

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.3036/2019

Syed Wamiq Abid Bukhari

Versus

Learned Additional District Judge, Islamabad-East & 2 others

Petitioner by : Mr Noman Munir Paracha, Advocate.

Respondents by : Mr Shafqat Abbas Tarar, Advocate.

Date of Hearing : 19-01-2022

Athar Minallah, C.J.- Through this consolidated judgment this Court will decide W.P. No.3036/2019 titled "*Syed Wamiq Abid Bukhari v. Learned Additional District Judge, Islamabad-East & 2 others*", W.P. No.3658/2020 titled "*Syed Wamiq Abid Bukhari v. District Judge Islamabad East & 3 others*" and Crl. Org. No.102/2021 titled "*Syed Wamiq Abid Bukhari v. Dr Naeem Rauf & 4 others*".

2. Syed Wamiq Abid Bukhari (*hereinafter referred to as the "Petitioner"*) has challenged order, dated 20-07-2019, passed by the learned Additional District Judge-V (East), Islamabad in W.P. No.3036/2019. In W.P. No.3658/2020, order, dated 17-09-2020, passed by the learned Judge Family Court has been assailed

whereby the latter in order to ensure execution of the decree had ordered blocking of CNIC and his passport.

3. The facts, in brief, are that the Petitioner had entered into a marriage contract with Ms Faiza Wamiq Bukhari daughter of Akhtar Hussain (*hereinafter referred to as the "Respondent"*). The parties were blessed with a daughter Syeda Hania Wamiq Bukhari (*hereinafter referred to as the "Minor"*). The Minor was born on 14-04-2010. The Petitioner at the relevant time was living abroad i.e. ~~at~~ South Africa. The Petitioner filed a suit on 09-02-2011 seeking restitution of conjugal rights. However, the suit was later withdrawn. Subsequently he filed a petition on 09-02-2011 under sections 12 and 25 Guardian and Wards Act, 1890. A suit was also filed by the Petitioner on 09-04-2011. The learned Judge Family Court passed judgment and decree, dated 31-10-2017. Both the parties challenged the judgments and decrees by preferring appeals. The appeal filed by the Petitioner was dismissed while that of the Respondent was partially allowed. The parties had assailed judgments and decrees through separate constitutional petitions before this Court. The constitutional petitions were dismissed vide judgment, dated 04-01-2019. However, it was observed as follows.-

*During the course of arguments it was pointed out that no decree was drawn up regarding enhancement of the amount of maintenance. This matter is to be considered by the learned Court where the execution proceedings are pending. Likewise the question regarding the date from which the judgment and decree is executable is also to be decided by the learned Executing*

*Court keeping in view the decree sought to be executed. Since this Court is satisfied that the impugned findings neither suffer from any legal infirmity nor the discretion has been exercised arbitrarily, therefore, no case is made out for interference while exercising Constitutional jurisdiction.*

After passing of the above judgment, the decree was drawn by the learned Judge Family Court on 18-02-2019 and the same is as follows.-

*"Now vide judgment dated 02.03.2018 of Learned Additional District Judge East-Islamabad the judgment and decree of this court has been modified and it is ordered that maintenance allowance of the plaintiff No.01 w.e.f. 23.09.2010 till 14.02.2011 @ Rs.15,000/- per month is modified and is enhanced to Rs.25,000/- and the maintenance allowance plaintiff No.02 is also modified and enhanced to Rs.30,000/- per month from the date of her birth till marriage with 10% annual increase per annum which increase shall be effective from January of every year. The plaintiff is held entitled to the recovery of two lac rupees as dower, 23 tolas and 7 mashas gold given to her by her parents"*

The judgment and decree attained finality because they were not challenged. The execution proceedings were initiated. The Petitioner did not dispute the judgment and decree except the date from which the 10% increase was to take effect. The learned executing court vide order, dated 25-05-2019, held that the increase would take effect from the date of the judgment and decree of the learned Family Court i.e. 31-10-2017. The order,

dated 25-05-2017, was challenged by the Respondent by preferring an appeal which was allowed by the learned Additional District Judge vide order, dated 20-07-2019. On the basis of the operative part of the judgment reproduced in the impugned order, dated 20-07-2019, the learned court concluded that the increase per annum was to take effect from the date of birth of the Minor till her marriage.

4. The Petitioner has challenged order, dated 20-07-2019, and the learned counsel has argued that the appeal was not competent under section 14 of the Family Courts Act, 1964 (*hereinafter referred to as the 'Act of 1964'*). He has further argued that the increase would take effect from the date of the judgment and decree. However, there is no dispute regarding the rest of the decree. The learned counsel was asked whether any undisputed amount was deposited or paid to the Minor. He has stated that the calculations made by the learned executing court were challenged and appeal is pending before the learned District Judge. He has further stated that order, dated 10-07-2021, was suspended by the learned appellate court. In response to a query, the learned counsel for the Petitioner has stated that according to the calculations of the Petitioner, the amount that is liable to be paid was about 04 million. Even this amount admittedly has not been paid. The learned counsel has stated that an amount of Rs.2.6 million has been deposited. The learned counsel has also argued that the learned Family Court was not vested with jurisdiction to block the CNIC nor the passport of the Petitioner. He has referred to

section 13 of the Act of 1964 in support of his contention that the recovery of the decretal amount could only have been made as arrears of land revenue.

5. The learned counsel for the Respondent on the other hand has contended that the impugned order, dated 20-07-2019, does not suffer from any legal infirmity and that the conduct of the Petitioner is contumacious. He has further referred to the operative part reproduced by the learned Additional District Judge in paragraph 4 of the impugned judgment. The learned counsel has further contended that the appeal was maintainable because the Act of 1964 is a special statute and the learned executing court also falls within the ambit of the expression as defined under section 2(1)(b). The learned counsel has referred to section 13 to show that a special procedure for enforcement of decrees of the family court has also been provided in the said special statute.

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

7. Admittedly, the dispute is only to the extent of the date on which the increase of 10% would take effect. The judgment and decree have attained finality. The learned Additional District Judge-V in paragraph 4 of the impugned order, dated 20-07-2019, has reproduced the relevant portion of the judgment which clearly shows that the maintenance allowance of the Minor including the 10% increase shall be effective from January of each year i.e. from

the date of birth till marriage. The expression 'from the date of birth till marriage of the Minor' is crucial. The judgments and decrees, as already noted, have not been challenged.

8. The impugned order, dated 20-07-2019, is well reasoned and, despite the able assistance of the learned counsel for the Petitioner, no legal infirmity could be pointed out requiring interference by the Court. There is also no force in the argument that the appeal was not competent under section 14 of the Act of 1964. Section 14 provides for a right of appeal against a 'decision' or a 'decree' passed by a Family Court. This distinction is crucial. It cannot be read into section 14 that the two distinct expressions should be read as 'judgment and decree' as has been suggested by the learned counsel. 'Decision' is defined as 'a conclusion or resolution reached after consideration'. It refers to an action or process of deciding something or resolving a question. The legislature has used the word 'or' between the two expressions and, therefore, there is no reason why they should not be treated disjunctively. The appeal was preferred assailing order, dated 25-05-2019, passed by the learned Family Court. It was indeed a 'decision' and, therefore, the appeal was competent. The order impugned in the appeal was not in the nature of an interim order in the context of the Act of 1964. The conduct of the Petitioner raised questions regarding his bonafides. The admitted amount has also not been paid in full by the Petitioner. He has been delaying the execution of the decree by challenging various orders. The order of the Family Court regarding payment of the decretal amount was

challenged, but the amount admitted by the Petitioner himself has not been deposited and paid in full. The Minor is his daughter but yet on one pretext or the other the Petitioner has delayed payment of the admitted amount in full.

9. The learned Family Court while executing a decree and taking into consideration the conduct of the Petitioner was not bereft of jurisdiction to pass appropriate orders including blocking of the computerized national identity card. No case is made out to initiate criminal proceedings.

10. For the above reasons, the petitions are meritless and, therefore, accordingly **dismissed.**

(CHIEF JUSTICE)

Luqman Khan/\*