAT IMTIAZ, J. Through the instant writ petition, the Petitioner has assailed the Judgment and Decree dated 31.03.2022 (**“Impugned Judgment and Decree”**) passed by the learned Additional District Judge, Islamabad (East) (**“Appellate Court”**), whereby appeal filed by the Respondents No. 3 to 6 was partially accepted. The Petitioner further seeks restoration of the Judgment and Decree dated 02.02.2022, passed by the learned Senior Civil Judge/Judge Family-Guardian Court, East, Islamabad (**“Trial Court”**).

2. The facts as per the Memo of Petition are that the Petitioner married to Respondent No.3 on 06.05.2011 and the couple had three children i.e. Respondents No. 4 to 6. On 10.05.2019, the Respondent No.3 left the house of the Petitioner taking away the Petitioner’s gold ornaments and precious belongings. The Petitioner filed a suit for conjugal rights and also a petition for guardianship, whereas, the Respondents No. 3 to 6 filed a separate suit for recovery of maintenance against the Petitioner. After recording evidence and hearing the arguments submitted by the parties the learned Trial Court passed a consolidated Judgment and Decree dated 02.02.2022 in the three suits whereby decree for restitution of conjugal rights was passed in favour of the Petitioner; the suit of the Respondents No. 3 to 6 was partially decreed accordingly Respondent No.3 was held entitled to maintenance allowance at the rate of Rs. 5,000/- per month from the date of joining the Petitioner as spouse and the Respondents No. 3 to 6 were allowed maintenance at the rate of Rs. 3,500/- per month each; whereas the Petitioner’s petition for custody was dismissed albeit visitation rights were granted.

3. The Respondents No. 3 to 6 filed an appeal before the learned Appellate Court which was partially decreed vide the Impugned Judgment and Decree whereby the Respondents No. 3 to 6 were held entitled to maintenance at the rate of Rs. 7,000/- per month each with 10% annual increase. Hence, present petition.

4. The learned counsel for the Petitioner stated that the Petitioner is a government primary teacher having meager income whereas the parents of the Petitioner are of old age and suffering from different chronic diseases therefore learned Appellate Court has passed the Impugned Judgment and Decree without applying the judicial mind. The learned counsel for the Petitioner also produced before this Court the Petitioner's salary slip for the month of June, 2022, Family Registration Certificate showing his parents and medical bill dated 24.03.2021 in respect of Petitioner's father. The learned counsel relied upon *Tauqeer Ahmad Qureshi versus Additional District Judge, Lahore and others*, PLD 2009 SC 760, *Abdul Jabbar versus Additional District Judge*, 2009 CLC 364, *Muhammad Aslam versus Muhammad Usman*, 2004 CLC 473, *M. Saleem Ahmad Siddqui versus Sabira Begum*, 2001 YLR 2329, *M. Shazia versus M. Nasir*, 2014 YLR 1563, *Shahid Raza versus Dr. Fauzia Shaheen*, 2004 MLD 1325, *Manzoor Ahmed versus District Officer Revenue, Lahore*, 2006 CLC 1647, and *Mazhar Iqbal versus D.C.O. Toba Tek Singh*, 2008 SCMR 863.

5. On the other hand the learned counsel for the Respondents submitted that the writ petition should not be indulged as the Petitioner has till date paid only Rs. 30,000/- towards the maintenance while execution proceedings are pending. He further highlighted that it is an admitted fact that the Petitioner's father is a retired service man who owns a house at Alipur Farash, Islamabad and as such is not dependent on the Petitioner; and that the Petitioner is school teacher of BPS-14 who has admitted in his examination in chief that he has abundant resources for raising the children as such the petition is without any merit and is liable to be dismissed. The learned counsel in support of his contentions relied on *Tanveer Salamat versus Additional District Judge and others*, 2019 YLR 1862, *Talha Asif Taufiz versus Vth Additional District Judge and others*, 2016 MLD 742 (Sindh).

6. I have heard the learned counsel for the parties and have also perused the available record.

7. It has to be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. As such, the Court cannot embark upon a reappraisal of evidence. The Honourable Supreme Court in the case of *Muhammad Hafeez vs. District Judge Karachi East*, 2008 SCMR 398 held that in the event of conflict of judgments, findings of the Appellate Court is to be preferred and

respected unless it is shown from the record that such findings are not supported by evidence or that conclusions drawn are against the material on record or that the judgment of the Appellate Court suffers from misreading or non-reading of the evidence or that the reasons recorded for reversal of judgment are arbitrary, fanciful and perverse.

8. The learned counsel for the Petitioner is unable to point out any non-reading or misreading of evidence or any other illegality or infirmity in the Impugned Judgment and Decree. Therefore, I am not compelled to exercise the discretionary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 to disturb the findings recorded by the learned Appellate Court.

9. The documents submitted by the learned counsel for the Petitioner during arguments before this Court cannot be taken into consideration at this stage as the same were not produced for evidence before the learned Family Court for reasons best known to the Petitioner.

10. In view of the foregoing, no reasonable grounds have been made out for interference with the findings of the learned Appellate Court in exercise of writ jurisdiction. As such, the instant petition is **dismissed** as being devoid of merit.

**(SAMAN RAFAT IMTIAZ)
JUDGE**

Announced in the open Court on the 12th day of August, 2022.

JUDGE