

2018 Y L R 645

[Lahore]

Before Jawad Hassan, J

SHAGUFTA BIBI and others---Petitioners

Versus

AMANAT ALI and others---Respondents

W.P. No.14014 of 2013, heard on 26th October, 2017.

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

----S.5 & Sched.---Limitation Act (IX of 1908), Art. 120---Suit for recovery of maintenance allowance of minors---Past maintenance allowance---Limitation---Claiming maintenance allowance for iddat period marriage was dissolved amicably--- Scope--- Petitioners/plaintiff's (wife) contended that Family Court had rightly decreed past-maintenance allowance for the period of around a decade since their expulsion from the house of the Respondent/defendant (husband)--- Respondent (husband) contended that maintenance allowance could not be granted for more than 6 years' time---Validity---Admittedly, the petitioners were living apart from the respondent since 2002 and during the said period the respondent had failed to pay a single penny to the petitioners, therefore, the Family Court had rightly held entitled for future maintenance allowance---Family Court had fell into error in determining the past maintenance from the year 2002 the time when the minors remained apart from the father and intervening period from expulsion to the date of institution of suit in the year 2012---Findings of Family Court about past maintenance, in circumstances, was contrary to law---High Court modified the impugned judgment and decree and allowed the petitioners past maintenance allowance of 6 years from the date of their expulsion---Appellate Court had rightly reduced the future maintenance allowance of minors from Rs.5000/- to Rs.3000/- each keeping in view the facts and circumstance of the case---Appellate Court had rightly found that mother of minors was divorced since ten years before and the matter was patched up and in such like situation, it could not be believed that maintenance of iddat period of a divorcee was still unpaid---High Court, in circumstances, modified the impugned judgment and decree passed by the Appellate Court---Constitutional petition was disposed of accordingly.

Mst. Bushra Qasim v. Dr. Abdul Rasheed and others 1993 CLC 2063; Rasheed Ahmed v. Mst. Shamshad Begum and 3 others 2007 CLC 656 and Mst. Farah Naz v. Judge Family Court, Sahiwal and others PLD 2006 SC 457 ref.

Muhammad Aslam Khan Buttar for Petitioners.

Mian Muzaffar Hussain for Respondents.

Date of hearing: 26th October, 2017.

JUDGMENT

JAWAD HASSAN, J.---Through this Constitutional Petition, the Petitioners have called in question judgment and decree dated 05.04.2013 (the "impugned judgment and decree"), passed by learned District Judge, Hafizabad, whereby suit filed by the Petitioners was decreed and appeal preferred by the Respondent No.1 was allowed and modified and claim of minors for past maintenance and for iddat period of their mother was declined, while claim of Shagufta Bibi and Rifat minors for future maintenance was allowed to the tune of Rs.3000/- each per month till they are married, from the date of filing of their suit with 5% annual increase applicable w.e.f. 1st of January, 2014.

2. Facts briefly for the disposal of this constitutional petition are that as a consequence of suit for maintenance allowance judgment and decree dated 07.12.2012 was passed by Judge Family Court, Hafizabad, whereby the Petitioners were held entitled to get maintenance allowance at the rate of Rs.3000/- per month each from the date of their expulsion by the Respondent No.1 i.e. 3.4.2002 till 30.04.2012 and they were also granted Rs.5000/- each per month as their future maintenance allowance from the date of institution of suit till they remain unmarried with an annual increase of 5% as future maintenance allowance to be effective from 1st of January every year. First increase in future maintenance allowance was effected from 1st of January, 2014. So far as maintenance allowance of Mst. Zohra Bibi was concerned, she was divorced, therefore, she was not entitled to any future maintenance allowance. However, she was held entitled to get entitled Rs.4000/- per month from the Respondent No.1 as her maintenance of "Iddat". Hence this petition.

3. Learned counsel for the Petitioner has argued that while passing the impugned judgment and decree the learned Additional District Judge, has not applied his judicious mind and in a slipshod manner has passed impugned judgment and decree which is not warranted by law. He further argued that it is an admitted fact that Mst. Zohra Bibi when was turned out from the house of the Respondent No.1, she filed an application for her maintenance allowance before the Nazim Union Council, Narianwali, who through reconciliation awarded maintenance to Zohra Bibi only as maintenance of minors was not claimed. Hence, the Nazim of Union Council awarded maintenance of Rs.2,30,400/- on the basis of Rs.4800/- per month. The Respondent No.1, before Tehsildar Hafizabad admitted the decision of Nazim Union Council Narianwala and committed to pay the aforesaid amount, but he failed to pay any amount. It transpired that the Respondent No.1 filed a suit for permanent injunction against Zohra Bibi and Nazim Union Council and Tehsildar Hafizabad wherein he prayed for rejection of decision of Arbitration Council and Reconciliation Court and prayed for the stay. Subsequently, the said suit filed by the Respondent No.1 was dismissed vide order dated 5.3.2003 and during pendency of the suit, the Respondent No.1 did not pay a single penny. Counsel for the Petitioner has argued that finding of the learned District Judge in respect of the past maintenance to the extent of minors is not based on any confidence inspiring evidence, hence is liable to be set aside. Lastly, he prayed for setting aside of the impugned judgment and decree.

4. On the other hand counsel for the Respondent No.1 has supported the impugned

judgment and decree and contended that the learned District Judge, Hafizabad has passed the impugned judgment and decree, in accordance with law therefore, no exception can be taken to it. Lastly, he prayed for dismissal of the writ petition.

5. Arguments heard and record perused.

6. From the perusal of record it reveals that learned Judge Family Court, Hafizabad considered the evidence of Plaintiff PW-1 and her witness the PW-2, who corroborated the stance of the PW-1. In rebuttal, the Respondent No.1, appeared as the DW-1 and tendered his affidavit as the Ex.D-1. Consequently, the learned Judge Family Court, after recording issue-wise findings decreed the suit of the Respondent No.1 vide judgment and decree dated 07.12.2012 in the terms mentioned supra. The said judgment and decree was assailed by the Respondent No.1 before the learned District Judge, Hafizabad in an appeal, which was allowed vide judgment and decree dated 05.04.2013, with modification whereby claim of minors for past maintenance and for iddat period of their mother was declined, while claim of Shagufta Bibi and Rifat minors for future maintenance was allowed to the tune of Rs.3000/- each per month till they are married, from the date of filing of their suit with 5% annual increase applicable w.e.f. 1st of January, 2014. The pivotal question to be determined by this Court is whether the learned Appellate Court had rightly considered the case regarding past as well as future maintenance allowance to the Petitioners.

7. From the perusal of record it reveals that prior to the filing of family suit, the Petitioners had filed application for her maintenance before the Nazim Union Council Narianwali, who through reconciliation proceedings awarded maintenance allowance to Mst. Zohra Bibi only. In the proceedings before Nazim of Union Council, maintenance allowance for minors daughters was not claimed, the Nazim of Union Council awarded maintenance allowance of Rs.2,30,400/- at the rate of Rs.4800/- per month. Subsequently, the Respondent No.1 before Tehsildar Hafizabad admitted to pay the aforesaid maintenance allowance but subsequently he revoked to pay the amount. Feeling aggrieved, the Petitioners were constrained to file suit for maintenance allowance before Judge Family Court. Further, the Respondent No.1 comes of a well off family and it has also come in evidence of PWs and the Respondent No.1 has also admitted the factum of cultivation of land himself, therefore, the learned Judge Family Court, Hafizabad has rightly held the minors entitled for maintenance allowance. Admittedly, the Petitioners are living apart from the Respondent No.1 since 3.4.2002 and during this period the Respondent No.1 has failed to pay a single penny to the Plaintiffs according to the terms and conditions of affidavit Ex.D-4, nor he examined any witness of alleged deed or produced receipt of payment of maintenance, therefore, the learned Judge Family Court, has rightly held entitled for future maintenance allowance. So far as past maintenance allowance is concerned, the learned Judge Family Court has fell in error in determining the same from 3.4.2002, the date when the minors remained apart from the Respondent No.1 and intervening period from expulsion to the date of institution of suit i.e. 29.05.2012 comes about 10 years past maintenance but the said finding of learned Guardian Judge is contrary to the dictum laid down by this Court in case titled Mst. Bushra Qasim v. Dr. Abdul Rasheed and others (1993 CLC 2063), wherein it has been held as under:-

"Controlling Authority set aside order of Arbitration Council according to which past maintenance was granted to wife for a period of eleven years and four months prior to filing of application for grant of past and future maintenance by wife. Controlling

Authority after setting aside order of Arbitration Council, granted past maintenance only for three years prior to filing of application for grant of maintenance. High Court found both order of Authorities below as illegal and found wife entitled to past maintenance for a period of six years prior to filing of application for grant of maintenance as provided under Article 120 of Limitation Act, 1908."

The above said view has also been affirmed in case titled "Rasheed Ahmed v. Mst. Shamshad Begum and 3 others" (2007 CLC 656), wherein it has been held that:--

"Article 120 of Limitation Act, 1908 being applicable to the suit for maintenance, Appellate Court below, had acted within its domain directing that maintenance would be paid with effect from six years prior to institution of the suit. Respondent having filed appeal, both in the matter of past maintenance as also for enhancement of rate of maintenance, same was not barred by law."

In Mst. Farah Naz v. Judge Family Court Sahiwal and others (PLD 2006 SC 457) it has been held as under:--

"Claim for past maintenance would be governed by Art.120 of the Limitation Act, 1908, which prescribed period of six years in a suit for which no period was provided elsewhere in the Act, from the date when the right to sue had accrued. In computing period of limitation prescribed for any suit, by reason of Section 13 of Limitation Act, 1908, time during which defendant had been absent from Pakistan and from the territories beyond Pakistan under administration of the Central Government would be excluded. Even if period of limitation for such suit would be three years, in view of absence of husband from Pakistan, period of his absence from Pakistan would be excluded for reckoning the period of limitation. Suit filed by wife was not barred by limitation."

In view of the above, the impugned judgment and decree is modified and Petitioners are allowed past maintenance allowance of six years from the date of their expulsion i.e. 3.4.2002 as per terms mentioned in the impugned judgment and decree. Regarding future maintenance of minors, the learned District Judge, Hafizabad, has rightly reduced the maintenance allowance of minors from Rs.5000/- each to Rs.3000/- each keeping in view the facts and circumstance of the case, therefore no exception can be taken to it. As far as maintenance allowance of Zahra Bibi mother of minors is concerned, admittedly the learned District Judge has rightly observed that she was divorced since ten years before, as according to her statement as PW-1, the matter was patched up and in such like situation, it cannot be believed that maintenance of Iddat period of Mst. Zahra Bibi was still unpaid. Agreement arrived at inter se the parties shows that full claim of Mst. Zahra Bibi was satisfied.

In view of above, the impugned judgment and decree 5.4.2013 passed by learned District Judge, Hafizabad is modified as per terms mentioned supra. Disposed of.

MQ/S-1/L

Order accordingly.

