Stereo HCJDA-38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.23991/2017

Mah Noor Azhar, etc.

Versus

Lieutenant Colonel Muhammad Sohail Khan, etc.

JUDGMENT

Date of Hearing:	24.06.2022.
Petitioners by:	Malik Sultan Amir Awan, Advocate.
Respondent No.1 by:	Ms. Nayla Mushtaq, Advocate.

Anwaar Hussain, J:- Through the present petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenge has been laid to the order of the learned Executing Court dated 18.01.2016 as well as the order of the learned Appellate Court below dated 16.03.2017 by virtue of which the objection petition of respondent No.1 (judgment-debtor) was accepted and it was held that the 10% annual increase in the monthly maintenance amount awarded to petitioners No.2 and 3 (hereinafter "**the petitioners**"), *vide* judgment and decree dated 25.11.2010, passed by the learned Additional District Judge, is to be effective from the date of the decree and not from the date of institution of the suit by the petitioners.

2. Admittedly, the petitioners are real children, born out of the wedlock of petitioner No.1 and respondent No.1 (hereinafter "**the respondent**"), and a suit for maintenance was instituted in the year 2004 by the petitioners, which was decreed by the

learned Family Court, *vide* judgment and decree dated 28.01.2010 awarding Rs.5,000/-, per month per head, maintenance to the petitioners with 30% increase. On appeal preferred against the judgment dated 28.01.2010, the learned Appellate Court, *vide* judgment and decree dated 25.11.2010, held that the petitioners are entitled to recover maintenance from the respondent at the rate of Rs.4000/-, per head per month, along with 10% annual increase. Judgment and decree dated 25.11.2010 admittedly attained finality as no further challenge was laid. The petitioners filed execution petition alleging that the respondent has failed to discharge his obligation *qua* payment of the maintenance amount along with annual increase. During the execution proceedings, the respondent filed objection petition demurring to 10% annual increase from the date of the institution of the suit and asserting that annual increase shall be effective from the date of the decree of the learned Appellate Court. Objection Petition was accepted by the learned Executing Court, *vide* order dated 18.01.2016, and said decision was upheld by the learned Appellate Court, *vide* judgment dated 16.03.2017.

3. Arguments heard. Record perused.

4. Through the instant *lis*, emanating from execution proceedings, this Court is called upon to determine the legal question as to whether 10% annual increase in maintenance allowance is to be effective from the date of passing of the decree that attained finality or from the date of institution of the suit. The petitioners claim that the annual increase is to be effective, on the amount of Rs.4,000/, per head per month, awarded to them from the date of institution of the suit whereas it is the case of the respondent that the date of annual increase shall be from the date of the decree of the learned Appellate Court.

5. Before examining the scope of the decree dated 25.11.2010, it dovetails well to first examine the object of the West Pakistan Family Courts Act, 1964 ("**the Act, 1964**") and the relevant provision thereof which deals with the decree passed by a Family Court in a suit. It is well settled legal position that the Act, 1964 is a beneficial legislation with its object and purpose being to protect the minors and females who are considered vulnerable segment of the society. The aim is to protect them from lengthy and protracted litigation and without being subjected to the strict niceties and technicalities of *Qanun-e-Shahdat* Order, 1984 and Code of Civil Procedure, 1908. Judgments of the Hon'ble Apex Court in case titled "*Muhammad Faizan Raza vs The Judge Family Court and others"* **(2022 MLD 634)**, as well as **"***Saif ur Rehman vs Additional District Judge, and others*" (**2018 SCMR 1885)** are referred. Section 17A deals with the suit instituted under the Act, 1964, and the decree passed therein. Section 17A reads as under:

> **"17A. Suit for maintenance**.– (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.
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> (2) In a decree for maintenance, the Family Court may:
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> *(a)* **fix an amount of maintenance higher than the amount prayed for in the plaint** due to afflux of time or any other relevant circumstances; and
>
> (b) **prescribe the annual increase in the maintenance.**
>
> (3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by

> the Court shall automatically stand increased at the rate of ten percent each year.
>
> (4) 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."
>
> (Emphasis Supplied)

At this stage, it is significant to note also that Section 17A was amended by legislature through Family Courts (Amendment) Act, 2015 (XI of 2015) ("**Amending Act**"). Prior to the amendment, Section 17A contemplated as under:

> "**Interim Order of maintenance:** At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit."

6. Perusal of the pre-amendment provision brings forth that the legislature had not provided the annual increase; however, the Courts used to award and grant annual increase in the maintenance on their own, keeping in view facts of each case. The jurisprudence so developed was given a legislative form by the legislature through the above reproduced amendment. Perusal of Section 17A, as it stands after the amendment, reveals that in a suit for maintenance, the Court can transcend the legal and procedural limitation of civil law of being confined to the relief sought as sub-section (2)(a) thereof provides that the Family Court is vested with the power to fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances. Such a statutory layout of the said provision is to be put parallel to the beneficial nature of the Act, 1964, which propels to the conclusion that section 17A is also beneficial in nature conferring financial protection to the female and minors. It is further seen from Section 17A that the Court can grant maintenance higher than what has been prayed for in the plaint on the basis of afflux of time or for other circumstances. Similarly,

Section 17A(2)(b) of the Act, 1964 obligates upon the Court to prescribe the rate of annual increase and sub-section (3) of Section 17A spells out that where the Court does not prescribe any rate of increase, the annual increase of 10% would be read into the decree. "*Shahzad Yousaf and others v. Farzana Shahzad and others*" **(2016 SCMR 2069)** is referred in this regard. However, on the basis of facts and circumstances of each case, the discretion of the Court to award more than 10% annual increase remains protected. Similarly, it is important to note that the legislature has vested the Family Court with the power to consider the afflux of time and such other circumstances while granting maintenance in the decree of maintenance. Considered from this perspective, the suit for maintenance was filed by petitioner No.1 (mother of the petitioners), in the year 2004 and decree passed attained finality in the year 2010, which show a lapse of almost six years in between the date of institution and the date of decree. Therefore, if the plea of the respondent (father) as to grant of annual increase from the date of decree is allowed, this would not only frustrate the object of the law but would also put premium in the hands of a defendant. The respondent in the instant case was to protract the suit for maintenance being concluded in order to avert the annual increase, which has been now given statutory recognition under Section 17A. Such an interpretation would be contrary and repugnant to the object and purpose of the law. Thus, it would be against the interest and welfare of the minor to grant annual increase from the date of decree particularly in cases like the one at hand where there is a gap of almost 6 years in the date of institution of the suit and date of final decree passed therein.

7. Having spelled out the object and intent of the legislature underlying the Act, 1964, it would be apt to state that the decree passed by the learned Appellate Court dated 25.11.2010, is required to be seen in the above perspective. The operative part of the said decree is reproduced as under:

> "Respondents No.2 and 3 are **entitled to recover maintenance** from the appellant at the rate of

> Rs.4000/- per head per month **from the date of institution of the suit** till the respondent No.2 attains majority and respondent No.3 is married **along with 10% increase**."
>
> (Emphasis supplied)

It has been argued by learned counsel for the respondent that the words ***"date of institution"*** are confined to the grant of maintenance to the tune of Rs.4000/- and ***annual increase stipulated in the judgment and decree does not apply to the words "date of institution***", which implies that the increase is to be calculated form the date of decree. The argument is misconceived and appears to have been conjured out of thin air as the term ***"date of institution"*** *qualifies* ***both "the maintenance"*** *as well as term* ***"the annual increase"*** *as its underlying object has the inflationary trend as well as the growing needs of the minor with the growing age*. It has been observed that while accepting the objection petition of the respondent and passing the impugned order dated 18.01.2016, the only reason put forth by the learned Executing Court is non-mentioning of the date from which the annual increase is to be effective in terms of the judgment dated 25.11.2010 passed by the learned Appellate Court granting the maintenance to the petitioners and the said finding has been upheld, by the learned Court hearing the execution appeal, in the following manner, through impugned judgment dated 16.03.2017:

> "So, as the Learned Appellate Family Court did not mention any specific date of year about the 10% rise in the maintenance allowance then it can be safely suggested that the annual rise would be applicable from the date of passing of the order and judgment dated 25.11.2010."
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> (Emphasis supplied)

Examination of order dated 18.01.2016 as well as judgment dated 16.03.2017 indicates that both the learned Courts below have not kept the aim, object and scope of the Act, 1964 in mind while interpreting the judgment and decree dated 25.11.2010 and have reached to a misconceived conclusion that it will be safe to allow the annual increase from the date of decree instead of the date of institution of the

suit. It is pertinent to observe that any ambiguity in the decree as to grant of annual increase from the date of institution or from the date of decree would be so construed as to be not incongruous to the object and purpose of law and in this manner, the instant case exhibits a *fortiori* situation inasmuch as when the Act 1964 itself, being beneficial legislation, cannot be construed and interpreted in a manner detrimental to the minor or female, the judgment and decree passed under such law cannot be so interpreted. Even otherwise, the annual increase in the instant case has to be construed and considered form the date of institution of suit as the same has not been categorically denied from the date of institution by the learned Appellate Court passing the decree dated 25.11.2010.

8. In view of what has been discussed above, the instant constitutional petition is **allowed** and the petitioners are held entitled to 10% annual increase in the maintenance amount awarded to them under the judgment and decree dated 25.11.2010 till their legal entitlement and the effective date shall be from the date of institution of the suit and not the date of the decree.

(Anwaar Hussain)
Judge

Approved for reporting

Judge

**S. Zahid **