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JUDGMENT SHEET

**IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT.**

W.P. No.238815/2018

Muhammad Razzaq Vs. Chairman Arbitration council etc.

J U D G M E N T

Date of Hearing	14.05.2019
Petitioner by:	Mr. Muhammad Amin Goraya, Advocate.
Respondents	Mr. Muhammad Khawar Kaleem, Advocate.
	Mr. Saqib Haroon Chishti, Asst. A.G.

ABID AZIZ SHEIKH, J.-,In this Constitutional petition, the petitioner has challenged the order dated 04.07.2017, passed by respondent No.1 and order dated 08.08.2018, passed by respondent No.2.

2. Brief facts are that respondent No.3, filed petition under section 9 of the West Pakistan Muslim Family Laws Ordinance 1961 (**Ordinance**) for recovery of maintenance allowance against the petitioner. The said application was allowed by respondent No.1 and maintenance allowance of Rs.40,000/- per month since June, 2016 till April, 2017, was fixed vide order dated 04.07.2017. The petitioner being

aggrieved, filed appeal before respondent No.2, where the maintenance allowance was reduced to Rs.20,000/- per month vide impugned order dated 08.08.2018. The petitioner still being aggrieved, has filed this Constitutional petition.

3. Learned counsel for the petitioner submits that after promulgation of the West Pakistan Family Courts Act, 1964 (**Act**) the Arbitration Council (Respondent No.1) has no jurisdiction to fix the maintenance allowance. Reliance is placed on Muhammad Khalil ur Rehman vs. Mst. Shabana Rahman and another (PLD 1995 S.C. 633). He further submits that under Rule 5(6) of the West Pakistan Rules 1961 (**Rules**), all decisions of the Arbitration Council are taken by majority and where no decision could be taken with majority, the decision of the Chairman shall be the decision of Arbitration Council. He submits that in present case neither the majority decision was taken nor it is case of no decision by Members of Council, hence respondent No.1, could not pass impugned order dated 04.07.2017, which is *coram non judice*. He placed reliance on Raja Aamir Naseem Khan vs. Collector Lahore District Lahore and two others (1999 MLD 1008). He further submits that even on merits, the maintenance allowance was fixed at Rs.20,000/- per month, without discussing and taking into consideration the financial capacity of the petitioner.

4. Learned counsel for the respondents on the other hand submits that impugned orders are not without jurisdiction of respondents No.1 & 2 and further there is no

illegality in the merits of the impugned orders. Learned Law Officer on the legal question argued that respondents No.1 & 2 had jurisdiction to pass the impugned orders.

5. Arguments heard. Record perused. The first contention of the learned counsel for the petitioner is that after promulgation of the Act, the Arbitration Council had no jurisdiction to fix the maintenance allowance under provision of the Ordinance. This argument has been carefully examined and found to be misconceived as discussed below:-

(i) Under the provisions of the Ordinance, if any husband failed to maintain his wife adequately, she may apply to the Chairman under section 9 of the Ordinance to constitute Arbitration Council and determine the amount of maintenance to be paid by the husband. Subsequently, the Act was promulgated on 02.11.1965, to establish Family Courts relating to marriage and family affairs. However, section 21 of the Act, provides that nothing in the Act shall deem to affect any of the provision of the Ordinance or Rules framed thereunder. Resultantly, the Arbitration Council under the Ordinance and Family Courts under the Act have concurrent jurisdiction in family matters, which fall within their respective domain.

(ii) However, the Hon'ble Supreme Court in Zulfiqar Ali vs. Mst. Shazia Bibi and others

(**2009 SCMR 1037**), held that both these forums cannot proceed for the same prayer and for the same relief, at the same time, as it may result into two contradictory and inconsistent decisions. The same view was also expressed by this Court in Shamim Akhtar vs. Muhammad Tufail (**2002 MLD 1716**). This Court in Shabbir Ahmad vs. Chairman, Arbitration council and others (**2018 CLC 836**), however, held that proceedings launched in term of section 9 of the Ordinance will not erode the suit subsequently instituted before the family court under the provisions of the Act.

(iii) The plain reading of section 9(1) of the Ordinance shows that remedy of maintenance allowance under section 9 *ibid* is in addition to seeking any other legal remedy available. In view of legal position and case law discussed above, conclusion can be drawn that same matter cannot proceeding simultaneously under the Ordinance and the Act, however, subsequent proceedings under any of the above laws will not be a bar merely because earlier proceeding launched and concluded under the other law.

(iv) The case of *Muhammad Khalil-ur-Rehman*, relied upon by the learned counsel for the petitioner relates to maintenance allowance

awarded by a Magistrate under section 488 Cr.P.C. and not under the Ordinance. In said case, the Hon'ble Supreme Court held that Act being special law, will prevail over general law of Cr.P.C. Therefore, Family Courts will have exclusive jurisdiction to try case of maintenance after promulgation of the Act. This judgment is not applicable to the facts and circumstances of present case where the maintenance allowance is fixed under the provision of the Ordinance and Rules, which have specifically been saved under section 21 of the Act. Therefore, it can safely be concluded that the impugned orders are not without jurisdiction.

6. The next argument of the learned counsel for the petitioner is that impugned orders are against the provisions of the Rules. This argument has also no legs to stand. Under Rule 5(6) of the Rules, all decisions of the Arbitration Council shall be taken by majority and where no decision can be so taken, the decision of the Chairman shall be the decision of the Arbitration council. The perusal of impugned order dated 04.07.2017, shows that representative of respondent No.3, agreed with the decision of the Chairman whereas the representation of the petitioner was absent on 04.07.2017, hence it was a majority decision and provision of Rule 5(6) of the Rules is not violated.

7. On merits, it is admitted position on record that the petitioner is employed in a Company abroad (Qatar) against a reasonable post and his earnings are in foreign currency. Keeping in view the above financial position of the petitioner, the learned trial court fixed the monthly maintenance allowance at Rs.40,000/- per month, which was however reduced by the learned appellate court to Rs.20,000/- per month. The learned counsel for the petitioner could not point out any infirmity in above findings. Even otherwise keeping in view the present conversion rate of foreign currency, the maintenance allowance of Rs.20,000/- is neither arbitrary nor unreasonable warranting interference through this Constitutional petition. Further, the learned counsel for the petitioner has failed to place on record any document regarding the exact income of the petitioner abroad to show that he is not in a position to pay the maintenance allowance of Rs.20,000/- per month.

8. In view of above discussion, this petition being meritless, is dismissed.

(ABID AZIZ SHEIKH)
JUDGE

Approve for reporting

JUDGE