

**2017 M L D 1005**

**[Lahore]**

**Before Jawad Hassan, J**

**MUHAMMAD ALTAF---Petitioner**

**Versus**

**ADDL. DISTRICT JUDGE and others---Respondents**

W.P. No.5797 of 2014, decided on 22nd February, 2017.

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

---Ss. 14 & 17-A---Maintenance for minors---Non-compliance of order of Family Court to pay interim maintenance---Father contended that dismissal of appeal was not based on merit rather his appeal was dismissed for non-compliance of order of Family Court to pay interim maintenance---Mother of minors contended that payment of interim maintenance was outstanding since long---Validity---Appellate Court directed the father to pay interim maintenance as well as outstanding maintenance, thereafter the appeal was to be fixed but he failed to comply with the order---Question to be determined by High Court was "whether appellate court was justified in passing a conditional order, could appellate court dismiss the appeal without deciding the same on merits"---Record revealed that order of appellate court regarding payment of interim maintenance was not a conditional order and nowhere was it mentioned in the said order that its non-compliance would construe dismissal of appeal---Order of appellate court was set aside and case was remanded for decision afresh---Case being an old one and involved maintenance of minors, Appellate Court was directed to decide the appeal expeditiously---Father was directed to pay maintenance allowance in compliance of order of Family Court---Order accordingly.

Civil Appeal No.810-L of 2013 ref.

Ghulam Hussain Awan for Petitioner.

Saleem Khan Cheechi for Respondents.

## **ORDER**

**JAWAD HASSAN, J.**---Through this constitutional petition, the Petitioner has called in question judgments and decrees dated 13.5.2013 and 21.12.2013 passed respectively by Judge Family Court, Sialkot and Additional District Judge, Sialkot, whereby the suit for recovery of maintenance allowance, filed by the Respondents Nos.3 to 6 was decreed in the terms mentioned in the said judgment and decree. The appeal preferred there-against by the Petitioner before the learned Additional District Judge, Sialkot was dismissed vide order dated 21.12.2013.

2. Brief facts for the disposal of this Constitutional Petition are that Respondents Nos.3 to 6 filed a suit for recovery of maintenance allowance, which was decreed after framing of issues and recording evidence of the parties, whereby the Respondent No.3 was held entitled to recover Rs.1,000/- per month as per Nikahnama, Exh.P-4, from July, 2007, till her legal entitlement i.e. subsistence of her marriage with the Defendant and the Respondents 4 to 6 were held entitled to recover maintenance allowance @ Rs.2000/- per month, per head, from July, 2007 i.e. three years before the institution of the suit, the time during which the Respondents Nos.4 to 6 can legally be entitled for the maintenance allowance, till their legal entitlement i.e. in case of the Respondents Nos.4 and 5, till date of their marriage and in case of Respondent No.4 till his age of majority, from the Petitioner with 10% increase per annum. The claim of recovery of dower amount of Respondent No.3 was dismissed. The Petitioner assailed the said judgment and decree before the learned Additional District Judge, Sialkot by filing an appeal which was dismissed vide order dated 21.12.2013 due to non-payment of interim maintenance allowance and non-compliance of order dated 29.5.2013 of Additional District Judge, Sialkot. Hence, this petition.

3. Learned counsel for the petitioner has argued that impugned judgments and decrees passed by both the courts below are result of misreading and non-reading of evidence, hence are liable to be set aside. He further argued that the Appellate Court had dismissed the appeal of the Petitioner on the ground non-compliance of order of interim maintenance allowance by observing that eleven (11) consecutive opportunities were given for compliance of the order of the Court but the interim orders sheet reveals that there is no mention of any opportunity for depositing of interim maintenance which indicates that the learned Judge has made the said observation without going through the record. Thus, the impugned judgment passed by the Additional District Judge, Sialkot suffers from misreading and non-reading of record.

4. Conversely, the counsel for the Respondents has supported the impugned judgments and decrees and prayed for dismissal of the writ petition as the petitioner failed to pay even the interim maintenance allowance.

5. Arguments heard and record perused.

6. It is reflected from perusal of the record that interim maintenance allowance was fixed by learned Judge Family Court vide his judgment and decree dated 13.05.2013 on the terms mentioned in the said judgment. Subsequently, the Petitioner preferred appeal before the learned Additional District Judge, Sialkot, which after preliminary arguments was admitted for regular hearing on 29.05.2013 and the Petitioner was directed to pay interim maintenance to the Respondents Nos.3 to 6 @ Rs.1000/- per head per month and was also directed to pay the outstanding interim maintenance by the next date. Thereafter the case was fixed on certain dates, but the Petitioner failed to pay the interim maintenance allowance to the said Respondents in compliance with order dated 13.05.2013. Resultantly, the learned Additional District Judge, Sialkot dismissed the appeal of the Petitioner due to non-payment of interim maintenance and non-compliance of his order. The important question to be determined by this Court is whether the learned Additional Judge, Sialkot was justified in passing a conditional order and in case of non-compliance of order, he could dismiss the appeal without deciding on merits. In order to resolve this controversy and sum up this question, the Hon'ble Supreme Court of Pakistan in the Civil Appeal No.810-L of 2013 vide order dated 02.01.2014 has held as under:--

"In law the learned High Court for the purposes of grant of interim injunction i.e. staying the execution of the decrees could always impose a condition and if such a condition is not met the interim relief granted to the appellant could be validly withdraw, but such condition should sparingly and in exceptional cases be attached to the hearing and the disposal of the main writ petition and that too if the imposing of the condition is imperative and most expedient towards the hearing of the case and is so permissible under the law, because the imposing of such a condition for the hearing of the main case itself may cause serious prejudice or virtually stultify the constitutional remedy available to an aggrieved person, though he might have a good case on merits otherwise, therefore, such a preclusion cannot be appreciated. We are not persuaded to hold that the requirement of the deposit vide order dated 22.11.2012 was a condition in respect of the hearing of the writ petition, firstly because it is not so clear from the order, secondly neither it is specified in the order nor there is caution to the appellant that in case of non-compliance qua the deposit his petition shall be dismissed, without hewing him on merits. We also not persuaded to hold that the order requiring the deposit was in term of Section 17-A *ibid*, the non-compliance whereof would attract any penal consequences. Such a condition we also hold was not relevant in respect of checking the bona fide/conduct of the appellant."

7. In the above context, it reveals that order dated 29.05.2013 of the Additional District Judge regarding payment of interim maintenance allowance was not a conditional order and nowhere is it mentioned in the said order that its non-compliance would construe dismissal of the appeal.

In view of the above, the impugned order dated 21.12.2013 passed by learned Additional District Judge, Sialkot is set aside and the case is remanded to the learned District Judge, Sialkot, for decision afresh, who shall either himself decide the matter or entrust the case to any other Additional District Judge. Since it is an old matter and involves maintenance of the minors, learned District Judge, Sialkot is directed to expeditiously decide the appeal. In the meantime, the Petitioner is directed to pay the maintenance allowance to the Respondent in compliance of the order dated 13.05.2013 of the Family Court. The Parties are directed to appear before the learned District Judge, Sialkot on 21.03.2017.

MQ/M-38/L

Case remanded.