

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1454/2019

Syed Ali Ahmad Shah Shamsi

versus

Judge Family Court, Islamabad and others.

Petitioner: In person.

Respondents No. 2 & 3 by: Mr. Muhammad Usman Shahzad
Khanzada, Advocate.

Date of Decision: 17.02.2021

JUDGMENT

MOHSIN AKHTAR KAYANI, J:- This petition is challenging the order dated 07.03.2019, passed by learned Family Judge/Guardian Judge, 1st Class (West), Islamabad, whereby half net salary of the judgment debtor was attached.

2. Brief facts referred in this case are that respondent No.2/Mst. Sajiha Shah and her daughter Noor Fatima (minor) filed suit for Dissolution of Marriage, Recovery of Maintenance Allowance and Dowry Articles, which was decreed by the Judge Family Court, Sahiwal vide judgment and decree dated 16.06.2015 and the execution has been transmitted to this Court as the petitioner is serving as employee of the Hon'ble Supreme Court of Pakistan. During the course of execution proceedings, the objections were filed by the petitioner, whereby attachment of half basic salary of judgment debtor was ordered on 18.07.2018, but the same was not given effect till passing of the impugned order due to a clerical mistake in the order of attachment of salary, where Rs. 400/- has been referred and the learned Executing Court rectified the order.

3. Petitioner in person contends that his counsel is not available due to strike, however, he has been given sufficient time to assist this Court or to justify his contention, but he refused to argue his case, therefore, this Court has no other option, but to proceed with the matter accordingly on the basis of record as well as on the basis of arguments of respondents.

4. Learned counsel for respondents contends that instant writ petition is not competent as the same is arising out of the interlocutory order of the executing Court for correction only. He further contends that the petitioner is not entitled for any discretionary relief as he has not come to this Court with clean hands, even has not been paid the due maintenance till date, despite the fact that judgment passed by the Family Court is against the petitioner.

5. Arguments heard and record perused.

6. Perusal of record reveals that sufficient opportunities were granted to counsel for petitioner to argue his case, even today is the 11th date of hearing qua issue relating to maintenance of minor, hence the claim of petitioner qua adjournment due to strike of the Lawyers is not accepted, even such conduct has been deprecated by the Courts of law. Reliance is placed upon 2017 MLD 535 [Lahore (Multan Bench)] (Asghar Ali Vs. The State and another)), AIR 2000 Delhi 266 (Dr. B. L. Wadehra Vs. State (NCT of Delhi) and others).

7. Record further reveals that the judgment and decree was passed by learned Judge Family Court, Sahiwal against the petitioner on 16.06.2016, whereby the petitioner was directed to pay maintenance allowance to the minor daughter @Rs.4,000/- per month from the date of institution of the suit till solemnization of her marriage with 10% annual increment, but the same was not paid.

8. During the course of execution of the maintenance decree, the petitioner has raised the objection, though at that time the previous maintenance was calculated, even it has been observed in the impugned order that the rate of monthly maintenance of the minor is more than Rs. 5,000/- after application of 10% annual increment, but petitioner has not paid any amount, despite the fact that he while appearing before Judge Family Court in response to non-bailable warrants of arrest, undertook to pay the same as reflected from the orders dated 18.07.2018 and 09.11.2018. He has also undertaken to get attached his half of the salary voluntarily. The petitioner is employee of the Hon'ble Supreme Court of Pakistan and letter has also been addressed from Registrar, Supreme Court of Pakistan, whereby a clarification has been sought from the Family Court regarding attachment of "آدھی بنیادی تنخواہ or نصف تنخواہ" as reflected from letter dated 13.03.2019, therefore, all these aspects were considered by the learned Executing Officer and it has specifically been ordered that from onwards the half net pay of judgment debtor will be attached for payment of outstanding decretal amount with reference to monthly maintenance of the minor. As such this aspect demonstrates that it is an interlocutory order, whereby writ petition is not competent, even otherwise, there is no illegality in the impugned order, which has been passed within four corners of law.

9. For what has been discussed above, instant writ petition stands **DISMISSED**. Copy of this judgment be sent to learned Judge Family Court for further necessary action.

(MOHSIN AKHTAR KAYANI)
JUDGE