

Form No: HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT
LAHORE.
JUDICIAL DEPARTMENT
W.P.No.46766/2021

Muhammad Faizan Raza Vs. The Judge, Family Court etc

S. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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23.9.2021.	Mr. Mahmood Tahir Ch., Advocate for the petitioner. Barrister Zargham Lukhesar, Assistant Advocate-General, Punjab.
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In this writ petition, the petitioner is seeking enhancement of maintenance allowance of Rs.5000/- per month for minor fixed in the impugned judgment and decree dated 10.4.2021 passed by learned Judge Family Court.

2. Relevant facts are that petitioner minor filed suit through his mother for recovery of maintenance allowance, in which, interim maintenance allowance of Rs.4000/- per month was fixed on 04.5.2019. For failure to pay the interim maintenance allowance, the suit was finally decreed under section 17-A of the Family Court Act, 1964 (**Act**) for maintenance

allowance of Rs.5000/- with 10% annual increase. The petitioner being aggrieved has filed this constitutional petition for enhancement of maintenance allowance.

3. Learned counsel for the petitioner at the very outset confronted that when right of appeal is available under section 14 of the Act for enhancement of maintenance allowance in view of law settled by Hon'ble Supreme Court in Saif-ur-Rehman vs. Additional District Judge etc. (2018 SCMR 1885), then how this constitutional petition is maintainable. Learned counsel in response submits that said judgment only provide right of appeal for enhancement of amount against dower and dowry articles and not against maintenance allowance for the minor, therefore, being no right of appeal available, this writ petition is maintainable.

4. Arguments heard. The threshold legal question requires determination in this case is that whether under section 14(2) of the Act, the right of appeal against decree for maintenance allowance of Rs.5000/- or less is denied only to the judgment debtor or also to the minor, if he wants to file appeal for enhancement

of the maintenance allowance. There is no cavil that under section 14(1) of the Act, the right of appeal is available against the decision or decree passed by Family Court, however, by virtue of sub-section 2 of section 14 of the Act, this right of appeal is curtailed in three eventualities including where decree for maintenance allowance is of Rs.5000/- or less.

5. The Hon'ble Supreme Court in case of *Saif-ur-Rehman (supra)* while interpreting section 14(2) of the Act, held that the only possible purposive beneficial and rational interpretation of section 14(2) of the Act, is that the right of appeal of a husband against whom a decree has been passed is curtailed, if the amount awarded is less than the amount, mentioned in the said provision but not for the decree holder, otherwise it will defeat the very purpose and object of the Act and frustrate its beneficial nature. Relevant observation of Hon'ble Supreme Court judgment in para 13 and 16 are reproduced hereunder:-

“13. Subsection (1) of section 14 of the Act of 1964, confers a right of appeal. However, by virtue of subsection (2) of section 14 of the Act of 1964, this right of appeal has been curtailed. The obvious purpose of curtailing the right of appeal is to avoid the benefits of any decree

which may have been passed being tied up in an appeal before a higher forum. It has also been noticed that in only three eventualities that even the right of first appeal has been curtailed. In all three eventualities, the decree would be for the benefit of the wife for dissolution of marriage under Clause (a), for dower or dowry under Clause (b) and for maintenance under Clause (c). The last may also be for the benefit of a minor. Thus, the only logical and reasonable interpretation, which is in accordance with the purposive of the Act and in line with the beneficial nature thereof would be that a judgment-debtor of a decree envisages in Clauses (a), (b) and (c) of subsection (2) of section 14 of the Act of 1964, would not have a right of appeal so that the disputes mentioned therein are resolved expeditiously and the benefits conferred through such decree reach the decree-holder without being frustrated. However, the said provision cannot be interpreted so as to exclude a right of appeal to a wife whose claim of dower or dowry has been partially or entirely declined. For such an interpretation, would defeat the purpose and object of the Act of 1964 and frustrate its beneficial nature.

16. Thus, the only possible purposive beneficial and rational interpretation of section 14(2) of the Act of 1964, is that the right of appeal of a husband against whom a decree has been passed is curtailed, if the amount awarded is less than the amount, which is mentioned in the said provision. However, in no event the right of the wife to file an appeal is extinguished if she is dissatisfied with any decree in a Suit for dower or dowry”.

6. The Hon’ble apex Court in the case of Tayyaba

Yunus v. Muhammad Ehsan and others (2010 SCMR

1403) while interpreting Section 14(2) of the Act held

that where suit for dower has been dismissed, the wife has right of appeal under Section 14(2) of the Act. In the case of Abid Hussain v. Additional District Judge, Alipur, District Muzaffargarh and another (2006 SCMR 100), Hon'ble Supreme Court held that object behind non-provision of appeal in case of dissolution of marriage is to protect women, an under privileged and generally oppressed section of our society from prolonged and costly litigation and it aims to put a clog on the right of husband.

7. Every principle of law laid down by the Hon'ble Supreme Court of Pakistan has force of binding precedent under the provisions of Article 189 of the Constitution of Islamic Republic of Pakistan, 1973 (Constitution). Both as a matter of its constitutional duty as well as the prudence and rationale of such precedents, it is incumbent that Courts enforce principle of law if clearly laid down by Hon'ble Supreme Court. However, the judgment cannot be construed as "law declared" under Article 189 of the Constitution if no "ratio decidendi" is discoverable from the judgment. The expression "ratio decidendi" is

the ground or reason of decision and the point in a case which determines the judgment. It is the “ratio decidendi” which is applicable to subsequent cases presenting the same problem. In this regard, reliance is placed on the cases of Muhammad Zahid, Proprietor Plus Enterprises Versus Federal Board of Revenue through Chairperson, Islamabad and 5 others (2021 PTD 80), S. Nasim Ahmad Shah and 115 others versus State Bank of Pakistan through Governor and another (2017 P T D 2029), Pakistan Lawyers’ Forum through General Secretary versus Federation of Pakistan, Ministry of Law and Justice Parliamentary Affairs and Human Rights, Islamabad and another (PLD 2011 Lahore 382) and Zafar Ahmed Khan versus Federation of Pakistan through Secretary, Ministry of Defence, Islamabad and 2 others (2009 PLC (C.S.) 415).

8. No doubt, the above judgments of Hon’ble Supreme Court are in respect of enhancement of alternative price of dowry articles, dower or dissolution of marriage, however, the ratio decidendi settled in these judgments are that non-provision of

appeal under Section 14(2) of the Act is to protect under privileged and generally oppressed section of our society from prolonged and costly litigation. The minor indeed fall within that category, hence as per law settled by Hon'ble Supreme Court, denial of appeal is for the protection of the minor and not vice versa.

9. The right of appeal under Section 14(2) of the Act shall not be available to the judgment debtor (father/husband) but decree holder (minor or wife) can file appeal for enhancement of decretal amount. The purposive beneficial and rational interpretation of section 14(2) of the Act made by august Supreme Court in above judgments, is also squarely applicable to the matter for the enhancement of maintenance allowance by the minor. Any other interpretation of section 14(2) of the Act would not only defeat the very purpose and object of the Act but will also frustrate the beneficial nature of Section 14(2) of the Act.

10. In view of above discussion, this Court has no manner of doubt that remedy of appeal under section 14(2) of the Act shall be available to the

petitioner/minor for the enhancement of maintenance allowance in the impugned judgment and decree. Therefore, being adequate alternative remedy of appeal available under the statute, this Constitutional petition is not maintainable, which is accordingly **dismissed.**

(ABID AZIZ SHEIKH)
JUDGE.

APPROVED FOR REPORTING.

JUDGE

Rizwan