

2012 Y L R 1703

[Lahore]

Before Malik Shahzad Ahmad Khan, J

IBRAR HUSSAIN BUKHARI---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE LAHORE and 3 others---Respondents

Writ Petition No.18373 of 2008, decided on 8th February, 2012.

West Pakistan Family Courts Act (XXXV of 1964)---

----S.5 & Sched.---Constitution of Pakistan Art.199---Constitutional Petition---Suit for recovery of maintenance allowance for minor---Suit was decreed concurrently by courts below---Contention of the husband was that the quantum of the maintenance allowance was excessive, and that the annual increase in the same at the rate of 25% was exorbitant---Validity---Documents submitted before the Trial Court showed that the husband was a wealthy man and keeping in view the status of the parties as well as the fact that the minor was a special child, there was no illegality in the judgment of the courts below to the extent of the quantum of the maintenance allowance---Annual increase in the said maintenance allowance at the rate of 25% was excessive, and no solid grounds for the same were mentioned in the impugned judgment---High Court modified the annual increase in the maintenance allowance to the extent of 10%---Constitutional petition was disposed of accordingly.

PLD 2009 SC 760 rel.

Malik Muhammad Ashhab for Petitioner.

Shahid Bilal Hassan for Respondents Nos.3 and 4.

ORDER

MALIK SHAHZAD AHMAD KHAN, J.---This petition has been filed to challenge the judgment and decree dated 8-3-2008, passed by learned Judge Family Court, Lahore, as well as, against the judgment and decree dated 15-10-2008, passed by learned Additional District Judge, Lahore.

2. Briefly facts of the case necessitating for the disposal of this petition are that the petitioner was married to Mst. Syeda Zahra Jaffery (respondent No.3 on 29-2-1980, and from this wedlock, three offspring, namely, Syed Salman Hussain (son), Mst. Amna Hussain (daughter), and Syed Muhammad Saad (son) were born. Syed Salman Hussain and Mst. Amna Hussain are major, whereas, Syed Muhammad Saad is minor and is suffering from Orisom disease. The petitioner/ defendant deals in automobiles spare parts and is owner of a Company with the name of Dai-Ichi Trading Co Ltd., having its offices in Japan, Canada, Dubai, Chile, Peru and South America. The petitioner failed to provide maintenance allowance to the plaintiffs/respondents Nos.3 and 4 since February, 2006, therefore, they filed a suit for the recovery of maintenance allowance against the petitioner.

3. On the other hand, the petitioner/ defendant appeared in the Court, and controverted the averments made in the suit by submitting his written-statement.

4 In order to resolve the controversy between the parties, the learned trial Court framed the following issues:--

ISSUES

(1) Whether the plaintiff is entitled to get a decree for recovery of maintenance allowance, if so, from what period and at what rate? OPP.

(2) Whether the defendant has paid maintenance allowance to the plaintiff till December, 2006 beyond his means? OPD.

(3) Whether the plaintiff has no cause of action to file this suit? OPD.

(4) Relief.

5. After framing of necessary issues, both the parties were directed to produce their evidence in support of their respective claims.

The plaintiff Syeda Zahra Jaffery (respondent No.3) herself appeared as (P.W.1). She also tendered documentary evidence i.e. Electricity, Gas and Telephone Bills (Exh.PB) to (Exh.PF) and Mark-A. She also examined one Ashraf Ali as (P.W.2) and submitted his affidavit (Exh.PG). Shahid appeared as (P.W.3) and submitted his affidavit (Exh.PH).

In rebuttal thereto, the petitioner/ defendant examined Maqbool Ahmad as (DW-1), who filed his affidavit (Exh.DA), and Riaz Ahmad as (DW-2), who produced his affidavit (Exh.DB).

The learned Judge Family Court, vide judgment and decree dated 8-3-2008, decreed the suit of the plaintiffs/ respondents Nos.3 and 4 in the following manner:--

"The suit of plaintiff No.1 for maintenance allowance from January, 2007 till effectiveness of her divorce and till the majority and recovery from disease of plaintiff No.2, is hereby, decreed at the rate of Rs.15,000 each per-month. The interim maintenance allowance which the defendant has paid to the plaintiff shall be deducted from the decretal amount".

Both the parties, being dissatisfied with the above-mentioned judgment and decree of the learned Judge Family Court, filed two separate family appeals. The learned

Additional District Judge, Lahore, vide impugned judgment and decree dated 15-10-2008, dismissed the appeal, filed by the petitioner, and accepted the appeal, filed by respondents Nos.3 and 4. Resultantly the maintenance allowance of respondent No.3 was enhanced from Rs.15,000 to Rs.40,000 per month whereas maintenance allowance of respondent No.4 was enhanced from Rs.15,000 to Rs.1,00,000 per month with 25% annual increase.

The petitioner has impeached both the above-mentioned judgments and decrees of the courts-below through this petition.

6. It is contended by the learned counsel for the petitioner that the impugned judgments and decrees passed by the courts below are against law and facts; that both the courts below have passed the impugned judgments and decrees without appreciating the evidence available on record; that the learned Additional District Judge fixed the quantum of maintenance without determining the income and sources of the petitioner; that no proof of expenses of the minor respondent No.4 has been placed on the record; that both the witnesses, produced by the petitioner/defendant, categorically stated that business of the petitioner is suffering from heavy loss; that the maintenance allowance granted to respondent No.4 at the rate of Rs.1,00,000 (rupees one lac only) per month, with 25% increase every year is exorbitant, therefore, this petition may be accepted and the impugned judgments and decrees may be set aside.

7. Conversely, the learned counsel appearing on behalf of the plaintiffs/respondents Nos.3 and 4 has vehemently opposed this petition on the grounds that there are concurrent findings of fact recorded by the two courts below against the petitioner, which may not be disturbed in Constitutional jurisdiction; that both the courts below have rightly passed the impugned judgments and decrees in favour of the plaintiffs/respondents Nos.3 and 4 by appreciating the evidence and the documents available on the record, therefore, this petition being merit less is liable to be dismissed.

8. Arguments heard and record perused.

9. From the perusal of the record, it manifests that respondent No.3 is ex-wife of the petitioner, who had been divorced during pendency of the trial on 8-3-2007, and the said divorce has become effective. During the course of trial, receipts of deposit of the maintenance allowance till December, 2006, in the account of respondent No. 3 were brought on the record, and there is no denial of the said receipts by the above said respondent, therefore, the plaintiff/respondent No.3 was rightly held entitled to get maintenance allowance since January, 2007, till her 'Iddat' period.

As far as minor respondent No.4 namely Syed Muhammad Saad is concerned, admittedly, he is suffering from mental disease and is a special child. His paternity is admitted, therefore, he was held entitled to get maintenance allowance from his father/petitioner since January, 2007 by the two courts below, anyhow, the learned appellate court enhanced the maintenance allowance from Rs.15,000 per-month per head for respondents Nos.3 and 4 to Rs.40,000 per month for respondent No.3 from January, 2007 till her Iddaf period and to Rs.1,00,000 per month, for minor respondent No.4 from January, 2007 till his majority and recovery from disease with 25% annual increase.

11. As regards the status of the petitioner/defendant and quantum of maintenance allowance is concerned, it has very much come on the record that the petitioner deals in the business of automobile spare parts with the name and style of Dai-Ichi Trading Company Ltd. having its offices in different countries of the world including Peru, Chili, South America etc., and this fact has been duly admitted by the petitioner in his written-statement in paragraph No.3 on merits. The witnesses of the petitioner have also admitted that the petitioner/defendant deals in automobile business with the name and style of Dai-Ichi Company Limited. Maqbool Ahmad Malik (DW-1) has also deposed about property/house owned by the defendant in Defence and Dubai. He has also admitted that the petitioner is owner of a boat. He has claimed that business of the petitioner/defendant is in loss and it is impossible for him to provide maintenance due to loss in his business, but no document was placed on the record by the appellant/defendant to substantiate his claim of loss in the business. During the cross-examination, Riaz Ahmad, DW-2 has stated that the plaintiff/defendant visited Pakistan

for eight times in the year, 2007, and on each trip he met the petitioner/defendant in Pearl Continental Hotel. He stated that whenever defendant visits Pakistan, he stays in Pearl Continental Hotel. If business of the petitioner/defendant is in loss then how he can afford to visit Pakistan for eight times in a year and how he can afford to stay in a Five Star Hotel in Pakistan. If the petitioner/defendant can visit Pakistan for eight times in a year and he can afford to live in a Five Star Hotel, then why the petitioner/defendant cannot pay the maintenance allowance to his son who is abnormal and needs more care and attention of parents. The receipts of different amounts deposited by the petitioner/ defendant in the account of respondent No.3/plaintiff No.1, were also attached with the written-statement by the petitioner/ defendant, which were although not exhibited but these receipts were taken into consideration by the learned appellate Court to analyze the financial status of the petitioner/defendant. Photo-copies of bank statements, which bears signatures of the Presiding Officer of the trial Court dated 30-5-2007, were also placed on the record and as per this statement a huge amount of US Dollars 1,129,766 worth about 35-crores rupees was sent in the account of respondent No.3/plaintiff in Citibank, Alfalah Building, Lahore through Dai-Ichi-Motors. Another copy of bank statement, having signatures of the Presiding Officer dated 30-5-2007 from September, 2005 till December, 2005 for an amount of US Dollars \$340,984 worth Rs.20,351,245 sent by Dai-Ichi-Motors in the name of Amna Hassan daughter of the parties was also placed on the record of the learned trial Court. The said documents show that the petitioner/ defendant is a wealthy man.

12. Keeping in view the status of the parties and as the minor respondent No.4 is a special child, therefore, I see no illegality in the judgment and decree of the learned appellate Court to the extent of fixation of the quantum of maintenance allowance. Anyhow, the annual increase in the maintenance allowance at the rate of 25% per annum is excessive. No solid grounds have been mentioned in the impugned judgment of the learned appellate Court for fixation of the said increase, therefore, judgment of the learned appellate court to the extent of annual increase in the maintenance allowance, is modified and it is held that there will be 10% annual increase in the

maintenance allowance of respondent No.3. Reference in this context may be made to the case of PLD 2009 Supreme Court 760).

13. With the above modification in the impugned judgment dated 15-10-2008, passed by the learned Additional District Judge, Lahore, this petition stands disposed of with no order as to costs.

K.M.Z./I-15/L

Order accordingly.