

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3231/2021

Muhammad Rafiq.

Vs.

Learned Family Judge (West), Islamabad & 04 others.

PETITIONER BY: Mr. Abdul Rauf Qureshi, Advocate.

RESPONDENTS BY: Respondent No.3, in person.

DATE OF DECISION: 06.12.2021.

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BABAR SATTAR, J.- The petitioner has impugned judgment and decree passed by the learned Judge Family Court (West), Islamabad dated 30.11.2020 and judgments and decrees passed by the learned Additional District Judge (West), Islamabad dated 07.07.2021 while disposing of the appeal filed by the petitioner as well as appeal filed by respondent No.3. Pursuant to the impugned judgments and decrees respondents No.3 has been granted maintenance in the amount of Rs.5,000/- per month for the *Iddat* period and the minor children of the petitioner (respondents No.4 & 5) have been granted maintenance in the amount of Rs.4,500/- per month each with an increase of 10% per annum w.e.f. May of 2014.

2. The learned counsel for the petitioner submitted that the increase has been given effect since 2014 and the learned Family Court and the learned Additional District Court have taken into account the salary of the petitioner at the time of passing of the judgment as opposed to the salary in May 2014 when the suit was filed and from which date the maintenance has been

fixed. He further contended that it was borne out by the record that respondent No.3 had continued to live in the accommodation provided by the petitioner up until the time of divorce and consequently she was not liable to any maintenance for the *Iddat* period.

3. Respondent No.3 appeared in person and sought for enhancement of the maintenance amount. She contended that the college fee of the daughters of the petitioner i.e. respondents No.4 & 5 far exceeded the amount of the maintenance granted and given that the petitioner had the ability to engage a counsel and expend resources on litigation, he must necessarily have the means to bear the expenses of his daughters.

4. In the impugned judgment and decree passed by the learned Judge Family Court, which has been upheld by the learned Additional District Court, the maintenance has been calculated on the basis of salary income of the petitioner in the year 2019 and 2020. The quantum of maintenance appears reasonable and in accordance with law, but it has been fixed on the basis of take home salary for the year 2020. The learned Judge Family Court has noted in the impugned judgment that the petitioner's salary, as of January 2019, was Rs.29,775/-. The Judgment also notes that the petitioner admitted that he received take home salary in the amount of Rs.36,000/- per month after various deductions. Consequently the quantum of maintenance fixed at the time of announcement of judgment by the learned Judge Family Court i.e. 30.11.2020 appears to be proportionate to the income of the petitioner. The learned Judge

Family Court has, however, not taken into account the salary of the petitioner, as of May 2014, when the marriage ended and from which month maintenance has been awarded by the learned Judge Family Court, subject to enhancement at the rate of 10% per annum. Given that the salary as of November 2020, was Rs.36000/- as admitted by the petitioner before the learned Judge Family Court, the salary, as of May 2014, would naturally be less than that in 2020 given that over the years the salary would have gone up due to application of increments etc. To the extent that the learned Judge Family Court has taken the salary from 2020 and applied it retrospectively to award maintenance starting from the year 2014, the impugned judgment and decree of the learned Judge Family Court suffers from legal infirmity.

5. It is settled law that the maintenance granted ought to be proportionate to the means of income as determined by Family Court on the basis of documentation produced. This aspect of the matter was also not appreciated by the learned Additional District Court. Consequently the impugned judgments and decrees are modified to the extent that the maintenance in the amount of Rs.4,500/- per month with 10% annual increase has been awarded since May of 2014, and such fixation shall be given effect from the date on which the learned Judge Family Court passed the impugned judgment and decree. The learned Family Court by order dated 15.09.2015 ordered that the petitioner pay an interim maintenance for respondents No.4 & 5 in the amount of Rs.4,000/- and Rs.3,000/-, respectively, and it is not contested that the petitioner has continued to pay such interim maintenance. The amount of maintenance fixed for each

of respondents No.4 and 5 at Rs.4,500/- per month with 10% increase annually will therefore apply from the date of judgment and decree of the learned Judge Family Court dated 30.11.2020 and not retrospectively from May of 2014. To the extent that the petitioner has not paid maintenance from May of 2014 up until 15.09.2015, when the order for payment of interim maintenance was passed by the learned Judge Family Court, the petitioner will be liable to pay such maintenance to respondents No.4 & 5 in the amount fixed by the learned Judge Family Court on interim basis i.e. Rs.4,000/- and Rs.3,000/-, respectively, from May 2014 to 15.09.2015.

6. The contention of the petitioner that respondent No.3 is not entitled to be granted maintenance for the *Iddat* period is without force. The learned Judge Family Court noted that respondent No.3 continued to live in the accommodation provided by the petitioner up until divorce was given effect and was maintained by the petitioner till such time and was therefore not entitled to pass maintenance during subsistence from marriage. But respondent No.3 was granted maintenance for the *Iddat* period after the divorce was given effect. And to such extent the impugned judgments and decrees suffer from no infirmity.

7. In view of the above, this petition is **allowed** and the impugned judgments and decrees will stand modified to the extent that the maintenance allowance in the amount of Rs.4,500/- per month with 10% annual increase has been given effect from May of 2014. The maintenance will remain

Rs.4,500/- per month with 10% annual increase will be given effect from 30.11.2020. And the petitioner will also be liable to pay maintenance in the amount of Rs.4,000/- and Rs.3,000/-, respectively, for respondents No.4 and 5 for the period from May of 2014 up until such time that the petitioner began making payment of maintenance in accordance with fixation of interim maintenance by the learned Judge Family Court by order dated 15.09.2020.

(BABAR SATTAR)
JUDGE