

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W. P. No.1548/2019

Tahir Imran

Versus

District Judge (West), Islamabad & 3 others

Petitioner by : Mr Imran Shafique, Advocate.

Respondents by : Mr Muhammad Pervaiz Kayani (Special Attorney)

Date of Hearing : 24-04-2019.

ATHAR MINALLAH, C.J.- Through this consolidated order, I will decide the instant petition alongwith W.P. No. 1133/2019 [*Mst Rukhsana v. District Judge, Islamabad & 3 others*].

2. The facts, in brief, are that Ms Rakhshanda Pervaiz (*hereinafter referred to as 'respondent no.3'*) entered into a marriage contract with Tahir Imran son of Sain Sher Ahmed (*hereinafter referred to as 'petitioner no.1'*) on 05-10-2008. Respondent no.4 i.e. Muhammad Shayan (*hereinafter referred to as*

the '**Minor**') was born on 01-08-2009. The petitioner in W.P. No.1133/2009, namely, Mst Rukhsana wife of Sher Ahmed (*hereinafter referred to as '**petitioner no.2**'*) is mother of petitioner no.1. Differences between the spouses led to their divorce which took effect on 14-11-2012. Respondent no.3 and the Minor filed a suit on 27-09-2013 seeking recovery of maintenance allowance and dowery articles. The suit was contested by the petitioners. They filed written statements and out of divergent pleadings six issues were framed. The learned trial Court determined the amount to be paid as interim maintenance in favour of the Minor and in this regard an order was also accordingly passed. The evidence led by respondent no.3 was recorded. However, despite affording several opportunities to the petitioners, they absented themselves from the proceedings and, therefore, on 21-05-2018 the learned trial Court ordered that they would be proceeded ex-parte. After completing the proceedings, the learned trial Court passed judgment and decree, dated 06-06-2018. On 25-09-2018 i.e. after almost three months from the date of passing of judgment and decree, an application was filed by the petitioners for setting aside the judgment and decree, dated 06-06-2018. The said application was dismissed by the learned Judge Family Court vide order, dated 0803-2019. The petitioner preferred an appeal which was dismissed by the learned District Judge, Islamabad

(West) vide order, dated 15-03-2019. The concurrent findings have been challenged by the petitioners through the petitions at hand.

3. The learned Counsel for the petitioner has contended that; both the learned Courts did not appreciate that after transfer of the case no notice was issued or served in accordance with law; the case was fixed for cross-examination of the witnesses and, therefore, an order to proceed ex-parte could not have been passed; the provisions of the West Pakistan Family Courts Act, 1964 have been violated; no notice regarding passing of the ex-parte decree was issued or served on the petitioners; the ex-parte proceedings vide order, dated 21-05-2018, and ex-parte judgment, dated 06-06-2018, were passed in disregard to the mandatory provisions of the law; the proceedings were transferred on 10-04-2018, while the order regarding proceedings ex-parte was passed on 25-05-2018 without issuance of any notice.

6. The Special Attorney of respondent no.1 was also heard. He has argued that; the petitioners had deliberately absented themselves from the proceedings; the petitioner no.1 failed to pay the interim maintenance ordered by the learned trial Court; the mere fact that the petitioners were bound to pay the interim maintenance ordered by the learned trial Court and failure on their part to do so is

sufficient to establish that they willfully absented themselves from the proceedings.

6. The learned Counsel for the petitioner and the Special Attorney who has appeared on behalf of respondent no.3 have been heard and the record perused with their able assistance.

7. The admitted position is that the petitioners had contested the suit by filing written statements. After evidence produced by and on behalf of respondent no.1 was recorded, the petitioners absented themselves from the proceedings. The record shows that during the period of their absence, which was for more than three months, the interim maintenance ordered by the learned trial Court in favour of the Minor was not deposited or paid by the petitioners. Petitioner no.1 is father of the Minor and, therefore he was aware that it was mandatory for him to deposit each month the amount of interim maintenance ordered by the learned trial Court. No effort was made by the petitioners to ensure that the order of the learned trial Court regarding payment of interim maintenance is complied with. Had they been vigilant about their obligations, the ex-parte proceedings would not have been ordered. There is no force in the argument raised by the learned Counsel for the petitioners that since no notice was served after the case was transferred, therefore,

the absence of the petitioners could not be treated as willful. The learned Counsel for the petitioners has not been able to point out any illegality or other legal infirmity warranting interference with the concurrent findings. The impugned orders are well reasoned and have been passed after taking all the relevant matters into consideration. The learned Counsel for the petitioners has argued that decree cannot be executed against the mother of petitioner no.1. This aspect would obviously be considered and dealt with in accordance with law by the learned Executing Court.

8. For what has been discussed above, these petitions are without merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Luqman Khan/\*