

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.30491 of 2021

Muhammad Arif

Versus

Fouzia Nasreen, etc

J U D G M E N T

Date of Hearing	14.02.2023
For the petitioner	Mr. Javed Rehmat Gill, Advocate
For Respondents No.1 to 3.	Mr. Sohail Qaiser Tarar, Advocate.

Raheel Kamran J:- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“the Constitution”) the petitioners have assailed the judgment and decree dated 07.09.2019 passed by the learned Judge Family Court, Phalia whereby suit for dissolution of marriage, recovery of maintenance and dowry articles instituted by respondents No.1 to 3 was partially decreed in the terms that minors were held entitled to recover maintenance at the rate of Rs.20,000/- per head per month from the date of institution of the suit till their legal entitlement and petitioner was also held entitled to recover maintenance at the same rate for *Iddat* period as well as the judgment and decree dated 03.12.2019 passed by the learned Additional District Judge, Phalia whereby appeal of the petitioner against the aforementioned judgment and decree was dismissed.

2. Learned counsel for the petitioners contends that in the terms of Rule 6 of the Family Court Act, 1964 (‘Act’) this Court has no jurisdiction and in the impugned judgment and decree specific issue in that regard was framed by the learned trial court, however, findings of the learned courts below on the said issue

are patently erroneous. While referring to the cross-examination of the plaintiff-respondent, learned counsel for the petitioner has emphasized that it is an admitted fact that minors in this case were born in Italy where they are residing and the cause of action for their maintenance, if any, covering their food, accommodation, health and education expenses arises in Italy, therefore, the courts in Italy possessed jurisdiction over the subject matter. In support of his contention, learned counsel for the petitioner has relied upon judgments in the cases of Shahdad Khan v. Judge Family Court, Rawalpindi and another (2014 CLC 1238) and Major Muhammad Khalid Karim v. Mst. Saadia Yaqub and others (PLD 2012 SC 66).

3. Conversely, learned counsel for the respondents states that the plaintiff-respondent No.1 was present within the territorial jurisdiction of this Court when the suit was instituted and learned courts below have rightly found the issue in favour of the plaintiff-respondent No.1. He has relied upon the judgment in the case of Muhammad Younas v. Shahzad Qamar & others (NLR 1982 CLJ 35).

4. Arguments heard. Record perused.

5. Out of divergent pleadings of the parties, learned trial court was pleased to frame Issue No.5 in the following terms:

“5. Whether the instant suit does not lie and liable to be dismissed because plaintiff is residing in Italy and suit between the parties are also pending in Italy? OPD”

6. In terms of Article 175(2) of the Constitution, no court has any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law. Jurisdiction of the Family Court to entertain, hear and adjudicate upon matters specified in Part I of the Schedule to the Family Courts Act, 1964 (‘Act’) is governed by Section 5 of the Act. The matters specified in the Schedule to the Act include maintenance as Item No.3. On matters specified under the Act, Rule 6 of the Family Court Rules, 1965 governs territorial jurisdiction of a Family Court. In

terms of Rule 6 *ibid*, the Family Court which has jurisdiction to try a suit for maintenance is the one within the local limits of which the cause of action wholly or in part has arisen, or where the parties reside or last resided together.

7. It is manifest from cross-examination of respondent No.1 who deposed as PW1 that she made significant admissions relevant to adjudication of the issue No.5 concerning jurisdiction of the Family Court in the instant case. Admittedly, respondent No.1 and the petitioner moved to Italy to reside there only after a couple of months of their marriage solemnized on 16.11.2009 where the minors were born. It was also admitted that since their marriage, respondent No.1 and her husband (the petitioner) alongwith the minors visited Pakistan two to three times. The minors are Italian citizens by birth who were admittedly residing in Italy. Nothing was produced in evidence to establish intentions of the private respondents to reside in Pakistan. Income of the petitioner was accruing in Italy where admittedly he was working and all expenses for the maintenance of private respondents were to be incurred in Italy where they were residing. Like most of the members of the European Union, Italy is a welfare state that significantly contributes towards health, education and other benefits qua maintenance of its minor citizens, which are relevant to be taken into account for determining the quantum of maintenance to be decreed. From the above, it is thus established that not only the parties were residing in Italy but the cause of action for their maintenance apparently arose there upon which the courts in Italy could exercise jurisdiction. Therefore, suit for the recovery of maintenance of private respondents was not maintainable before the Family Court at Phalia. The learned courts below have manifestly acted in disregard of Rule 6 *ibid* while deciding issue No.5 in negative i.e. against the petitioner and in favour of the private respondents, therefore, the impugned judgment and decree liable to be reversed on that account.

8. Marriage of the petitioner with respondent No.1 was dissolved vide order and decree dated 03.04.2019 which is not under challenge before this Court. What has been assailed before this Court are judgments and decrees dated 07.09.2019 and 03.12.2019 passed by the learned Judge Family Court, Phalia and learned Additional District Judge, Phalia in appeal respectively to which the instant decision is confined.

9. For the foregoing reasons, this writ petition is allowed and the impugned judgments and decree of maintenance passed by the courts below are set aside and suit for the maintenance of respondents No.1 to 3 is dismissed for lack of jurisdiction. There shall be no order as to costs.

(RAHEEL KAMRAN)
JUDGE

Asim Shahzad

Approved for reporting.

JUDGE