

Stereo. H C J D A 38

JUDGMENT SHEET

LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

W. P. No. 7340 / 2024

Saba Gul & 02 others

Versus

Additional District Judge, Faisalabad & 02 others

JUDGMENT

Date of Hearing:	18.09.2024
Petitioners By:	Syed Muhammad Shah, Advocate
Respondent No. 3 By:	Mr. Ghulam Murtaza Ch., Advocate Mr. Umair Abbas, Advocate Mr. Tariq Umar Gill, Assistant Attorney General Mr. Jahanzeb Inam, Additional Advocate General

ABID HUSSAIN CHATTHA, J: This constitutional Petition is directed against the impugned Order and Judgment dated 13.09.2023 and 31.10.2023 passed by Judge Family Court / Executing Court and Additional District Judge, Faisalabad, respectively.

2. Brief facts of the case are that the Petitioners instituted a suit for recovery of maintenance allowance and dowry articles against Respondent No. 3 (the “**Respondent**”) which was partially decreed by the Family Court vide Judgment and Decree dated 03.09.2018. The Petitioners and the Respondent preferred cross appeals against the said Judgment and Decree. The Appellate Court dismissed appeal of the Respondent while appeal of the Petitioners was partially allowed vide consolidated Judgment and Decree dated 18.03.2019, thereby, ordering modification in the Decree of the Family Court. Both the parties filed separate W. P. Nos. 22863 and 23430 of 2019 before this Court which were partially allowed and the Judgment and Decree stood further modified. Statedly, the matter has attained finality up to the level of the Supreme Court of Pakistan.

3. During execution proceedings, the Respondent filed an Objection Petition before the Executing Court seeking calculation of paid amount of maintenance allowance with reference to 10% annual increase awarded to the minors in the final Decree under execution by alleging that the Petitioners are calculating the annual increase on compound basis which is unlawful since there is no such stipulation in the Decree or the law. It was maintained that maintenance allowance once decreed by the Court remains constant and static which merely increases by 10% each year in terms of Section 17-A(3) of the Family Courts Act, 1964 (the “Act”). Reliance was placed on cases titled, “Mir Muhammad Khan and 2 others v. Haider and others” (PLD 2020 Supreme Court 233); “Muhammad Anwar v. Bashir Ahmad and another” (2014 CLC 1819); and “Kashif Mahmood v. Additional District Judge and others” (2022 MLD 1762). The said application was resisted by the Petitioners on the ground that maintenance allowance fixed by Court is enhanced by 10% after first year and increase thereupon in the second year is applicable on the cumulative amount of preceding year, as such, 10% annual enhancement is leviable on compound basis as contemplated by Section 17-A(3) of the Act. The Courts below by relying upon the case of Kashif Mahmood (supra) opined that rate of annual increment in each year is to be calculated on base value of the maintenance allowance fixed by the Court and not on the enhanced maintenance amount of previous year arrived at by adding annual increment. Hence, this Petition.

4. During proceedings of this case, it transpired that two separate single Benches of this Court in cases titled, “Mian Muhammad Latif v. Additional District Judge, etc.” (W. P. No. 77557 / 2022) decided on 07.12.2022; and “Sohaib Umar Ilyas v. Judge Family Court, etc.” (W. P. No. 15888 / 2021) decided on 02.02.2023 expressed the view that annual increase in maintenance allowance is required to be calculated on compound basis in terms of Section 17-A(3) of the Act in contrast to the view taken by another learned Single Bench of this Court in the case of Kashif Mahmood (supra). Accordingly, constitution of a larger Bench was recommended vide order dated 30.04.2024, whereafter, the matter was referred to this Bench. Notice was issued on 16.05.2024 to the Attorney General of Pakistan and

Advocate General of Punjab under Order XXVII-A of the Code of Civil Procedure, 1908 (the “**CPC**”) seeking assistance to determine the following question:-

Whether the statutory annual increase of 10% in maintenance allowance ordained in Section 17-A(3) of the Act will apply on compoundable or non-compoundable basis?

5. Learned counsel for the Petitioners and learned Federal Law Officer favored compound calculation of annual increase on the decreed amount of maintenance. It was submitted that Section 17-A of the Act is required to be interpreted in the context of overall scheme of law enshrined in the Act which is not only beneficial in nature but also emphasizes the importance of maintenance allowance as the only source of subsistence of women and children. The provision caters for changed circumstances in terms of their needs and protects them against inflation and price hike. The mandatory annual increase of 10% is applicable at a minimum to all maintenance decrees although the Court is vested with discretion to prescribe a higher rate. There is no specific stipulation therein regarding calculation of annual enhancement on base or aggregate value of maintenance. However, the intent and import of the said provision is that annual increase of each year is required to be imposed on the cumulative or aggregate amount of maintenance allowance of the previous year. This is an obvious conclusion since the Act, in general, and Section 17-A(3) thereof, in particular, is a beneficial legislation aimed to hedge inflation and devaluation of currency. Women and children are oppressed class who are entitled to beneficial interpretation of law which is the intent of legislature in line with the directive Principles of Policy enunciated under Articles 34, 35 and 37 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”) as emphasized by the Supreme Court of Pakistan in case titled, “Saif-ur-Rehman v. Additional District Judge, Toba Tek Singh and 2 others” (2018 SCMR 1885).

6. Learned counsels further submitted that annual rent increments under the Punjab Rented Premises Act, 2009 (the “**Rent Act**”) as a widely accepted general practice are calculated on compound basis reflecting real value of money and property appreciation. The Courts in foreign

jurisdictions employ compound or index-linked payments in long-term financial obligations, such as maintenance, to ensure fairness and alignment with inflation. In case titled, “Sempra Metals Limited (formerly Metallgesellschaft Limited v. Her Majesty’s Commissioners of Inland Revenue and another”, (2007 UKHL 34), the House of Lords ruled in favor of compound interest on the ground that it accurately reflects the true value of money over time. In contrast, it was noted that flat interest rates fail to account for real time inflation and time value of money. Although a custodial parent can institute a subsequent suit or approach the Executing Court by filing an application for enhancement in maintenance allowance in changed circumstances yet the purpose of introducing Section 17-A(3) of the Act is to protect the decree holder against annual real-time inflation, thus reducing the occasions to frequently resort to Court seeking enhancement in maintenance on the ground of increase in inflation and growing needs of minors. Therefore, by implementing automatic compound increases, the Court can streamline adjustments in maintenance in a manner that reduces the need for frequent litigation. This will save costs, time, resources and emotional stress for decree holders. Such an interpretation would bring certainty in fixation of maintenance allowance and would lead to financial stability for the decree holders to meet their evolving needs. Therefore, the ambiguity in Section 17-A(3) of the Act regarding flat versus compound annual increase should be resolved in favor of compound calculations which is a more equitable and efficient approach of adjusting maintenance over time against inflationary trends and growing needs.

7. Learned Counsel for the Respondent and Provincial Law Officer advanced arguments in support of annual increase in maintenance on non-compoundable or linear basis. It was stated that the Decree under execution was passed under Section 17-A(2) of the Act which provides for 10% annual increase and like all family decrees, is required to be executed under Section 13 thereof. Hence, Section 17-A(3) of the Act is not attracted as the Decree was passed under Section 17-A(2) of the Act. The former comes into play only when the Family Court fails to prescribe annual increase. Without prejudice to the above, the intention of legislature to

induct Section 17-A(3) in the Act is express and clear that if the Family Court does not prescribe the annual increment, the ‘maintenance fixed by the Court’ would automatically increase by 10% each year, thus providing for in-built hedging against inflation. The Family Court is empowered to determine the quantum of maintenance allowance which remains fixed till legal entitlement and the said amount annually increases by 10% thereon, thereby, adequately providing for statutory cushion against price hike and inflation. In case, the intention of legislature was to provide for compound annal increase, it could have been expressly specified therein. As such, the conspicuous and conscious omission cannot be substituted by the Court. Islamic jurisprudence derived from the Holy Quran as well as case law on the subject emphasize the importance to strike a balance between the responsibility to pay maintenance to wife and children on the one hand and the financial capacity to pay the same on the other hand. Therefore, the provision of Section 17-A(3) of the Act must be interpreted in a manner to maintain a balance and proportionality between competing rights. Hence, the levy of 10% annual increase on compound amount would lead to injustice.

8. It was further contended that the Rent Act does not provide for automatic 10% compound increase, rather, it is always with the mutual consent of landlord and tenant based on lease agreement. Hence, annual increase in rent does not take effect by operation of any law in contrast to Section 17-A(3) of the Act. As such, the former cannot be equated with the latter. Moreover, the comparative example is misconceived inasmuch as the landlord offers the demised premises against a definite rent which is fixed with the mutual consent of landlord and tenant but in contrast, payment of maintenance allowance is a personal right rooted in love and affection of a person towards his wife and children. Hence, the concept of increase in rent on compound basis cannot be employed in interpretation of Section 17-A(3) of the Act. Therefore, the moot point under consideration has been rightly determined in the case of Kashif Mahmood (supra) particularly, when in the cases of Mian Muhammad Latif and Sohaib Umar Ilyas (supra), no definitive finding on the question of law was rendered. This is particularly so when in cases titled, “Muhammad Iqbal v. Mst. Nasreen Akhtar” (2012

CLC 1407); and “Muhammad Akram v. Additional District Judge and others” (PLD 2008 Lahore 560), the Court opined that the principle of *res judicata* embodied in the CPC is not a bar to institute a fresh suit for enhancement in maintenance allowance due to changed circumstances. Therefore, if the 10% automatic increase on non-compound basis as per Section 17-A(3) of the Act is found inadequate in any particular case, the option to institute a fresh suit for enhancement in maintenance allowance can be exercised. Hence, the 10% increase in maintenance on compound basis would be highly unjustified as the same is not the intent and import of Section 17-A(3) of the Act.

9. Arguments heard. Record perused.

10. The relevant part of modified final Decree qua maintenance amount subject of Objection Petition with respect to calculation of annual increase of 10% reads as under:

“The plaintiffs No. 2 & 3 being minor children of the defendant are held entitled to recover maintenance allowance from the defendant @ Rs. 150,000/- each per month from the date of institution of suit till their legal entitlement with 10% annual increment.”

11. The Decree thus contemplates payment of maintenance at the rate of Rs. 150,000/- for each minor from the date of institution of suit i.e. 29.03.2014 with 10% annual increase. It did not specify if the annual increase shall take effect on compound or non-compound basis, thus triggering the moot question framed for determination. As the *pro* and *contra* arguments revolve around interpretation of Sections 13 and 17-A of the Act, therefore, it would be advantageous to reproduce the same as under:

“13. Enforcement of decrees.— (1) *The Family Court shall pass a decree in such form and in such manner as may be prescribed, and shall enter its particulars in the prescribed register.*

(2) *If any money is paid or any property is delivered in the presence of the Family Court, in satisfaction of the decree, it shall enter the fact of payment or the delivery of property, as the case may be, in the aforesaid register.*

(3) *Where a decree relates to the payment of money and the decretal amount is not paid within time specified by the Court not exceeding thirty days, the same shall, if the Court so*

directs be recovered as arrears of land revenue, and on recovery shall be paid to the decree-holder.

(4) The decree shall be executed by the Court, passing it or by such other Civil Court as the District Judge may, by special or general order, direct.

(5) A Family Court may, if it so deems fit, direct that any money to be paid under a decree passed by it be paid in such installments as it deems fit.

17A. Suit for maintenance.— *(1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.*

(2) In a decree for maintenance, the Family Court may:

(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and

(b) prescribe the annual increase in the maintenance.

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.

(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.”

12. Section 12(2) of the Act empowers the Family Court to pronounce its judgment and pass the decree after conclusion of trial. Section 13 of the Act is another general provision of law which relates to the enforcement of all decrees passed under the Act. It obligates the Family Court to pass a decree in the prescribed form and manner. It also mandates to record and maintain necessary particulars qua payments and delivery of property. This is imperative since family decrees by their very nature involve payment of money on monthly basis and receipt of multiple dowry articles. Further provisions are made in the Family Courts Rules, 1965 including prescribing of uniform Forms for recording of decrees and maintaining of the Register of Receipts and Disbursements. Section 13 of the Act also empowers the Executing Court to direct recovery of unpaid amounts as arrears of land revenue including the power to effect recovery of money in installments to ensure execution of decrees.

13. In contrast, Section 17-A of the Act is a specific provision dealing with suit for maintenance as a special category of family claims. Section 17-A of the Act in its present form was introduced in the Act through the Punjab Family Courts (Amendment) Act, 2015 (XI of 2015) dated 18.03.2015. It places maintenance of wife and children at a higher pedestal than other family claims because maintenance allowance serves as a means of subsistence and survival for them, intrinsically connected to their right to life guaranteed under Articles 4 and 9 of the Constitution. Section 17-A(1) provides for fixation of monthly interim maintenance allowance for wife or a child on the date of the first appearance of the defendant and failure of the defendant to pay the same by fourteenth day of each month entails penal consequences in terms of striking off his defence, thereby, paving the way for passing of decree for maintenance on the basis of averments in the plaint and other supporting documents on record of the case. Section 17-A(2) of the Act postulates that in a decree of maintenance, the Family Court may fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances and prescribe the annual increase in the maintenance. It is evident that necessary discretion has been vested in the Family Court to cater for the time consumed in decision of the suit for maintenance and address other relevant circumstances in order to ensure that an adequate quantum of maintenance is fixed. This provision also confers discretionary powers on the Family Court to prescribe an annual increase in maintenance to cater for future needs and requirements of plaintiffs as well as depreciation in the value of currency in terms of inflation. No caveat is attached to the power of the Family Court to prescribe such annual increase in maintenance on compound or non-compound basis and the Family Court is free to pass a reasonable decree in this behalf depending on the facts and circumstances of the case.

14. In the instant case, however, the Court did not specify if annul increase would apply on compoundable or non-compoundable basis. In such situations, the operation of Section 17-A(3) of the Act comes into play. This provision stresses the importance and requirement of prescribing an annual increase in the maintenance. The provision is couched in negative covenant and provides that if the Family Court does not prescribe annual increase in the

maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of 10% each year. At the same time, it prescribes a statutory threshold or standard that was considered appropriate by the legislature in case, the Court does not specify the annual increase itself depending upon the facts and circumstances of a particular case. The Decree under execution as well as Section 17-A(3) of the Act does not specifically state if the annual increase would be realized on compoundable or non-compoundable basis. Therefore, the argument that Section 17-A(3) of the Act has no relevance as Decree under execution was passed under Section 17-A(2) of the Act requiring execution under Section 13 thereof, is misconceived for the reason that a simple decree not providing for calculation of annual increase in maintenance on compoundable or non-compoundable basis requires interpretation of Section 17-A(3) of the Act which is vividly promulgated to supply omissions in the decrees for maintenance. This is particularly so when it is not the case of the Respondent that the Decree under execution required maintenance to be calculated on non-compound basis. Since the Decree in this respect is silent and Section 17-A(3) of the Act is ambiguous, therefore, interpretation of the latter is imperative to give effect to the Decree according to the mandate of Section 17-A(3) of the Act. Needless to reiterate that Section 13 of the Act only deals with the enforcement of decrees and has no relevance qua determination of annual increase on decreed amount of maintenance.

15. There is no cavil to the proposition that Islamic jurisprudence as interpreted by superior Courts unequivocally hold that maintenance is to be determined on equitable terms by balancing competing interests, as such, the financial status, income, resources and estate of a person liable to pay maintenance is required to be proportionally adjusted against the needs and requirements of wife and children while fixing the quantum of maintenance. Nevertheless, questions qua entitlement to maintenance as well as quantum of maintenance are settled on the basis of facts and evidence from case-to-case basis and the same exercise was undertaken in the instant case. However, the grant of annual increase on the quantum of decreed maintenance and its calculation on compound or non-compound basis is altogether a different question. The rationale to provide annual increase in maintenance fixed by the Court is rooted in hedging inflation and providing

for anticipated future yet inevitable needs and requirements of wife and children. There is no doubt that quantum of maintenance once fixed after trial cannot remain stagnant. There may be a host of changed circumstances, such as, inflation, increased cost of existing needs or new requirements in wake of growing age when there is a need for revising the determined maintenance by the Court. It is in this context that the Courts in the cases of Muhammad Iqbal and Muhammad Akram (supra) held that the principle of *res judicata* in the CPC is not applicable to a subsequent suit for enhancement in maintenance based on changed circumstances since such circumstances provide a fresh cause of action. In fact, the Supreme Court of Pakistan in case titled, “Lt. Col. Naseer Malik v. Additional District Judge, Lahore and others” (2016 SCMR 1821) went as far as to hold that an application under Section 151 of the CPC seeking enhancement in maintenance is maintainable in lieu of instituting a separate subsequent suit in the following words:-

“6....Once a decree by the Family Court in a suit for maintenance is granted thereunder, if the granted rate for per month allowance is insufficient and inadequate, in that case, according to scheme of law, institution of fresh suit is not necessary rather the Family Court may entertain any such application and if necessary make alteration in the rate of maintenance allowance.”

16. The right to institute a subsequent suit or filing of an application for enhancement in maintenance allowance, however, is always cumbersome entailing costs, resources and time, thus burdening the wife and children to frequently resort to Court. It is ostensibly clear that by introducing substituted Section 17-A in the Act, the legislature intended to stipulate a comprehensive arrangement with respect to maintenance, thus empowering the Court to fix interim monthly maintenance, pass a decree upon failure of the defendant to pay the same, fix maintenance higher than prayed amount due to afflux of time or upon consideration of relevant circumstances and prescribe annual increase. To top it all, Section 17-A(3) of the Act mandated automatic 10% annual enhancement by operation of law, if the Court failed to prescribe annual increase. This arrangement was put in place to reduce the occasions for wife and children to have frequent recourse to Court for enhancement in maintenance, thus accounting for

inflation, rising cost of living and evolving requirements of wife and children.

17. The legislature while promulgating Section 17-A(3) of the Act did not specifically provide for compound or non-compound calculation of prescribed automatic annual increase. In financial transactions, both compound and non-compound standards are employed in our jurisprudence. Section 34(1) of the CPC confers discretionary powers upon the Court to grant costs subject to such conditions and limitations, as may be prescribed, and to the provisions of law for the time being in force. Section 34(3) of the CPC further ordains that the Court may give interest on costs at any rate not exceeding six per cent, per annum, and such interest shall be added to the costs and shall be recoverable as such.” The Supreme Court of Pakistan in case titled, “Najm Koreshi v. Chase Manhattan Bank Now Muslim Commercial Bank Limited, Lahore and others” (2015 SCMR 1461), while interpreting Section 34 of the CPC recognized the power of the Court to grant simple or compound interest and opined that interest *pendente lite* and further interest are both discretionary reliefs, therefore, unless expressly ordered in a decree, such interest accrues on principal amount adjudged and not on the aggregate of that amount with accumulated interest.

18. In contrast, Section 28 of the Land Acquisition Act, 1894 expressly provides for compound interest on adjudged compensation at the rate of eight percent from the date of possession of acquired property. Similarly, Section 5-A(1) of the Punjab Urban Rent Restriction Ordinance, 1959 (since repealed) proclaimed that “*the rent of a non-residential building shall stand automatically increased at the end of every three years of its tenancy by twenty-five percent of the rent already being paid by the tenant*” thus, stipulating enhancement in rent on the immediately preceding or prevalent rent. However, Section 6(1)(c) of the Rent Act in vogue leaves the matters qua rate of rent, rate of enhancement due date and mode of payment of rent to the mutual consent of the landlord and the tenant to be determined through the tenancy agreement. Notwithstanding the same, practically and as a generally accepted trade practice, enhancement in rent is actualized on the last preceding rent and not on the original amount of rent fixed. It, therefore,

follows that both compound and non-compound calculations are part of our jurisprudence. At times, it is expressly provided by law or otherwise it is left at the discretion of the Court depending upon the facts and circumstances of the transaction. Therefore, the ambiguity in Section 17-A(3) of the Act can be best resolved by analyzing the scheme of law enshrined in the Act in the context of nature of maintenance claim based on the guiding principles of fairness, equity and justice.

19. The Act has been promulgated for the establishment of Family Courts for expeditious settlement and disposal of disputes relating to marriage, family affairs and other matter connected therewith. In furtherance of the stated objective, a convenient and flexible procedure has been prescribed in the Act for time bound adjudication of a family suit. Strict rules of procedure are dispensed with as Section 17(1) of the Act postulates that save as otherwise expressly provided by or under the Act, the provisions of the Qanun-e-Shahadat Order, 1984 and the CPC, except Sections 10 and 11 thereof, shall not apply to proceedings before any Family Court in respect of Part I of Schedule to the Act. The superior Courts in view of the intent, purpose and objective of the Act have consistently adopted a liberal and beneficial approach in interpretation of various provisions of the Act. In Saif-ur-Rehman case (supra), the Supreme Court of Pakistan while interpreting Section 14(2) of the Act underscored the need of purposive interpretation of the Act in the following words:

“10.It is now settled law that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference, in this behalf, may be made to the judgments reported as Federation of Pakistan through Ministry of Finance and others v. M/s. Noori Trading Corporation (Private) Limited and 14 others (1992 SCMR 710) and Hudabiya Engineering (Pvt.) Limited v. Pakistan through Secretary, Ministry of Interior, Government of Pakistan and 6 others (PLD 1998 Lahore 90).

11. The second aspect of the Family Courts Act, 1964 and the Rules framed thereunder as amended from time to time would reveal its gender sensitivity. A glance at Section 3 of the Act of 1964 reveals that women Judges are specifically catered

for. The residence of the wife can be a determining factor for conferring territorial jurisdiction, in certain Suits as is evident from the provisions of Rule 6 of the West Pakistan Family Courts Rules, 1965. There can be no escape from the fact that the tone and tenor of the Family Courts Act, 1964 and the Rules framed thereunder are beneficial in nature. It is an equally settled law that beneficial provisions in a Statute must be interpreted liberally in a manner so that the benefit conferred is advanced rather than frustrated or subverted. Reference, in this behalf, may be made to the judgments of this Court reported as Lahore Development Authority through D.G., Lahore and another v. Abdul Shafique and others (PLD 2000 SC 207) and Pakistan Engineering Co. Limited, Lahore through Managing Director v. Fazal Beg and 2 others (1992 SCMR 2166).”

20. The preamble of the Constitution highlights the importance of social justice and ordains that adequate provision shall be made to safeguard legitimate interests of depressed classes. The right to life is protected under Articles 4 and 9 of the Constitution. The right of maintenance of wife and children is undoubtedly an inseparable part of right to life as they are dependent on maintenance for their very survival in terms of their basic needs and requirements with respect to food, clothing, shelter, schooling and healthcare. The right to receive maintenance is a legal right granted by law and enforceable through the Court. It is not merely a personal right based on love and affection of a person towards his wife and children. Maintenance must be received by those held entitled to receive the same with dignity in terms of Article 14 of the Constitution. Even the non-discrimination clause embodied in Article 25 of the Constitution proclaiming equal protection of law for all citizens, creates a conscious and conspicuous exception by proclaiming that the State is not prevented from making any special provision for the protection of women and children. The directive Principles of Policy contained in Articles 34, 35 and 37 of the Constitution particularly call upon the State to ensure full participation of women in all spheres of national life; protect marriage, the family, the mother and the child; promote special care, educational and economic interests of backward classes; and ensure inexpensive and expeditious justice.

21. Therefore, it is abundantly clear that Section 17-A(3) of the Act is a beneficial, remedial or curative provision which calls for liberal

interpretation. It is triggered when the Court omits to prescribe annual increase in maintenance or does not expressly specify if annual increase so prescribed will take effect on compound or non-compound basis while passing a decree under Section 17-A(2) read with Section 12(2) of the Act. If the legislature has not specifically provided for compound calculation in Section 17-A(3) of the Act, it is equally true that the legislature has also not provided otherwise. The expression ‘the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year’ ordinarily imply that quantum of maintenance fixed under a decree does not remain static or constant but is a variable figure which is meant to increase after each year. After increase of 10% at the end of first year, a new quantum of maintenance comes in field and the amount gets merged or amalgamated in the quantum of maintenance fixed by Court. The process is repeated after each year till the legal entitlement of wife or children under the decree. Therefore, annual increase of each year is required to be calculated on the merged amount of last preceding year for the reason that 10% increase is intrinsically linked with the principal amount and is an inseparable part of the decree. If the rent is traditionally increased with reference to the last prevailing rent, there is no reason why maintenance should not be increased based on the same principle. The compound calculation of maintenance not only caters for inflation and rising cost of living but also allows to account for growing needs and requirements of wife and children, thus, reducing the occasions to resort to Court seeking enhancement in maintenance allowance. Hence, it is concluded that when a decree of maintenance does not prescribe an annual increase or is silent qua calculation of prescribed annual enhancement on principal or aggregate amount of maintenance, Section 17-A(3) of the Act will come into operation and the Executing Court shall calculate the due decreed amount on compound basis.

22. Before parting, we note that in the case of Kashif Mahmood (supra), it has been aptly held that Section 17-A(3) of the Act shall apply to all pending proceedings from the date of its promulgation and the finding contained therein to this extent is fully endorsed.

23. In view of the above, this Petition is **allowed**; the impugned Order and Judgment dated 13.09.2023 and 31.10.2023 are set aside; and consequently, the Objection Petition of the Respondent stand dismissed. The Executing Court is directed to enforce the Decree under execution in accordance with law. However, it is clarified that this Judgment will only apply to pending proceedings and shall not affect the past and closed proceedings which have attained finality.

24. The Registrar of this Court is directed to transmit a copy of this Judgment to all District Judges of the Province of Punjab for its circulation to all Family Courts within the jurisdiction of respective Districts for information. A copy of this Judgment shall also be sent to Secretary Law, Government of the Punjab for consideration of initiation of appropriate amendment in the Act to bring clarity in Section 17-A of the Act in the manner deemed appropriate by the Legislature.

(Shams Mehmood Mirza)
Judge

(Abid Hussain Chattha)
Judge

Approved for Reporting.

Judge

Judge

Announced in Open Court on **09.10.2024**.

Judge

Judge

Waqar