

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 674 OF 2022**

**MUHAMMAD ZULQARNAIN.**

**VS.**

**MST. SOBIA FAZIL AND OTHER.**

**Petitioner by** : **Mr. M. Usman, Advocate.**

**Respondents by** : **Mr. Afzaal Qadeer Satti, Advocate.**

**Date of Decision** : **20.01.2023.**

**SAMAN RAFAT IMTIAZ, J.:-** Through the instant writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioner [Muhammad Zulqarnain] seeks reduction in the maintenance allowance of the Respondents No. 2 & 3 and annulment of the grant of maintenance of Respondent No.1 for Iddat period.

2. The facts in brief as per the Memo of Petition are that the marriage between the Petitioner and Respondent No. 1 was solemnized on 27.09.2014 in consideration of dower of Rs. 5,000/- which was paid at the time of Nikkah. The spouses were blessed with two children [Respondents No. 2 & 3]. Initially the relationship between the spouses was cordial but later the attitude of the Respondent No.1 changed and she started quarrelling with the Petitioner and with his parents on petty issues. The Petitioner was earning his livelihood in Saudi Arabia but had to leave his job and come back to Pakistan on 03.05.2017 to save his marriage. He remained unemployed for a period of one year after which he got employed as Rigger in LCC Pakistan (Private) Limited at a monthly salary of Rs. 21,715/-. The Respondent No.1 went to her parents' house along with Respondents No.2 and 3. The Petitioner tried to bring her back but she refused. Thereafter, he pronounced talaq upon her. The Respondent No.1 filed suit for Recovery of Dowry Articles, Gold Ornaments and Monthly Maintenance. The learned Family Court passed the Impugned Judgment and Decree dated 14.10.2021 ("**Impugned Judgment and Decree I**"), whereby the Petitioner was directed to pay Rs. 10,000/- as monthly maintenance to the Respondent No.1 with effect from August, 2019 till completion of her Iddat period; and Rs. 10,000/- for the Respondents No. 2 & 3 each till their legal entitlement with 15% annual increase.

3. Aggrieved of the Impugned Judgment and Decree I, both the Petitioner and the Respondents No. 1 to 3 filed respective appeals before the learned Appellate Court. The learned Appellate Court after hearing the parties, partially allowed both the appeals and modified the Impugned Judgment and Decree I vide consolidated Judgment & Decree dated 24.01.2022 (**“Impugned Judgment and Decree II”**) by holding the Respondent No.1 entitled to maintenance at the rate of Rs. 8,000/- per month from August, 2019 till her divorce and observing that admittedly she had already received the maintenance for the Iddat period. Whereas, the Respondents No. 2 and 3 were allowed maintenance at the rate of Rs. 8,000/- per month each from August, 2019 till their legal entitlement. The learned Appellate Court keeping in view the financial status of the Petitioner allowed 10% annual increase in the maintenance of the Respondents No. 2 and 3.

4. Being aggrieved and dissatisfied by the Impugned Judgments & Decrees I and II passed by the learned Family Court and learned Appellate Court the Petitioner has preferred the instant writ petition for partially setting aside the same.

5. The learned counsel for the Petitioner contended that the Impugned Judgment and Decree I is self-contradictory as on one hand it has been noted that the Petitioner came back to Pakistan from Saudi Arabia one year before filing of the suit i.e. 2018 but on the other hand a finding has been given that he has been serving in Saudi Arabia which led the Family Court to reach the erroneous conclusion that the Petitioner is a man of means. He referred to the Petitioner's employee slip for the month of June, 2019 according to which his net salary was Rs. 21,715/-, however, he conceded that the same was not produced in evidence. The learned counsel also pleaded that the Petitioner has remarried and as such his financial obligations have increased. He referred to C.M.No. 3423 of 2022 for additional documents whereby the Petitioner has sought to bring on record the evidence that he has been employed with Gondaltrade International (Pvt.) Limited as a Driver against monthly salary of Rs. 32,000/- with effect from 31.03.2022. With regard to the prayer in the instant writ petition pertaining to the annulment of maintenance of the Respondent No.1 for the Iddat period, he conceded that the learned Appellate Court vide the Impugned Judgment and Decree II has already observed that the Respondent No.1 has admittedly received maintenance for the Iddat period as such he does not press the instant writ petition to the extent of such prayer.

6. The learned counsel for the Respondents on the other hand submitted that regardless of the second marriage of the Petitioner, the Respondents No. 2 and 3 are the obligations of the Petitioner and that the learned Appellate Court has already reduced the maintenance for the Respondents No. 2 & 3 to Rs. 8,000/- and as such no further reduction is required given the needs of the two minor children and the current high cost of living. The learned counsel in support of his contentions placed reliance on *Muhammad Asim and others versus Mst. Samro Begum and others*, PLJ 2019 SC 41, *Naeem Akhtar versus Ambreen Bibi and others*, 2018 CLC Note 47, *Ch. Muhammad Bashir versus Mst. Ansarun Nisa and others*, 2012 MLD 1394, and *Ijaz Ahmed through Attorney versus Judge, Family Court and others*, 2005 CLC 1913 [Lahore].

7. Heard arguments. Record perused.

8. First and foremost, it has to be borne in mind that this Court in exercise of Constitutional Jurisdiction does not act like a Court of appeal. It neither reappraises evidence nor does it substitute the findings of fact recorded by the Family Court with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

9. The learned counsel for the Petitioner has failed to point out any instance of misreading or non-reading of evidence with regard to the maintenance allowance granted by the learned Courts below. It is an admitted position that the Petitioner was employed in Saudi Arabia at one point in time. Nowhere has the learned Family Court stated that he is still employed there. The learned Family Court has simply taken note of the fact that the record reflects that he has been serving in Saudi Arabia, which does not mean that he is still employed there. Therefore, I see no misreading in this regard.

10. No reason has been cited as to why the salary slip of June, 2019, which the Petitioner seeks to rely upon before this Court, was not produced by him in evidence before the learned Family Court despite the fact that such employment was specifically mentioned by way of his Affidavit-in-Evidence in August, 2021. In this regard I would like to refer to the judgments rendered by the Honorable Lahore High Court in the cases of *Tariq Mehmood versus Mst. Farah Shaheen*,

2010 YLR 349 and *Tanveer Salamat versus Additional Sessions Judge and others*, 2019 YLR 1862 , whereby it was held that the onus to prove financial capability is upon the husband/ father. Therefore, I find no reason to consider the photocopy of the said salary slip at this stage, which is even otherwise unverified. In such circumstances, when the husband/father does not tender any proof of income before the learned Family Court, the learned Family Court has no choice but draw its own conclusions based on the facts on the record as was done in this case.

11. The learned Appellate Court has already shown indulgence to the Petitioner by reducing the monthly maintenance allowance of the Respondents No. 2 & 3 from Rs. 10,000/- to Rs. 8,000/- and annual increment of such maintenance from 15 % to 10% per annum. No reason has been shown by the Petitioner justifying further reduction.

12. In view of the foregoing, the Petitioner has failed to point out any reasonable grounds for interference with the Impugned Judgments and Decrees I and II passed by the learned Family Court and the learned Appellate Court in exercise of Constitutional Jurisdiction. As such, the instant petition being devoid of any merit is hereby **dismissed**.

**(SAMAN RAFAT IMTIAZ)**  
**JUDGE**