

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

**W.P. No.3156/2020**

Najm-us-Saqib

*versus*

Minhaaj Saqib & 04 others

Petitioner: In-person.

Respondents by: Mr. Ejaz Janjua and Mr. Nasir Mehmood,  
Advocates for Respondents No.1 to 3.

*and*

**W.P. No.114/2021**

Minhaaj Saqib & 02 others

*versus*

Najm-us-Saqib & 02 others

Petitioners by: Mr. Ejaz Janjua and Mr. Nasir Mehmood,  
Advocates.

Respondent No.1: In-person.

Date of Hearing: 23.02.2021.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:-** Through this single judgment, this Court intends to decide the captioned writ petitions for having involved similar questions of law and parties.

2. For the purpose of clarity, Najm-us-Saqib is to be referred as "*petitioner*", whereas, Minhaaj Saqib, Sahar Saqib and Saima Malik are to be referred as "*respondents*".

3. Through captioned W.P. No.3156/2020, the petitioner has called in question concurrent findings of the Family Court as well as of the Appellate Court, dated 06.12.2018 and 28.09.2020, respectively, whereby

maintenance allowance in favour of respondents has been fixed on higher side.

4. On the contrary, through captioned W.P. No.114/2021, the respondents have assailed the judgment and decree of the learned Additional District Judge (West), Islamabad, dated 28.09.2020, whereby the judgment and decree passed by the learned Judge Family Court/Guardian Judge (West), Islamabad, dated 06.12.2018, has been modified.

5. Succinctly, petitioner and respondent No.3 had married on 25.07.1989 and were blessed with three children namely Sahar Saqib, Myra Saqib and Minhaaj. The petitioner divorced respondent No.3 on 13.01.2011, where-after Myra Saqib started living with the petitioner (father), while Sahar Saqib and Minhaaj left with respondent No.3 (mother), as such, the petitioner was not paying the expenses occurring on the children living with their mother / Respondent No.3, which compelled the respondents to file a suit for recovery of maintenance. The suit was contested by the petitioner by filing written statement, however, the right of petitioner to defend the suit was struck off on account of his failure to pay the interim maintenance since November, 2016 and the suit was decreed to the tune of Rs.100,000/- per month for each respondents from the date of institution of suit along with 10% annual increase. Feeling aggrieved thereof, the petitioner preferred an appeal, whereby the matter was remanded to the learned Family Court with direction to record reason to the extent of fixation of quantum and period of maintenance allowance. After recording

of pro and contra evidence, the suit was decreed vide impugned judgment and decree dated 06.12.2018, in the following manner:

- *Plaintiff No.1 is entitled for recovery of past maintenance allowance from the defendant @ Rs.40,000/- per month, from September 2011 till institution of this suit. Further plaintiff No.1 is also entitled for recovery of future maintenance allowance @ Rs.60,000/- per month from the date of institution of this suit, till he attains the age of majority or till he is otherwise legally debarred, with 15% simple annual increase, due in December 2019.*
- *Plaintiff No.2 is entitled for recovery of maintenance allowance from the defendant from September 2011 till May 2015 @ Rs.40,000/- per month. While from June 2015, till completion of her LLM from abroad, plaintiff No.2 is entitled to receive Rs.100,000/- per month. Plaintiff No.2 is entitled to receive future maintenance allowance @ Rs.40,000/- per month from the defendant till her legal entitlement with 15% annual increase which shall be applicable from December, 2019.*

Feeling aggrieved with the above impugned judgment and decree, the petitioner filed an appeal, which has partially been accepted vide impugned judgment and decree, dated 28.09.2020, whereby the judgment and decree of the learned trial court have been modified in the following manner:

*"The respondents No.1 and 2 are not entitled to the past maintenance. The respondent No.1 is entitled to the maintenance @ Rs.40,000/- per month from date of institution of suit till his age of majority or he is otherwise legally debarred with 10% annual increase due in December 2019. The respondent No.2 is entitled to recover the maintenance from the appellate @ Rs.40,000/- per month from date of institution of suit till her marriage with 10% annual increase due from December, 2019. No order as to cost."*

Both the parties feeling aggrieved thereof filed their respective captioned writ petitions.

6. Najam us Saqib/petitioner in-person contended that both the courts below have overlooked the basic law that without cross examining the witnesses produced by respondents, no reliance can be made on the evidence produced by such witnesses; that both the courts below have not properly appreciated the facts and circumstance of the case, rather entirely neglected the fact that the petitioner got retired from service, therefore, imposition of such huge maintenance allowance on the petitioner overburdens him; that both the courts below have overlooked the fact that the only source of petitioner's income is the pension, which is quite meager and petitioner could not carry the burden of the maintenance allowance settled by the courts below, as such, respondent No.2 is not a minor according to the prevailing law, therefore, not entitled for maintenance allowance, per se, both the Courts below have decreed the suit in a slipshod manner vide the impugned judgment and decree, which are not sustainable in the eyes of law.

7. Conversely, learned counsel for respondents No.1 to 3 contended that the learned first Appellate Court has modified the judgment and decree passed by the learned trial Court without any plausible justification, rather such modification is in violation of principles settled by the apex court that past maintenance would be governed by Article 120 of the Limitation Act, 1908; that the firstly Appellate Court has ignored the basic principle of Islamic Shariah as well as of the applicable law that

father is duty bound to maintain the child not only till the age of legal entitlement but even after her divorce, if any; that the learned trial Court pursuant to proper appreciation of the facts and circumstances of the case had decreed the suit of respondents vide judgment and decree dated 06.12.2018, which are liable to be restored.

8. Arguments heard, record perused.

9. Perusal of record reveals that both the parties were aggrieved with the judgment & decree dated 28.09.2020, passed by learned Appellate Court, whereby the claim of petitioner Najm-us-Saqib has partially been accepted and maintenance was reduced in terms of its rate as well as period declared in judgment dated 06.12.2018, passed by Judge Family Court, however, on the other side respondents are also aggrieved with the modification of decree, however, during the course of arguments petitioner Najm-us-Saqib father of respondents No.1 & 2 conceded the maintenance of his son namely Minhaaj Saqib and contends that he has no objection qua the judgment and decree passed by the Appellate Court to the extent of his son and he is ready to satisfy the decree within his means. However, he has raised objection on the maintenance awarded to his daughter/respondent No.2 namely Sahar Saqib, who was born on 08.07.1990 and presently 31 years of age and is a practicing lawyer.

10. As per the contention of petitioner Family Court committed illegality while ignoring the fact that respondent No.2 was adult at the time of filing of suit and even the suit was filed without her signature. He has also raised serious objection on the character of respondent No.2 and

declared her disobedient daughter who is not entitled for maintenance from her father. Admittedly no such evidence is available on record to consider that daughter of petitioner is disobedient and is not entitled for any maintenance though there is some stance that respondent No.2 was major at the time of filing of suit but entire evidence shows that respondent No.2 was not maintained and it is not the case of petitioner before the Courts below that maintenance was properly paid. The allegation qua the disobedience has only been stressed by the petitioner mainly on the ground that respondent No.2 is living with her mother and is not in talking terms with her father/present petitioner.

11. I have also gone through the contention raised by the petitioner that courts below have fixed the maintenance on higher side while considering the petitioner as Ambassador living abroad and contends that he has been retired, presently getting pension and is not able to pay the maintenance which is beyond his capacity. However, it has not been denied that all these questions raised by the petitioner were not argued by him before the appellate Court and appellate court has considered all these aspects in detail as a result whereof maintenance decree has been modified in favour of petitioner. It has not been denied that respondent No.2 is still unmarried though it has been contended by the petitioner that she is working lady and is not entitled for any maintenance but this aspect did not absolve the petitioner being father to pay the maintenance as directed by the courts below, especially when petitioner himself has contracted second marriage in September, 2011 and have a daughter from second marriage, this aspect

clearly establishes that petitioner is man of means and he could not be exempted from the maintenance of her daughter who is still un-married as such mere age of majority itself is not sufficient to declare unmarried daughter disentitled to maintenance allowance. Reliance is placed upon 2012 MLD 1394 (Ch. Muhammad Bashir Vs. Mst. Ansarun Nisa and 7 others). Although, petitioner contends that his daughter is disobedient but, there is no evidence available to factually verify this allegation, in absence of such evidence / plea of disobedience is considered to be an afterthought, however, question of age of respondent No.2, who is more than 31 years has to be seen in the light of principles laid down in Quran & Sunnah as to whether she is entitled for maintenance from the father, though he is not interested to pay the same. In this regard, this Court is guided by the settled principle as reported by Adbdullah ibn Amr, that the Messenger of Allah (Peace Be Upon Him), said, "*it is enough sin for a man to withhold from those dependent upon him.*" (Sahih Muslims 996). This Court has also gone through the settled principle as highlighted in Muhammadan Law, written by Syed Ameer Ali, that while dealing with question of maintenance of female children, a father is bound to maintain his female children until they are married, if they have no independent means of their own, as such, this aspect has also been appreciated in PLD 1957 Lahore 441 (Mst. Sughra Begum vs. Muhammad Din). It is also settled that marriage does not necessarily absolves the father from the obligation of maintaining his daughter, referred in Hidaya, Volume 1 (Page 410); Fatawai Alamgiri Volume 1 (Page 752) and Radd ul Mukhtar.

12. While considering all these aspects highlighted in Islamic Law, there is no cavil to proposition that father is bound to maintain the daughter despite taking the plea that a disobedient daughter is not entitled to maintenance but, such aspect has been deprecated, even there is no concept of abandonment (*Aaq*) for disgruntled son / daughter depriving him/her of the inheritance and, therefore, daughter could not be deprived of her right to be maintained by her father during his lifetime. Reliance is placed upon PLD 2013 Lahore 464 (Gakhar Hussain v. Mst. Surayya Begum). Similarly, the age of majority of girl is no ground to exclude her from receiving maintenance from her father as the father is bound to provide maintenance to daughter till she gets married and, as such, there is no age restriction. Reliance is placed upon 2010 YLR 520 Lahore (Muhammad Ali v. Judge Family Court, Depalpur) and 2020 CLC 148 Karachi (Faiz Ahmad v. Mst. Soni).

13. When the Courts below have already considered the socio-economic status of father and concurrently fixed the maintenance, especially when the first Appellate Court also considered the grounds raised by the father, as a result whereof the maintenance has been modified, then the father is under moral and legal duty to maintain his children in befitting manner and he could not escape from his moral and legal duty to maintain his daughter. Reliance is placed upon 2004 SCMR 1598 (Muhammad Abdul Lateef v. Sheikh Muhammad Ikram, Additional District Judge, Lahore).

14. At last, learned counsel for respondents contended that it is appropriate to remand this matter to justify the allegation *vis-a-vis* the



evidence qua the status of petitioner being a retired bureaucrat but, this Court is not in agreement with such plea as family matters are not to be remanded lightly as it would prolong the agony between the spouses, per se, remand should be ordered only in cases where parties were not given opportunity to produce the evidence on issues of dispute, which is not the case in hand as the petitioner is negligent in his conduct to lead the evidence, therefore, in such circumstances, the request made by respondents is not appreciable in the light of principles laid down in case reported as 1997 SD 384 (Mst. Surria Bibi Vs. Additional District Judge, Khanpur, etc.).

15. While considering the entire background, the maintenance fixed by the appellate Court after modification has fairly settled the question of fixation of maintenance while considering the status of petitioner / father, who is a retired bureaucrat, who can manage the affairs of an unmarried daughter within his sources, even otherwise, the petitioner / father has conceded to the claim of his son, who is only entitled to get maintenance till age of majority, therefore, the only liability of maintenance is to the extent of unmarried daughter upon the petitioner / father, as such, the plea raised by the children for enhancement of maintenance is not justified, especially when the petitioner has been retired from service.

16. In view of above reasons, both the parties have failed to make out their case in any manner for interference in the findings of the Courts below, even otherwise, petitioner being father is under obligation to maintain his children, especially unmarried daughter, therefore, there is no

question of interference, similarly even the learned first Appellate Court has already reduced and modified the maintenance fixed by the learned Family Court. In this backdrop, no case of interference is made out in judicial review, therefore, both the captioned writ petitions are hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 3<sup>rd</sup> March, 2021.

JUDGE

Khalid Z.