

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

**Writ Petition No. 867 of 2020**  
Muhammad Shakir  
Versus  
Additional District Judge, Islamabad-West, etc.

Petitioner by: Ch. Muhammad Javed Gujjar,  
Advocate  
Respondents 3 to 6 by: Malik Muhammad Haseeb,  
Advocate  
Date of Hearing: 28.09.2020.

**FIAZ AHMAD ANJUM JANDRAN, J.-** Through the instant writ petition, petitioner impugns judgment and decree dated 09.07.2019 and 21.12.2019 passed by the learned Senior Civil Judge-III/Guardian Judge, Islamabad-West and learned Additional District Judge, Islamabad-West, whereby suit for recovery of maintenance allowance filed by the respondents was partially decreed while appeal filed by the petitioner was dismissed.

2. Facts, relevant for the disposal of instant writ petition are that respondents 3 to 6 have filed a suit for recovery of maintenance allowance against the petitioner whereby respondent No.3 sought maintenance for herself at the rate of Rs.5000/- per month w.e.f. April 2011 while for the respondents 4 to 6 at the rate of Rs.10,000/- per month w.e.f. June 2013 till their majority besides Rs.2,68,350/- school fee of respondent No.4 and Rs.71,600/- the amount paid by her parents as educational fee of the petitioner. Besides the said suit, respondent No.3 also filed a suit for

recovery of dower amount to the tune of Rs.1 Million and twenty tolas gold ornaments.

3. The petitioner contested the suit by filing written statement he controverted the stance of the respondents by asserting that he was living in the house of parents of respondent No.3; that he was expelled out of the house in June 2016 and that he had been paying all the school fee of the respondents 4 to 6 from his own pocket till June 2016.

4. The learned trial Court out of divergent pleadings of the parties, framed necessary issues and recorded evidence of the parties. Respondent No.3 appeared as PW-1, tendered affidavit P1, Nikah Nama P2, Form B Mark PA, birth certificates of minors Mark A2 to Mark A4, marriage registration certificate Mark A5, fee challans Mark A6/1 to Mark A6/19. On the other hand, petitioner's father Muhammad Younas appeared as DW-1 and tendered power of attorney and affidavit Ex.D1 and Ex.D2 respectively. The learned trial Court after hearing the parties, dismissed the second suit of respondent No.3 for recovery of dower amount and gold ornaments while partially decreed the suit of the respondents for recovery of maintenance in terms that respondents 4 to 6 were held entitled to recovery maintenance at the rate of Rs.10,000/- per month each from July 2016 till their legal entitlement with 5% annual increase while claim of the respondent No.3 for recovery of maintenance allowance was dismissed. Hence, the instant writ petition.

5. Learned counsel for the petitioner argued that the evidence on record establishes the fact that the petitioner since day one of the marriage had been living in parental house of respondent No.3; that petitioner has no legitimate

source of income at present while on the other hand, respondent No.3 is a working lady having permanent job and source of income while it is also established from the evidence that the petitioner had been contributing towards payment of maintenance, therefore, in absence of sufficient financial means, the impugned maintenance is too excessive, therefore, impugned judgment and decree to this extent are liable to be modified.

6. On the other hand, learned counsel for the respondents 3 to 6 argued that from the statement of witness of petitioner, it is evident that the petitioner hails from a well-off family and living with his parents while the maintenance fixed, in the present days of inflation, in no way can be termed excessive, therefore, petition is liable to be dismissed.

7. Heard the learned counsels for the parties and perused the record with their able assistance.

8. The pivotal point in the case is that whether the course adopted by the learned Family Judge and affirmed by the learned Appellate Court qua fixation of maintenance, to be paid by the petitioner/father is in accordance with the evidence on record besides the law on the subject.

9. The Hon'ble Apex Court in case law reported as "**Muhammad Asim v. Mst.Samro Begum**" (PLD 2018 SC 819), has held that:-

*"Where a husband was required to maintain his wife or children and was required to pay maintenance, including the arrears of maintenance, his present and past earnings must be disclosed by him, because his financial status would determine the amount of maintenance that should be awarded. **The family court should***

**try to ascertain the salary and earnings of husband/father, who was required to pay maintenance.**" *[Emphasis added]*

10. The Hon'ble Supreme Court of Pakistan in another judgment reported as "***Humayun Hassan v. Arslan Humayun and another***" (PLD 2013 SC 557) expounded the law in the following terms:-

*"4. Heard. There can be no cavil with the proposition that the maintenance issue(s), in relation to Muslim relatives shall be governed and regulated by the principles/injunctions of Islam i.e. as per the personal law of the parties. In this context, according to section 369 of the Muhammadan Law by D.F. Mullah, maintenance means and includes food, raiment and lodging. However, it may be observed that from the very language of the above section, such definition is neither conclusive nor exhaustive, and in our view it undoubtedly has a wider connotation and should be given an extended meaning, for the purposes of meeting and catering for the present days social, physical, mental growth, upbringing and well-being of the minor, keeping in mind the status of the family, the norms of the society and his educational requirement, which has now attained utmost importance but obviously corresponding to and commensurating with the means and the capacity of the father to pay. Anyhow, the same jurist in section 370 of the book has elucidated the liability of the father to pay the maintenance to his children as follows:--*

*"370. Maintenance of children and grandchildren.---(1) A father is bound to maintain his sons until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (section 352) does not*

*relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.*

*(2) If the father is poor, and is capable of earning by his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.*

*(3) If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances."*

And at the end an additional note on the compendia of the principal of Muslim Personal Law was also made in the following terms:-

*"When a court of law is to adjudicate upon parental or filial obligations of a Muslim it is only the legal principles concomitant to such obligations which are relevant and not the social or moral principles. A father, or any of the parents in a given case, may be under a social or moral expectation, compulsion or obligation to maintain a minor offspring for as long as the offspring does not attain the requisite physical, mental, intellectual and financial capacity to survive and sustain on his own but the case in hand before the learned trial court was only in respect of maintenance of a minor son by his father which issue, on the legal plane, could not have been stretched by the learned executing court and the learned Judge-in-Chamber of the Lahore High Court, Lahore to a stage beyond the son's minority by blurring the distinction between social and moral obligations and legal obligations under the principles of Muslim personal law.*

11. In another judgment, Hon'ble Supreme Court of Pakistan in **"Khadija Bibi and another v. Abdul Rahim**

***and another***" (2012 SCMR 671) by remanding matter to the learned Family Court held as under:-

*"3. The other question as to automatic annual increase in the maintenance for the minor children has been dealt with by the High Court in para 7 of the impugned judgment. At present, there appears to be no factual basis brought on record to justify such annual increase. The learned counsel for the petitioner, however, states that he will be in a position to lead evidence in the form of financial statistics including the Sensitive Price Index ("SPI") to persuade the trial Court to grant annual increase in line with such statistical data.*

*4. In the foregoing circumstances, the appellate judgment dated 23.02.2010 and the impugned judgment dated 04.08.2011 are set aside. The matter is remanded to the Trial Court which shall proceed to frame specific issues relating to the dowry articles as well as enhancement of maintenance awarded to the minor children and shall thereafter allow the parties to lead evidence before deciding the case afresh. During this period, maintenance at the rate of 2,000 per month shall continue to be deposited by the respondent No.1/Grandfather."*

12. The Hon'ble Lahore High Court in the case of "**Nazia Bibi and others v. Additional District Judge Ferozewala and others**" (PLD 2018 Lahore 916) held that:-

*"9. Quantum of maintenance requires due consideration of all factors on the basis of which the court can determine the actual need of the minor. In this regard, it is important for the court to first determine the expenses incurred or likely to be incurred on the minors. For this purpose the court must look into the living conditions of the minor and the manner and means by which the mother is maintaining the minors which will include factors like where they reside, whether the mother is dependent upon her family, if so what is*

*the income on the basis of which the minor is also being cared **whether she has a job and whether she has any source of independent income**. Special needs of the minor which will include medical or physical needs or special educational needs should also be seen. Special needs will vary from case to case, if relevant, as it is unique to the situation and individual. Yet for the purpose of maintenance it is the obligation of the father to fulfill these special needs. In the case of enhancement, the court must also determine as to what extent the maintenance already fixed meets the requirement and expenses of the minor and for what purpose, further enhancement is required. **At the same time the court must determine the income of the father either through proper documentary evidence or on the basis of the social status and earning capacity of the father**. In order to ensure that proper information is before the court, it may always require the father to produce documents such as his salary slips or any bank statement or property document on the basis of which he is able to show his monthly income or earning or his financial status. In this regard, the assets owned by the father are relevant as it contributes towards establishing the financial status of the father that has to be probed into by the court and based on attending circumstances the court can conclusively establish the means through which the father will be able to maintain the minors. It is also important to take into consideration any liability of the father, that is whether he is paying any bank loan or debt, whether he has remarried or has other children or whether his parents are dependent on him. In this way the court can determine the manner in which the income of the father is spent and balance the income and capacity with the reasonable requirements of the minors seeking maintenance. [Emphasis added]*

13. The Hon'ble Lahore High Court in case reported as "**Khalid Mahmood v. Naseem Akhtar**" (2019 MLD 820 Lahore) held that Section 17-A (4) of the Family Court Act,

1964 provided that paramount duty of the Family Court is to keep in mind the financial status of the father before fixing the quantum of maintenance. Likewise, in case laws reported as **2004 MLD 1325 Peshawar** and **2009 CLC 1819 Lahore**, same principle was reiterated.

14. That evidence of PW-1 (respondent No.3) is available on record, wherein, in her cross-examination she stated as under:-

یہ درست ہے کہ میں سرکاری حساب کرتی ہوں۔ یہ درست ہے کہ میری حساب محکمہ (PWD) میں ہے۔  
یہ درست ہے کہ میرے نکاح میں میرے والد صاحب بھی شامل نہیں تھے۔ یہ درست ہے کہ میری والدہ میرے نکاح میں شامل تھیں۔  
ہماری شادی love کی شادی تھی۔  
یہ درست ہے کہ مدعا علیہ بوقت نکاح زیر تسلیم تھ اسکی کوئی حساب نہ تھی۔  
یہ درست ہے کہ مدعا علیہ دوران آبادی اپنی آمدن میں سے معمولی سا خرچا مجھے دیتا تھا۔  
میں BPS-9 میں حساب کرتی ہوں۔ دوبارہ کہا کہ اب میں BPS-11 میں حساب کرتی ہوں۔ میں بطور UDC حساب کرتی ہوں۔ میری گراس سیلری / تنخواہ 27,000/- روپے ہے۔ یہ درست ہے کہ میں سرکاری ملازم کے علاوہ بھی پرائیویٹ طور پر ایک حساب کر رہی ہوں۔ میں اپنی پرائیویٹ حساب سے ماہانہ 30,000/- روپے تنخواہ لے رہی ہوں از خود کہا کہ میری پرائیویٹ حساب پارٹ ٹائم ہے۔  
یہ درست ہے کہ ہماری کالونی کے اندر بھی سرکاری سکول موجود ہے۔ یہ درست ہے کہ متذکرہ سکول پیدل مسافت پر واقع ہے۔  
مجھے علم نہ ہے کہ مدعا علیہ اپنے اخراجات کے سلسلہ میں اپنے والدین پر انحصار کرتا ہے۔  
دوران آبادی مدعا علیہ بچوں کی فیس کی ادائیگی میں حصہ ڈالتا رہا ہے۔

15. The above referred testimony of the respondent No.3 when considered in light with the other pleadings then it transpires that judgments of the two courts below is lacking regarding determination of quantum of maintenance



for the private respondents, in the light of above referred case laws.

16. It is incumbent upon all courts of the country to adhere legal pronunciation by the Apex court of the land and to seek guidance while deciding the matter before them which has not been considered in the present case by the lower forum.

17. The principle *ibid*, guides to hold that before determination of the quantum of the maintenance, the learned Family Court, is under obligation to determine the financial capability of the father *vis-a-vis* the amount claimed in that respect. The test provided for the purpose is that there should be some tangible, concrete and confidence inspiring material preferably in the shape of documents and thereafter proper maintenance is to be fixed.

18. Now it is to be seen that whether the maintenance fixed and affirmed by the two learned Courts is inconsonance with income of the petitioner and for ascertaining the same, evidence has been gone through.

19. The statement of respondent No.3/PW-1 is very material in this respect and as a matter of fact, reflects the true story. She in cross-examination admitted that she is doing government job in PWD; that no rent is being deducted from them for the residence wherein they are residing; that no member from the family of petitioner attended the Nikah ceremony; that even her father had not participated in the Nikah; that it was a love marriage; that at the time of Nikah, petitioner had been studying and was jobless.

20. The witness admitted that during cohabitation, petitioner had been contributing to some extent in terms of maintenance out of his income; that she is serving in BPS-11 with monthly salary of Rs.27,000/-; that she is also doing private job and earning Rs.30,000/- per month; that she has no knowledge as to whether the petitioner is currently jobless; that at the time of Nikah her Rukhsti had not taken place and that petitioner had been contributing for payment of school fees of the minors during the Abadi.

21. The careful analysis of the statement of the respondent No.3 lead to draw conclusion that it was a love marriage, petitioner had been studying at that time, while they after the marriage, lived in the parental house of the respondent No.3, which is an official accommodation. It also borne out from the evidence that the petitioner, as admitted by the respondent No.3 highlighted above, had been contributing in terms of maintenance and payment of school fee of the children at par with his financial capability. The respondent No.3 in her statement has not given the details or even remote hint whereby the financial status of the petitioner could be ascertained while on the other hand a suggestion was also put to her that the petitioner is jobless. In such an eventuality, when the legitimate source of income of the petitioner is shrouded in mystery and it is established that respondent No.3, is a working lady, had been contributing towards maintenance parallel to the petitioner, the awarded maintenance appears to be excessive and in contravention of the financial capability of the petitioner particularly, when there is nothing on record regarding his financial capability. The amount so fixed thus warrants modification.

22. The sequel of above discussion is that while fixing maintenance, both the learned courts have overlooked the important aspects highlighted in para-14 (*supra*), which are essential to determine the financial capability of the father vis-à-vis independent source of income of the respondent No.3/mother. It was incumbent upon the courts to determine the income of the father for which recourse in terms of sub-section 4 of section 17 (A) of the West Pakistan Family Courts Act, 1964 can be adopted which is meant to facilitate the court to determine the financial position of the father.

23. Consequently, impugned judgments and decrees dated 09.07.2019 and 21.12.2019 are **set-aside** and the matter is **remanded** to the learned Senior Civil Judge-III/ Guardian Judge, Islamabad-West for decision afresh within a period of one month from the receipt of this judgment after giving due opportunity to both the parties to lead evidence, if so desire. The petitioner shall continue paying maintenance allowance at the rate of Rs.3500/- per month per child, which he is already paying, till the final disposal of the suit. There shall be no orders as to costs.

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran

Announced in open Court on **20.11.2020.**

**JUDGE**

Approved for reporting.