

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT, LAHORE**  
JUDICIAL DEPARTMENT

WP No.24596/2017

**JUDGMENT**

Khalid Mahmood Vs. Naseem Akhtar etc.

**Date of hearing: -** 30.01.2019

**Petitioner by: -** Ms. Sadia Malik and Moin Ahmad, Advocates for the Petitioner.

**Respondent by: -** Respondents proceeded against ex-parte vide order dated 22.01.2019.

Rai Shahid Saleem Khan, AAG on Court's call.

**JAWAD HASSAN, J:-** The Petitioner has challenged the judgments and decrees of the Family Court dated 31.05.2016 and the Appellate Court dated 22.03.2017. Due to non-appearance of the Respondents, they were proceeded against ex-parte vide order dated 22.01.2019. Even today none is present on their behalf.

2. Facts succinctly for the disposal of instant writ petition are that the Respondents filed a suit for recovery of maintenance allowance asserting therein that the Respondent No.1 entered into a marriage contract with the Petitioner in accordance with Muslim Rites on 20.01.2006. Out of the said wedlock, the spouses were blessed with two minors i.e. Respondents No.2 and 3, who are in the custody

of the Respondent No.1. The relations between the spouses remained cordial in the beginning but subsequently became strained as a consequence whereof two months prior to the institution of the suit; the Petitioner expelled the Respondents from his house after causing physical torture to her without any just cause. Subsequently, during her desertion, the Petitioner even did not bother to contact the Respondents and never ever endeavored to reconcile with her and to provide maintenance allowance to the Respondents. Consequently, the Respondents filed a suit for recovery of maintenance allowance at @ Rs.35,000/-. She further claimed dowry articles which are lying with the Petitioner worth Rs.4,50,700/- as per list annexed with the plaint. The said suit was contested by the Petitioner by filing his written statement wherein he took certain preliminary and legal objections and resisted the suit. Out of divergent pleadings of the parties as many as five consolidated issues were framed. After framing of issues both the parties produced their oral as well as documentary evidence. The Respondent No.1 herself appeared as PW-1 and produced Muhammad Arif (PW-2) and Gulzar Hussain as PW-3 in support of her version. While on the other hand, the Petitioner himself appeared as DW-1 and he produced Altaf Ahmad (DW-2) and Ghulam Muhammad (DW-3).

3. The learned Judge Family Court after scanning the whole evidence available on record partially decreed the suit vide judgment and decree dated 31.05.2016 entitling the minors to get maintenance allowance @ Rs.5000/- P.M each from the date of institution of the suit and in further at the same rate till statutory entitlement with an increase of 10% per annum and the Respondent No.1 was entitled to get maintenance allowance of Iddat Period of three months @ Rs.3000/- P.M. The claim of Respondent No.1 qua buffalo and gold ornaments was turned down. Regarding claim of dowry articles, the Respondent No.1 was held entitled to recover dowry articles from the Petitioner or in alternative Rs.1,50,000/- as price thereof. Feeling aggrieved thereof, the Petitioner preferred appeal before the learned Additional District Judge, Jhang, which was partially allowed to the extent that the suit for restitution of conjugal rights was decreed; whereas rest of the claims of the Petitioner were declined. Hence this petition.

4. Arguments heard and record perused.

5. So far as contention of Petitioner regarding dowry articles is concerned; suffice is here to mention that dowry articles as decreed by learned courts bellow are comprised of such articles of daily use; which parents as per their customs and traditions usually give to their daughters at the time of their marriages. Petitioner had himself

acknowledged that some of dowry articles are still in his possession. Both the Courts below have rightly assessed alternate approximate value of said dowry articles as Rs.1,50,000/- after wear and tear.

6. As for as quantum of maintenance allowance of minors/respondents is concerned; it would be advantageous to reproduce Section 17-A (4) of The Family Courts Act, 1964 as under:

*“For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.”*

A discreet study of both judgments passed by learned courts below reveals that they have not discussed any document on the basis of which they determined the financial status of Petitioner for fixation of the quantum of maintenance for minor respondents. It was paramount duty of learned Family Court as enshrined above to keep in mind the financial status of the Petitioner/husband before fixing quantum of maintenance. The financial status and resources of father/Petitioner and his capacity to pay could only be ascertained through summoning of documentary evidence from the concerned organization, body or authority where he is employed. Both courts below had miserably failed to do so.

7. Careful scanning of record reveals that the Petitioner had tendered in his documentary evidence the salary slip (Mark-D/I) in the Court, but the same is not reflected in the said judgments and without discussing this material piece of evidence the learned Family Court decided the issue of quantum of maintenance in a slipshod manner; the same is contrary to law. It is settled principle of law that no judgment could be passed without discussing the evidence. The learned Additional District Judge has also not considered this aspect of the case and haphazardly coincided with the findings of learned Family Court. Both the Courts below did not advert to the document (Mark-D/I) i.e salary slip of the Petitioner and misread and non-read this material piece of evidence. The said salary slip shows the net pay of Petitioner as Rs.18,252/-; viz-a-viz the maintenance of minors was fixed Rs.5000/- per month each with 10% increase; ignoring the factum that the Petitioner also had to support his ailing mother and other family members as well as his handicapped daughter who is living with him. There is only verbal assertion of the Respondents that the monthly income of Petitioner is Rs.35,000/- but Respondents had not tendered any documentary evidence in this regard. It is a settled principle of law that documentary evidence excludes oral evidence. In case titled **ASIF RAFIQUE VS Mst. QURATULLAIN and 3**

**others** reported at **2016 MLD 425**, this Court laid ratio as under:

*“Family Court while deciding the question of husband’s salary had given preference to his oral evidence over documentary evidence i.e. pay slip which would carry presumption of truth. Strong and exceptional evidence was required to rebut the said documentary evidence. Court should rely upon documentary and other circumstantial evidence to find as to which party was speaking truth in proof of a fact when oral words of one party were against the oral words of other party. Net pay drawn by the defendant-husband should be considered for determining his monthly income. Monthly maintenance allowance granted by the Family Court for each child was modified from Rs.10,000/- to Rs.7,000/- per month with 5% increase per annum from institution of suit till passing of impugned judgment and decree and thereafter Rs.10,000/- for each child with 5% increase per annum till they attain the age of 18 years.”*

8. In view of aforesaid observations instant constitutional petition is allowed and impugned judgments & decrees are modified to the extent that keeping in view financial status, paying capacity and liabilities of Petitioner and the needs of minors, the quantum of maintenance of Respondents No. 2 & 3 is reduced from Rs.5000/- per month each to Rs.3000/- per month each with 10% annual increase from institution of suit till their legal entitlement. As the suit for restitution of conjugal rights of the Petitioner was already decreed by learned Appellant Court; therefore Respondent No.1 is not entitled for any maintenance allowance till she performs matrimonial obligations. It has

been noticed that the Petitioner has paid entire amount in the court pursuant to the order of this Court which is evident from the interim orders. The learned Executing Court while determining and calculating the amount due on petitioner's part shall also adjust the amount already received by the Respondents.

**(Jawad Hassan)**  
Judge

*ZAHOR*