

[Lahore]

Before Jawad Hassan, J

TANVEER AZIZ---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No.433 of 2017, decided on 10th January, 2017.

Family Courts Act (XXXV of 1964)---

---Ss.7, 14(2)(C), 17-A & Sched.---Suit for maintenance---Quantum of maintenance allowance for minor daughter---Scope---Family Court decreed maintenance allowance to minor striking off defence of father in wake of his failure to provide interim maintenance allowance---Record revealed that Family Court proceeded to strike of right of defence, and suit of plaintiffs to the extent of maintenance allowance was decreed under S.17-A of the Family Courts Act, 1964---Father was man of means and had sufficient source of income to meet decreed amount of maintenance which was Rs.5000/- monthly---Even otherwise, it was legal, moral and religious obligation of father to maintain his daughter---Appellate Court had rightly found that in view of amended notification decreed maintenance allowance was not appealable---Constitutional petition was dismissed accordingly.

Tariq Nazir Sheikh for Petitioner.

ORDER

JAWAD HASSAN, J.---By way of instant petition, the Petitioner has called in question the order dated 04.01.2017 passed by the learned Additional District Judge, Lahore whereby he dismissed the appeal preferred against the order dated 24.03.2016 of learned Judge Family Court, Lahore.

2. Brief facts for the disposal of this Constitution Petition are that Plaintiff No.1 was married with the Petitioner/Defendant on 26.9.2010, against consideration of Rs.1000/- as prompt dower and Rs.25 lac payable on demand (deferred dower) and at the time of rukhsati precious dowry articles and gifts valuing Rs.729755/- were also given to the Plaintiff No.1. Subsequently, the relations between the spouses became strained as a consequence, Plaintiff No.1 was deserted from the house of Petitioner and ultimately she took refuge in her parental house. During subsistence of marriage, on 24.6.2011, plaintiff No.2 was born in house of parents of Plaintiff No.1 and delivery expenses of Rs.80,000/- were also born by her parents. Subsequently, the Petitioner/defendant divorced the Plaintiff No.1 on 9.10.2011. Respondent No.3 along with her real mother Muqadas Abdul Rauf filed a suit for recovery of maintenance allowance, dowry articles etc. The said suit was contested by the Petitioner/defendant by filing written statement wherein he resisted the claim by taking legal as well as factual objections and out of the divergent pleadings of the parties as many as six issues were framed as against whereof the learned Judge Family Court proceeded to decree

the suit in favour of the Respondent No.3 to the extent of recovery of maintenance allowance of Respondent No.2 @ Rs.5000/- per month from the date of institution of the suit i.e. 07.04.2012 till the time she gets married or the custody of the minor changes through process of law with 10% increase per annum. Feeling aggrieved, the Petitioner preferred an appeal before the learned Additional District and Sessions Judge, Lahore which was dismissed on 04.01.2017. Hence this petition.

3. Arguments heard and record perused.

4. From the perusal of record it reveals that after framing of issues, the case was adjourned for evidence of respondent as well as for the payment of interim maintenance allowance, which was fixed on 7.9.2012 at the rate of Rs.1500/- per month. The record reveals that the petitioner has badly failed to provide the interim maintenance allowance to the minors. Therefore, the learned Judge Family Court proceeded to struck off the right of defence of the petitioner and the suit of Respondent/Plaintiffs to the extent of maintenance allowance was decreed under Section 17-A of West Pakistan Family Courts Act 1964. Consequently, learned Judge Family Court decreed the suit of the plaintiffs to the extent of recovery of maintenance allowance of Plaintiff No.2/Respondent No.3 entitling her to recover Rs.5000/- per month from the Petitioner/Defendant from the date of institution of the suit i.e. 7.4.2012 till the time she get married or the custody of the minor changes through process of law with 10% increase per annum. The said judgment and decree was assailed before the learned Additional District Judge, Lahore in an appeal preferred by the petitioner but the same was dismissed vide judgment dated 4.1.2017. Since the maintenance allowance has been fixed @ Rs.5000/- per month for the Respondent No.3 and it has also come on record that petitioner is man of means and being "Aarhti" has sufficient source of income to meet the above said amount of maintenance. Even otherwise, it is legal, moral and religious obligation of the petitioner to maintain his daughter. The learned Appellate Court has rightly held that in view of amendment vide Notification No.PAP/Legis-2(67)/2015/1194 dated 18.3.2005 under Section 14(2)(C) maintenance allowance is not appealable to the extent of Rs.5000/-, which in the instant case has been fixed Rs.5000/- by the learned Judge Family Court, therefore, the appeal is hit by the said provision of law. Learned counsel for the petitioner has failed to point out any illegality or any piece of misreading or non-reading of evidence from the concurrent findings of facts recorded by two courts below. Writ petition being devoid of merit is hereby dismissed in limine.

MQ/T-3/L Petition dismissed.

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MQ/T-3/L Petition dismissed.