

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

**WRIT PETITION NO.3013 OF 2022**

**DOCTOR HALEEMA YASMEEN AND OTHERS**

**VS.**

**MUZAMMIL MUMTAZ AND ANOTHER**

**Petitioner by                               :     M/s Rakshanda Azhar and Akseer  
Ahmad Abbasi, Advocates.**

**Respondent No.1 by               :     Mr. Haroon ur Rashid, Advocate.**

**Date of Decision                       :     14-11-2022.**

**SAMAN RAFAT IMTIAZ, J.:-** Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the Petitioners have assailed the Judgment and Decree dated 15.07.2022 (“**Impugned Judgment and Decree**”) passed by the learned District Judge (East) Islamabad (“**Appellate Court**”), whereby the appeal filed by the Petitioners was dismissed while the appeal filed by the Respondent No.1 was partially accepted and decree was modified to the extent that the minor Petitioners were held entitled to recover maintenance from the Respondent No.1 at the reduced rate of Rs.25,000/- each per month from the date of institution of suit with 10% annual increase with effect from May, 2023.

2. Brief facts as per the Memo of Petition are that the Petitioner No.1 [Doctor Haleema Yasmeen] and Respondent No.1 [Muzammil Mumtaz] were married each other on 11-10-2013. They have two daughters i.e. Petitioner No.2 [Aleena Mozammil] and Petitioner No.3 [Amina Mozammil] (“**Minors**”). Thereafter the relations between the spouses deteriorated and the Respondent No.1 divorced the Petitioner No.1. The Petitioners filed a Suit for Recovery of Past and Future Maintenance Allowance of the Minors and *Iddat* Maintenance for the Petitioner before the learned Judge Family Court, East-Islamabad (“**Family Court**”) wherein the learned Family Court decreed the suit vide its Judgment and Decree dated 31.05.2022, *inter alia*,

holding the Minors entitled to maintenance at the rate of Rs. 60,000/- each per month with 20% annual increase.

3. Feeling aggrieved of the Impugned Judgment and Decree dated 31.05.2022, both the Petitioners as well as the Respondent No.1 filed appeals before the learned Appellate Court. The Petitioners claimed enhancement of maintenance while the Respondent No. 1, *inter alia*, claimed that the maintenance granted by the learned Family Court was excessive. The learned Appellate Court dismissed the appeal filed by the Petitioners and partially accepted the appeal of the Respondent No. 1 as detailed herein above vide Impugned Judgment and Decree dated 15.07.2022, hence the instant writ petition for setting aside the same.

4. The learned counsel for the Petitioners submitted that the learned Family Court correctly appreciated the financial capacity of the Respondent No.1 and also rightly drew negative inference against the Respondent No.1 on account of his failure to submit wealth statement whereas the learned Appellate Court failed to consider the financial strength of Respondent No.1 as evident from the salary slip produced as Ex-D184 and also erred by not taking notice of the fact that Respondent No.1 failed to produce his wealth statement despite direction by the learned Family Court and his undertaking to do so which is clear indication that Respondent No.1 was hiding his wealth/assets from the court. She further submitted that the Impugned Judgment does not clarify as to whether or not the cost of the Minors' education expenses which are being borne by Respondent No.1 are included in the grant of monthly maintenance of Rs.25,000/- or not. She submitted that the amount granted by the learned Appellate Court is not sufficient as it does not even cover the travel expenses incurred by the Petitioner No. 1 on picking and dropping the minors to and from school. She relied on *Muhammad Asim Vs. Mst. Samro Begum*, PLD 2018 SC 819, *Dr. Aqueel Waris Vs. Ibrahim Aqueel Waris*, 2020 CLC 131 and *Muhammad Shakir Vs. Additional District Judge, Islamabad-West*, 2021 CLC 809.

5. On the other hand the learned counsel for the Respondent No.1 drew my attention to the Impugned Judgment whereby the learned Appellate Court has given its reasons for reduction of monthly maintenance in detail and submitted that the same is well reasoned and does not warrant interference by this Court. He further submitted that Respondent No.1 is paying monthly maintenance at the rate of Rs.25,000/- per month per Minor pursuant to the Impugned Judgment over and above the monthly educational expenses of the Minors.

6. Arguments advanced by the learned counsel for the parties have been heard and record perused with their able assistance.

7. The Petitioners have invoked the Constitutional jurisdiction of this Court against the judgments of the lower courts which are at variance with each other. In such circumstances, the Honourable Supreme Court held in the case of *Muhammad Hafeez vs. District Judge Karachi East*, 2008 SCMR 398 that in the event of conflict of judgments, findings of the Appellate Court are 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. However, despite repeated opportunities the learned counsel for the Petitioners was unable to point out any evidence on the record which has not been considered by the learned Appellate Court or how the reasons recorded for the reduction in maintenance allowance are arbitrary, fanciful or perverse. No documentary evidence of the amount of expense allegedly incurred by the Petitioner No.1 towards the conveyance of the Minors was produced by her. No evidence has been highlighted by the Petitioners' legal counsel to show that the monthly expenses of the Minors exceed the maintenance allowance fixed by the learned Appellate Court.

9. On the other hand, perusal of the Impugned Judgment shows that the learned Appellate Court has meticulously dealt with all the evidence on the record. The Impugned Judgment records that according to a settlement reached between the parties the Minors live with the Respondent No.1 for eight to ten days in a month during which time the Respondent No.1 is responsible for their expenditure apart from the monthly amount paid to the Petitioners toward the maintenance of the Minors as fixed by Court. Given that the Minors live with the Petitioner No. 1 up to three weeks in a month, the Petitioners have failed to show how the maintenance allowance as fixed by the learned Appellate Court is insufficient for the maintenance of the Minors. Although the learned Appellate Court has significantly reduced the quantum of maintenance allowance as fixed by the learned Family court, the reduction cannot be described as arbitrary, fanciful or perverse in view of the reasons recorded in the Impugned Judgment as discussed briefly herein above.

10. The focus of the arguments presented on behalf of the Petitioners was that the Respondent No. 1 is capable of paying a higher amount of monthly maintenance. I am firmly of the view that the standard of living enjoyed by the children during the subsistence of their parents' marriage should be maintained notwithstanding the breakdown of the marriage as the children should not be made to suffer on account of the inability of the parents to resolve their differences nor should there be a disparity between the status enjoyed by the father and his children only because the mother has primary custody of the children after divorce. Having said that the Petitioners have failed to show how the previous living standard of the Minors is not being maintained or that there is a disparity between the status of the father and that of the Minors following the divorce between the Petitioner No.1 and the Respondent No.1. The undisputed amount of the Respondent No.1's salary and the school fees as recorded in the Impugned Judgment in addition to the quantum of maintenance fixed by the learned Appellate Court indicates that the Respondent No. 1 is paying almost half of his salary toward the expenses

of the Minors in one way or the other and that is without taking into account the expenses incurred during the time period that the Minors are residing with him as per the visitation schedule. In view of the foregoing, I see no reason for interference with the Impugned Judgment.

11. In any event, an alternate, adequate remedy is available to the Petitioners in terms of enhancement of maintenance application which may be filed before the Family Court as held by the Honorable Supreme Court in the case of *Lt. Col. Nasir Malik Vs. Additional District Judge, Lahore, 2016 SCMR 1821*. Consequently the titled petition, being devoid of any merit, is **dismissed**.

12. Before parting with the judgment, I would like to clarify that based on the statement made by the learned counsel for Respondent No.1 the monthly maintenance amount of the Minors as determined by the learned Appellate Court i.e. Rs.25,000/- per minor per month is exclusive of the educational expenditure which is to be borne by the Respondent No.1. This Court is also cognizant of the fact that financial needs of the Minors may vary from month to month due to unforeseeable factors. To this end, the Petitioner No. 1 and the Respondent No. 1 are directed to keep the best interest of the Minors in mind at all times and to improve their relations with each other so that decisions about the financial needs of the Minors can be amicably resolved promptly inter se without having to approach the Court. It is expected that the Respondent No. 1 shall fulfill his legal, religious, and moral obligations as a father and cater to all the legitimate needs of the Minors as and when they arise.

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