

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1040 of 2021

Rafi Siraj Qazi

Versus

Mst. Hajra Tariq, etc.

Date of Hearing:- : 10.03.2022
Petitioner by: : Shahid Anwar Bajwa, Advocate.
Respondent by: : M. Sohail Khursheed, Advocate.

ARBAB MUHAMMAD TAHIR, J: The instant writ petition is arising out of judgments and decrees dated 27.06.2019 and 28.01.2020 passed by the Judge Family Court and the Additional District Judge, Islamabad (West) respectively, whereby suit for recovery of maintenance allowance and dower amount filed by respondents 1 to 3 were decreed and appeal against the above judgment and decree dated 27.06.2019 was dismissed.

2. Precisely, relevant facts are that on 08.10.2015 respondents 1 to 3 namely Mst. Hajra Tariq, Makial Siraj Qazi and Salman Qazi filed suit for recovery of maintenance allowance (*past, future and for Iddat period*) besides dower amount of Rs.5,00,000/-. Initially, the petitioner contested the suit by filing written statement wherein he refuted the claim of the respondents, however, subsequently disjoined the proceedings and his right to produce evidence was closed on 11.07.2018. The learned Trial Court vide judgment and decree dated 27.06.2019 partially decreed the suit in terms that respondent No.1 held entitled to recover maintenance allowance for the period of Iddat at the rate of Rs.10,000/- per month, respondents 2 & 3 at the rate of Rs.25,000/- per month, per head from February 2015 till legal entitlement with 10% annual increase. In addition, respondent No.1 also held entitled to recover dower amount of Rs.5,00,000/-. Being dissatisfied with the judgment and decree, petitioner filed an appeal, but the same was dismissed vide judgment and decree dated 28.01.2020, being impugned through the instant writ petition.

3. Learned counsel for the petitioner argued that in case of misreading of evidence and where the concurrent findings are against the record, the jurisdiction in terms of Article 199 of the Constitution can be exercised; that the maintenance fixed for respondents 2 & 3 does not cohere with the financial status of the petitioner as the very claim was based upon presumption qua earning of the petitioner as the respondent No.1 asserted that petitioner could earn Rs.300,000/- per month, and that petitioner is ready to pay maintenance as per his financial capability at the rate of Rs.15,000/-per head as determined by the Trial Court as an interim maintenance of two minors, therefore, impugned judgment and decrees are liable to be modified. Learned counsel placed reliance upon case laws reported as **PLD 1978 Karachi 417, 1984 PLC 95 (Peshawar), 1979 PLC 437 (Karachi) and 1976 PLC 01.**

4. On the other hand, learned counsel for respondents 1 to 3 argued that the petitioner, being real father is under obligation to maintain his children irrespective of the fact that they are residing with their real mother; that the awarded maintenance is in accordance with financial position of the petitioner and that the conduct demonstrated by the petitioner disentitles him to ask for discretionary relief as he had been avoiding to appear before the learned Trial Court that led to closure of his right to adduce evidence, therefore, petition is liable to be dismissed.

5. Heard, record perused.

6. The evidence in the present case comprised of affidavit of respondent No.1 Ex.P, copy of Nikah Nama Ex.P2, certificate of Talaq Ex.P3, Insurance Policy deposit receipt Ex.P4, school fee payment receipts Mark-A & Mark-B, tuition fee receipt Mark-B, fee receipt Mark-C, receipt regarding minors' expenses Mark-D, salary slip of respondent No.1 Mark-E, salary and service certificate of respondent No.1 Mark-F & Mark-G.

7. After careful perusal of the pleadings of the parties and the evidence referred to above, the admitted facts that glean out are to the effect that the marriage of petitioner and respondent No.1 was solemnized on 16.12.2002 and lasted for more than 13 years when the latter exercised her right to divorce on 26.03.2015. There is no dispute with regard to the extension of the said right to the respondent No.1

while the dated of desertion i.e. 12.02.2015 is also an admitted one. The respondent No.3 was born on 13.06.2007 while respondent No.2 on 12.10.2013. The dower amount i.e. Rs.500,000/- is also an admitted fact while there is no evidence to substantiate the claim of the petitioner as asserted in written statement in para-2 parawise reply in terms that *“the reality is that dower amount has been accordingly paid to the plaintiff No.1 in cash in the beginning”*. Both the minors are school going and are being imparted with education while the ex-spouses are also in litigation over custody of the minors by claiming to have preferential right over the other.

7. The thrust of the arguments had been on the point that the maintenance fixed is not in accordance with financial status of the petitioner and it was also for the reason that the respondent No.1 had failed to discharge her onus to prove the financial capability of the petitioner to nourish the two minors.

8. It is settled principle that the minors are entitled to be maintained by the father in the manner befitting the status and financial condition of the father and for this reason, the Family Court is under an obligation while granting the maintenance allowance, to keep in mind the financial condition and status of the father. Reliance is placed upon case of **“Tauqeer Ahmad Qureshi v. Additional District Judge, Lahore and 2 others” (PLD 2009 SC 760)**.

9. The precedent on the subject is the case of **“Nazia Bibi and others v. Additional District Judge, Ferozewala and others” (PLD 2018 Lahore 916)** wherein the Hon’ble Lahore High Court after surveying the case law, has held that *“for the determination of the quantum of maintenance, it is mandatory for the Court to determine the income of the father either through proper documentary evidence or on the basis of social status and earning capacity of the father.”*

10. In the present case, the evidence on record divulges that both the minors are school going, being imparted with education as reveals through receipts Mark-A (1-4) and Mark-B while on the aspect of documentary evidence qua financial status of the petitioner, as per stance of respondent No.1 contained in Para-03 of the plaint, take home salary of the petitioner was Rs.250,000/-, respondent reaffirmed her stance in affidavit Ex. P1 which the petitioner never attempted to deny by appearing in the witness box or subjecting the respondent

No.1 to cross examination rather he disjoined in the midst of the proceedings. In addition, the social status and earning capacity of the petitioner can well be gathered from his own stance contained in Para-11 of the written statement in terms that “the contents of Para No.11 are denied being incorrect. The facts have been already submitted above the defendant is balanced, groomed has a sound background belongs to established and highly respectful family from Peshawar”. In addition, in written statement, under the heading “brief history of the case” under paragraph (b.), petitioner maintained that “although both the parties were strangers to each other yet this is a marriage of cordial understanding (a love marriage) between the parties. It is imperative to mention over here that both the families are well education and have sublime social status in the twin cities of Rawalpindi and Islamabad while the defendant is well educated, balanced groomed with sound background, belongs to an old well known, established and respectable family of Peshawar, he is conscious about marital obligation as a Muslim husband.”

11. In the presence of above evidence, there left no need to lay any further comment on the issue. It is, therefore, held that the quantum of maintenance fixed by the Family Court and affirmed by the Appellate Court, in the light of pleadings and evidence on record, is just and appropriate and does not call for any interference. Consequently, instant writ petition fails and accordingly **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open court on ____ .04.2022.

JUDGE.

****//Kamran//****