

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 498/2021

Jalal-ud-Din

Versus

Additional District Judge (MCAC) West, Islamabad, etc.

Petitioner by: Mr. Rizwan Shabbir Kayani, Advocate.

Respondents by: Mr. Moneeb Ahmed, Advocate for respondent No.3.
Barrister Faiza Asad, Advocate for respondent No.4.

Date of Decision: 25.09.2023.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner, real son of respondent No.3 is aggrieved with the judgment & decree dated 30.10.2019, passed by Judge Family Court (West), Islamabad, which has been maintained by Additional District Judge (West), Islamabad vide judgment dated 31.10.2020 to the extent of maintenance in the following manner:-

By virtue of even dated separate judgment, recorded in English, the suit of the plaintiff is partially decreed in favour of the plaintiff and maintenance of the minor for the period i.e. from June 2015 till December, 2016 is fixed @ Rs.30,000/- per month and lump sum Rs.50,000/- per month maintenance is allowed for the year 2017, as arrears to be paid by the defendant to the plaintiff, whereas, the monthly maintenance of minor is fixed at Rs.70,000/- per month, for years 2018 and 2019. The defendant will be liable to pay Rs.70,000/- per month as maintenance of minor with 10% annual increase on Rs.70,000/- for the years to come till the minor attains the age of majority. The defendant is entitled to deduct the already paid interim maintenance amount from payable amount, whereas, to the extent of remaining claim of plaintiff, the suit is hereby dismissed.

2. Learned counsel for the petitioner contends that petitioner's claim has not been appreciated to the extent of his claim qua security fee amounting to Rs.50,000/-, Ex.P2/3, admission fee Rs.157,500/-, Ex.P2/1 and rate of maintenance fixed @ Rs.30,000/- per month for the year 2016 & 2017, whereas rest of claims have been passed in his favour; that petitioner's mother and respondent No.3 were married on 06.09.2011 and petitioner was born on 22.11.2012, who resides with his mother in the house of maternal grandfather, whereas respondent No.3 is permanent resident of USA and doing business in the said country, who has never shown love and affection towards the petitioner; that respondent No.3 abused the mother of petitioner in the month of June, 2015, she was ousted from house by mother and sister of respondent No.3; that trial court has not appreciated the evidence in a proper manner and complete claim of petitioner has not been allowed.

3. Conversely, learned counsel for respondent No.3 contends that each and every aspect has been appreciated, even quantification of maintenance available on evidence and record and it is not compulsory and obligatory to pay each and every penny to the petitioner, especially when claim has otherwise appreciated by the Family Judge based upon sound reasons.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner is minor son of respondent No.3 claims his maintenance from father though

concurrent decree has been passed in his favour, however, two claims were turned down i.e. amount of security fee referred as Ex.P2/3 and admission fee Ex.P2/1 as well as lower rate of maintenance of Rs.30,000/- per month for the year 2015-2016. Though these aspects if considered in the light of judgment rendered by the trial court maintenance was fixed in the year 2015-2016 @ Rs.30,000/- and then Rs.50,000/- per month for the year 2017, for 2018-2019 Rs.70,000/-, which goes up with 10% annual increase on Rs.70,000/-. All these aspects if considered in the light of principles settled by the Supreme Court of Pakistan in 2023 SCMR 413 (Arif Fareed vs. Bibi Sara and others) wherein it has been held that:-

The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied.

6. Similarly, in another case reported as 2023 SMCR 246 (Mst. Tayyeba Ambareen vs. Shafqat Ali Kiyani), it has been held that:-

The object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong. The appraisal of evidence is primarily the function of the Trial Court and, in this case, the Family Court which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a

corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, mis reading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken.

7. However, all these factors have been confronted to the petitioner's counsel who is unable to make any exception from these principles. It is also settled law that decision of appellate court is considered as final on facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear as held by Supreme Court of Pakistan in C.P No.1418/2023 titled M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others, dated 17.07.2023 (not yet published).

8. While attending the proposition based upon above principles, learned counsel for the petitioner has not pointed out any exceptional circumstance or patent illegality committed by the Family Court or first appellate court, even it has not been denied by the petitioner's side that appellate court has given due right of hearing and decided the matter accordingly, which has attained finality, therefore, instant writ petition is not made out and the same is hereby dismissed. However, it is noted with great concern that respondent No.3/father has not paid due maintenance till date and even no proof of maintenance has been brought on record. In such eventuality,

learned Executing Court seized with the matter shall proceed in the matter expeditiously and get the decree executed in favour of petitioner by all means and shall submit a report in this regard within three (03) months.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid