

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.3498/2017

Dil Jan & another

versus

Muhammad Altaf & another

Petitioners by: Hafiz Farman Ullah, Advocate.

Respondent No.1: Ex-parte.

Date of Hearing: 23.10.2019.

MOHSIN AKHTAR KAYANI, J: Through the instant writ petition, the petitioners have assailed judgments and decrees dated 06.03.2017 and 03.07.2017, passed by the Courts below, to the extent of maintenance allowance only, which has been prayed to be enhanced to the tune of Rs.10,000/- per month.

2. Brief facts referred in the instant writ petition are that on 19.01.2004, Dil Jan/petitioner No.1 contracted marriage with Malik Altaf/respondent No.1 against dower to the tune of Rs.50,000/-, and from the said wedlock Hamza/petitioner No.2 was born on 18.10.2005. However, due to strained relationship between the spouses, respondent No.1 contracted second marriage in the year 2006 and got disappeared, who in the year 2012 turned up and informed his family elders that he has divorced petitioner No.1 vide divorce deed dated 01.01.2012, though respondent No.1 failed to pay maintenance allowance to the petitioners and dower to petitioner No.1, which constrained the petitioners to file suit for recovery of maintenance and dower. The suit was contested by other side and eventually the learned Judge Family Court (West), Islamabad vide the impugned judgment and decree dated 06.03.2017 partly decreed the suit in favour of the petitioners. Feeling aggrieved thereby, both the sides preferred their respective appeals, which were dismissed by the learned

Additional District Judge-VII (West), Islamabad vide impugned judgment and decree dated 03.07.2017. Hence, the instant writ petition.

3. Learned counsel for petitioners contended that impugned judgments and decrees to the extent of maintenance allowance in favour of petitioners have been passed in a hasty and arbitrary manner; that the findings to the extent of awarding maintenance are based on presumption, surmises and conjectures resulting into grave miscarriage of justice; that the impugned judgments and decrees to the extent of maintenance allowance are the result of mis-reading and non-reading of evidence and facts of the case as the petitioners had prayed for maintenance allowance to the tune of Rs.10,000/- each per month, therefore, the impugned judgments and decrees may be set-aside to the extent of maintenance awarded and the maintenance allowance may be enhanced as prayed for by the petitioners.

4. Arguments heard, record perused.

5. Perusal of record reveals that a notice was issued to Muhammad Altaf/Respondent No.1 through Special Messenger, who submitted a detailed report that Respondent No.1 was contacted on his mobile No.0321-5200735, who stated that he is shifted to Karachi. However, when the said Special Messenger went to serve the notice at given address of Respondent No.1 in Rawalpindi, his cousin namely Shahid not merely acknowledged that Respondent No.1 asked him not to receive the notice but also confirmed that Respondent No.1 has misstated that he is shifted to Karachi, rather he is in Rawalpindi, therefore, respondent No.1 is proceeded ex-parte for deliberately refusing to receive the notice, and as such, since the instant matter pertains to maintenance allowance, the same is hereby taken up for today.

6. It has been observed from the available record that petitioner No.1 was married to respondent No.1 on 19.01.2004 against *Haq Mahar* of Rs.50,000/- and from the said wedlock petitioner No.2 was born on 18.10.2005, who remained with respondent No.1 till August, 2006. However, the petitioners left the abode of Respondent No.1 when he entered into second marriage and as per claim of petitioner No.1, respondent No.1 never paid a single penny as maintenance, which constrained the petitioners to file a suit for maintenance w.e.f. 2006 to 2012 along with maintenance of minor and *Haq Mahar* of Rs.50,000/-, even a Jirga was constituted to settle the dispute, however on 01.01.2012, respondent No.1 extended written divorce to petitioner No.1.

7. Petitioner No.1 appeared as PW-1 and reiterated her stance through affidavit of evidence Exh.P1, in which it has been brought on record that respondent No.1 without obtaining permission from his first wife entered into second marriage in April, 2006 and never paid a single penny for approximately 07 long years, rather he disappeared from the family life of petitioners and left petitioner No.1 to take care of petitioner No.2 at her own resources. It has further been stated by petitioner No.1 that petitioner No.2 suffers from skin disease, which requires specialized treatment, but respondent No.1 has not paid any heed towards the said treatment of minor. During the course of cross-examination, petitioner No.1 acknowledged that she along with her son are living in her father's house and the expenses are being borne by her father. She has been cross examined at length and confronted with the settlement of issue through Jirga referred as Mark-B, but she denied the fact that she has received any *Haq Mahar* or maintenance allowance.

8. On the other hand, respondent No.1 appeared as DW-1 and submitted his evidence as Exh.D1, in which he acknowledged the *Haq Mahar* of Rs.50,000/- as well as birth of his son on 18.10.2005 and claimed that he in presence of witnesses had pronounced *Talaq-e-Salasa* to petitioner No.1 on 05.02.2006, whereafter he entered into second marriage having three daughters. He has also produced receipt Exh.D1 and his income details vide Exh.D2. During the course of cross examination, respondent No.1 acknowledged that he is working as Driver with Coca Cola distribution company. Respondent No.1 also acknowledged that he has neither produced any proof of *Talaq* in the Court, nor produced any witness in this regard. He acknowledged document Mark-A of Jirga executed on 27.01.2013, whereby he acknowledged that he executed divorce in January, 2012. Respondent No.1 also produced Sardar Abdul Qudoos as DW-2 in addition to his own evidence.

9. I have gone through the receipt Exh.D1, dated 28.02.2013, whereby respondent No.1 has paid amount of Rs.50,000/- to petitioner No.1, while the recipient name shows Muhammad Mansha, as such, this document is not considered as receipt of *Haq Mahar* against petitioner No.1.

10. Perusal of the judgment passed by the learned Trial Court reveals that each and every aspect has been explained and a detail view regarding maintenance has been given while deciding Issue No.1 in the following manner:

“Admittedly defendant is working in a leading multinational company; as such it is believed that he is getting a salary not less the minimum salary prescribed by law. He also admits that he is getting commission in addition to his salary. Hence at a minimum side, his salary is considered as Rs.20,000-25,000/- per month. Keeping in view facts and circumstances of the case and taking into consideration inflation and other factors, Rs.4000/- per month is fixed as maintenance of plaintiff No.2 with effect from six years prior to institution of suit i.e. October 2008 with 10%

annual increase. First increase will be effective from 01.01.2017. Accordingly this issue is decided in affirmative."

The above referred opinion rendered by the learned Trial Court is free from any illegality and ultimately the learned Trial Court vide impugned judgment dated 06.03.2017 has rightly passed the decree in the following manner:

RELIEF

13. *For what has been discussed above, instant suit is decreed in following terms:-*

- a. *Decree for recovery of maintenance of plaintiff No.1 @ Rs.2500/- per month w.e.f. August 2006 till April 2012.*
- b. *Decree for recovery of maintenance of plaintiff No.2 @ Rs.4000/- month w.e.f. October 2008 till attaining the age of majority with 10% annual increase. First increase will be effective from 01.01.2017.*
- c. *Decree for recovery of dower amounting to Rs.50,000/- from defendant.*

11. I have also gone through the consolidated judgment of the learned first Appellate Court, whereby the findings of the learned Trial Court have been maintained.

12. It is settled law that concurrent findings of the Courts below could not be interfered with in constitutional jurisdiction, even otherwise, the question of jurisdiction raised by respondent No.1 has thoroughly been explained by both the Courts below in Issue No.2, therefore, no case of interference at this stage is made out, and as such, both the Courts below have not committed any illegality in passing of the impugned judgments and decrees, however the conduct of respondent No.1 is not above board who has not paid even a single penny as maintenance till date.

13. The petitioners have successfully achieved the maintenance on the basis of their evidence and as such, the record was rightly appreciated by the Courts below as the Family Court has given ample consideration to the rate of maintenance w.e.f. August, 2006 till April, 2012 to the extent of Petitioner No.1 together with the maintenance allowance in favour of Petitioner No.2 at the rate

of Rs.4,000/- per month w.e.f. October, 2008 till 2017 with 10% increase, however respondent No.1 has not paid the maintenance allowance. However, if the petitioners are aggrieved with the rate of maintenance due to change of circumstances, escalation and devaluation of Pakistan Rupee in these years, the petitioners can file application for enhancement of maintenance allowance, which could be considered by the concerned court subject to evidence and pass thereon any order in accordance with law, therefore, the concurrent findings derived by both the Courts below are based upon recognized principles of law.

14. For what has been discussed above, the instant writ petition is misconceived and the same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on: **30th October, 2019.**

JUDGE

Khalid Z.