

(Appellate Jurisdiction)

Mr. Justice Sardar Tariq Masood
Mr. Justice Amin-ud-Din Khan
Mr. Justice Syed Hasan Azhar Rizvi

(Against the order dated 30.11.2022 of the Lahore High Court, Lahore passed in W.P.No.3332 of 2022)

Petitioner

Additional District Judge, Renala Khurd District Okara etc.

For the Petitioner(s) : In person
(via video link from Lahore)

Date of hearing : 25.01.2024

Syed Hasan Azhar Rizvi, J.- Through this petition filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 30.11.2022 passed by the Lahore High Court whereby writ petition filed by him was dismissed.

2. Succinctly, facts of the case leading to filing of this petition are that the marriage between the petitioner (**Qudrat Ullah**) and Respondent No.3 (**Mst. Shama Naheed**) took place on 25.03.2000. Out of the said wedlock, Respondent No.4 (**Mst. Qurat-ul-Ain**) was born. However, on account of strained relations, the marriage could not remain intact and they parted their ways.

Respondent No.3 instituted a suit for recovery of maintenance for her minor daughter/respondent No.4, when she was six months old, in the Court of Family Judge, Renala Khurd,

which was decreed vide judgment and decree dated 10.04.2007 at the rate of Rs.1000/- per month with 10% annual increase. Subsequently, on 11.03.2020 Respondent No.3 filed a Family Suit No. 157-JFC-2020 for enhancement of maintenance amount. That suit was decreed on 08.07.2021 and maintenance amount was enhanced to Rs.5000/- with 10% annual increase by the learned Family Judge. Thereafter, respondents preferred an appeal before the learned Additional District Judge, Renala Khurd, for further enhancement of maintenance which too was allowed and the maintenance amount for the Respondent No.4 was enhanced upto Rs.25,000/- per month vide judgment and decree dated 18.12.2021.

Being aggrieved, the petitioner filed a Writ Petition No.3332/2022 before Lahore High Court, which was dismissed vide order dated 30.11.2022, impugned herein.

SUBMISSIONS OF PARTIES

3. Petitioner in-person contends that his only source of income is the pension i.e. Rs. 60,000/- per month; that he has a family from second marriage thus maintenance fixed is beyond his means, and that Appellate Court provided no plausible reasoning to justify such an exponential increase in the quantum of allowance.

4. On the other hand, Respondent No.3 while defending the impugned judgment contends that maintenance amount determined is necessary for the continuation of the studies of the respondent No.4 who is currently studying Engineering at COMSATS University, and out of 8 semesters 4 semesters have been completed.

5. We have heard the parties at length and perused the available record.

EVALUATING THE SCOPE OF TERM “MAINTENANCE”

6. The important question that needs determination is *“whether a Muslim father is under an obligation to pay the expenses incurred on education of his daughter/children or whether maintenance of child includes educational expenses?”* In order to answer this question, it is necessary to examine the definition of the term "maintenance."

7. In Pakistan, issues related to child maintenance are dealt with by the Muslim Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964. However, these laws do not provide a specific definition for "maintenance." For better understanding it is suitable to rely on the dictionary meaning of the term.

8. The word “maintenance” is derived from Arabic word “Nafaq” which means “to spend” and in literal sense, the word “nafaqah” (نَفَقَة) means what a person spends on his family. The word “maintenance” has been defined in Black’s Law Dictionary,¹ as under:

“Financial support given by one person to another.”

9. It has been defined in Section 369 of the Principles of Muhammadan Law by D.F Mulla in following words:

“369. Maintenance defined.—“Maintenance” in this Chapter includes food, raiment and lodging.”

Such definition of maintenance is not exhaustive. The word "includes" is generally used in interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the Statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they

¹ Black’s Law Dictionary, 9th Edition, 2009

signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

10. In this view of the matter, it does not exclude other necessary expenses for mental and physical well-being of a minor. This view is also fortified by the judgment in *Arslan Humayun and another*² wherein it was held that Section 369 *ibid* has a wider connotation and should be given an extended meaning, for the purposes of social, physical, mental growth, upbringing and wellbeing of the minor.

LEGAL FRAMEWORK OF MAINTENANCE - ISLAMIC LAW

11. Undeniably, the Almighty Allah is the only sustainer, but, He has created means through which this task is accomplished. Bearing the expenses of children is the second most important task of the father.³

12. In Islamic law “maintenance” is termed as Nafaqah (نَفَقَة) and signifies all those things which are necessary to support life. It is the legal and religious duty of a man to maintain his wife and children. The obligation to maintain wife and children is derived from the Holy Quran and is one of the incidences of marriage. Verse 233 of Surah Al-Baqarah says:

“...and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing.”⁴

Furthermore, Verse 34 of Surah An-Nisaa enjoins:

“Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means.”

13. Thus, right of child to be maintained by the father is ordained by Islamic law as mentioned above.

² PLD 2013 SC 557

³ Nasr, Sayyad Hossein, *Islmaic Spirituality Foundations*, Crossroad, New York, 1987, page 147.

⁴ Holy Qur'an, 2:233

14. Similarly, under Pakistani law, the maintenance of a child is an obligation primarily upon the father. The Family Courts Act 1964 and the Muslim Family Laws Ordinance 1961 (“**MFLO**”) deal with the issue of maintenance of minors in Pakistan.

LEGAL FRAMEWORK OF MAINTENANCE- INTERNATIONAL LAW

15. All the civilized nations of the world have recognised that children have rights by virtue of being children. These obligations are also *erga omnes*⁵ and have since been codified in the United Nations Convention on the Rights of the Child, 1989 (**the “UNCRC”**). UNCRC is an international treaty which sets out the rights of children. The State of Pakistan ratified the UNCRC on 12.11.1990 with its only reservation that its Articles will be interpreted in light of Islamic injunctions. However, in 1997, this reservation was withdrawn, thus, ratification became absolute.

16. Article 27 of the UNCRC is reproduced below for ease of reference;

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

*4. States Parties shall take all appropriate measures to **secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child,** both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international*

⁵ Erga omnes means those obligations that are owed to international community as a whole.

agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Said Article must be read with Article 3 paragraph 1 of the UNCRC, which reads as under;

*“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, **the best interests of the child** shall be a primary consideration.”*

17. The concept of the “child's best interests” is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child,⁶ the Convention on the Elimination of All Forms of Discrimination against Women, 1979,⁷ as well as in regional instruments and many national and international laws.⁸

18. When assessing and determining the best interests of a child the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being⁹ should be taken into consideration. Children’s well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety.¹⁰

19. It is in the best interests of the child to have access to quality education, including early childhood education. All decisions on measures and actions concerning a specific child must respect the best interests of the child or children, with regard to education.¹¹

⁶ Declaration of Rights of Child, 1959, para.2.

⁷ Article 5(b) and 16(1)(d).

⁸ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, para.2.

⁹ UN Convention on Rights of Children, 1969, Article 3 para 2.

¹⁰ UN Committee on the Rights of the Child (CRC), *General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1)*, 29 May 2013, CRC /C/GC/14, para 71.

¹¹ Ibid., para 79.

20. The above discussion leads us to draw a conclusion that it would be absolutely safe to include educational expenses also within the concept of maintenance of a child.

21. Admittedly, Respondent No.4 is the unmarried daughter of the petitioner who is studying in COMSATS University, thus, in order to meet her educational expenses, she requires sufficient amount. In the Trial as well Appellate court Respondent No.3 has sufficiently established, with cogent evidence, that besides receiving pension, the petitioner has other sufficient sources of income. Thus, he has the ability to pay her educational expenses.

22. In the case of *Alaf Din v Mst. Parveen Akhtar*,¹² it has been held that;

*"in interpreting the word "maintenance" some reasonable standard must be adopted. Whilst it is not confined merely to food, clothing and lodging, it cannot, by any stretch of the imagination, be extended to incorporate within it education at **higher levels ad infinitum**. What is necessary to decide in this connection is to find out what amount of education has to be attained by the child concerned, having regard to the status and other circumstances of his family, to enable it to earn a complete livelihood by honest and decent means.... what is required is that the child must be maintained until it is in a position to earn its own livelihood in an honest and decent manner in keeping with its family status."*

While applying the same interpretation it can be noted that although petitioner is not bound to provide the maintenance for education at **higher levels ad infinitum** however, he is duty bound to provide maintenance to Respondent No.4 till she completes her graduation studies and gains an employment to support herself.

23. We have carefully examined the impugned judgment as well as the judgment passed by the learned Judge of the Appellate Court, that was upheld by High Court, and find that reasoning advanced by the Appellate Court is justified and plausible. Before

¹² PLD 1970 SC 75

enhancing the maintenance amount, the Appellate Court duly undertook expenses analysis and concluded that sum of Rs. 25,000/- is required to ensure the continuation of the studies of the Respondent No.4. Therefore, the amount of maintenance so granted is neither excessive nor unjustified.

24. Normally, this Court refrains from intervening in concurrent findings unless they are unreasonable, arbitrary, imaginative, or whimsical. Petitioner has failed to point out any illegality or infirmity so also non-reading or misreading of evidence, hence, no case for interference has been made out.

25. Consequently, this petition being devoid of merit is hereby dismissed and leave is refused.

Judge

Judge

Judge

Islamabad

25 January 2024

Approved for reporting.

Paras Zafar, LC/