

Abid Hussain

Judge Family Court, etc.

02.06.2015 Ch. Muhammad Yousaf, Advocate for the petitioner.  
Mr. Nayyar Iqbal Ghauri, Advocate for respondent  
No.3.

Through this Constitution Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner challenges exparte orders dated 15.12.2011, exparte judgment and decree dated 06.01.2012, order dated 26.06.2012 and the judgment and decree dated 08.11.2012, whereby suit for the recovery of maintenance allowance @Rs.5,000/- per month with 10% annual increase from 20.06.2010 till to date and in future till her legal entitlement, dower amount to the tune of Rs.1,99,000/-, dowry articles as per list valuing Rs.10,13,681/- as alternate price and 5 ½ tola gold ornaments or its price as per prevalent rate was decreed and the application filed by the petitioner to set aside the exparte judgment as well as appeal were dismissed.

2. Learned counsel for the petitioner contends that the exparte judgment and decree was passed on

account of failure of learned counsel for the petitioner to inform him about the date of hearing when he was supposed to appear and as such counsel remained negligent in the performance of his professional duty, therefore, was warned by the Disciplinary Committee of the Punjab Bar Council. Further submits that even otherwise the trial court was required to pass order on the basis of evidence instead of allowing claim to the fullest.

3. Conversely, learned counsel for respondent No.3 submits that the decree was passed on the basis of evidence and the negligence of counsel, if any, would not help out the petitioner, who himself otherwise was bound to pursue the case on the dates of hearing.

4. Arguments heard. Record perused.

5. The suit was filed by respondent No.3 on 27.07.2011 and the written statement was filed by the petitioner on 30.11.2011, whereafter, on 15.12.2011 the case was fixed for pre-trial reconciliation proceedings on which date respondent No.3 entered appearance and got recorded her statement that she was ready to rehabilitate with the petitioner if he paid her dower and provide maintenance allowance. However, the petitioner did not appear, therefore, exparte proceedings were taken against him and

exparte evidence was recorded. In the suit respondent No.3 has claimed maintenance allowance @Rs.20,000/- per month as past maintenance allowance since June, 2010 as well as future maintenance allowance alongwith Rs.1,99,000/- and 5½ tolas gold ornaments as dower and Rs.10,13,681/- as alternate price of dowry articles and birth expenses of Rs.90,000/-. However, maintenance @Rs.5,000/-per month with 10% annual increase, dowry articles of Rs.10,13,681/- and 5½ tola gold ornaments as dower amount was awarded on the basis of exparte evidence vide order dated 06.01.2012. On 13.02.2012, just after a month the petitioner moved an application under section 9(6) of the West Pakistan Family Court Act, 1964 alongwith application under section 5 of the Limitation Act which was resisted but was dismissed on 26.06.2012 on the ground that negligence of counsel was not a valid ground to set aside the exparte decree and places reliance upon AMANULLAH SOOMRO v. P.I.A. through Managing Director/ Chairman and another **[2011 SCMR 1341]**. However, before passing order dated 26.06.2012 the Disciplinary Committee of the Punjab Bar Council has already warned the learned counsel namely Mrs.Shabnam Naz Tariq, Advocate but this fact was not mentioned in the order dated 26.06.2012. The

Disciplinary Committee of Punjab Bar Council referred to the pendency of appeal before the competent court of law against the said order dated 06.01.2012. The appellate court in its order dated 08.11.2012 while dismissing the appeal has not appreciated the proposition in the dictum laid down in the above cited judgment that the proceedings of the Disciplinary Committee had not resulted into warning to the counsel and that the Disciplinary Committee in its order dated 05.05.2012 had already referred to the pendency of the appeal.

6. Since due to the negligence of the counsel the petitioner has not been informed about the progress and the order passed by the Family Court, therefore, in my humble view, case of the petitioner has been seriously prejudiced.

7. As far as rights of respondent No.3 regarding claim of maintenance is concerned, I am of the firm view that some amount must be paid by the petitioner to her immediately which may be subsequently adjusted by the Family Court, if a decree is passed.

8. In this view of the matter, order dated 26.06.2012 dismissing the application of the petitioner filed under section 9(6) of the West Pakistan Family Courts Act, 1964 is hereby set aside as a result of which suit for recovery of maintenance allowance,

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dowry articles, dower amount, etc. is deemed to be pending before the Family Court at Lahore where the case is remanded subject to payment of Rs.1,00,000/- by the petitioner which may be adjusted subsequently in the form of maintenance allowance and payable by the petitioner on 15.06.2015 when the parties shall appear before the Judge Family Court at Lahore, who shall proceed strictly in accordance with law and decide the family suit expeditiously, preferably within a period of three months from the receipt of copy of this order.

**(ALI BAQAR NAJAFI)**  
**JUDGE**  
**SPECIAL BENCH FAMILY-I**

Approved for reporting.

**J U D G E**

Ali Gauhar/\*