

2018 M L D 1315

[Lahore]

Before Jawad Hassan, J

Syed HAMID HASSAN---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE, LAHORE and others---Respondents

W.P. No.2023 of 2012, decided on 11th April, 2018.

Family Courts Act (XXXV of 1964)---

---S. 5, Sched. & S.17 (3)---Constitution of Pakistan, Art. 199---Constitutional petition---Maintainability---Suit for recovery of maintenance allowance---Family Court fixed maintenance allowance @ Rs. 3,000/- per month for each plaintiff (wife and children) with 15% annual increase---Contention of husband/father was that plaintiff-wife prayed for increase of 10% per annum but Family Court had granted 15% increase per annum in the maintenance allowance without any reason---Validity---Defendant being father of child could not deny the maintenance allowance fixed by the Family Court which was not harsh or excessive---Assessment and appraisal of evidence was the function of Family Court---Courts below had fixed maintenance allowance after considering needs/requirements of plaintiffs and financial status of the defendant---Defendant being a retired employee and except pension he had no other source of income, annual increase in the maintenance allowance was reduced to 10%---Courts below had recorded concurrent findings with regard to maintenance allowance---No illegality or irregularity had been pointed out in the impugned judgments passed by the Courts below---Constitutional petition was dismissed in circumstances.

Lt. Col. Nasir Malik v. Addl. District Judge, Lahore and others 2016 SCMR 1821; Syed Hussain Naqvi and others v. Mst. Begum Zakara Chatha through L.Rs. and others 2015 SCMR 1081; Mst. Nusrat and others v. Dr. Cap. Shahzad Riaz and others 2011 SCMR 1325; Waqar Haider Butt v. Judge, Family Court and others 2009 SCMR 1243; Muhammad Habib v. Mst. Safia Bibi and others 2008 SCMR 1584 and Mst. Sarwar Mai and another v. Judge Family Court, Muzaffargarh and others 2010 YLR 1234 rel.

(b) Constitution of Pakistan---

---Art.199---Constitutional jurisdiction of High Court---Scope---High Court in its extraordinary jurisdiction could not go behind concurrent findings of facts unless it can be shown that the finding is on the face of it against the evidence or so patently improbable and illegal, or perverse that to accept same could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible.

Lt. Col. Nasir Malik v. Addl. District Judge, Lahore and others 2016 SCMR 1821 rel.

Syed Muhammad Hussain Shah for Petitioner.

Hafiz Muhammad Salam for Respondents.

ORDER

JAWAD HASSAN, J.---Through this Constitutional Petition, the Petitioner has called in question judgments and decrees dated 26.01.2011 and 12.11.2011 (the "impugned judgments and decrees"), passed by learned Judge Family Court, Lahore and Additional District Judge, Lahore, whereby suit filed by the Respondents Nos.3 and 4 was decreed and appeal preferred by the Petitioner was dismissed whereas appeal filed by Petitioners against Syeda Ijaz Fatima was accepted and suit filed by her was dismissed.

2. Facts briefly for the disposal of this Constitutional Petition are that as a consequence of suit for maintenance allowance, judgment and decree dated 26.01.2011 was passed by Judge Family Court, Lahore, whereby Respondents Nos.3 and 4, were held entitled to get maintenance allowance @ Rs.3,000/- per month each from July, 2002 along with 15% annual increase. The said judgment and decree was assailed by the Petitioner through two separate appeals before learned Additional District Judge, Lahore and vide consolidated judgment dated 12.11.2011, the appeal filed against Syeda Ijaz Fatima was allowed whereas the appeal filed against the Respondents Nos.3 and 4 was dismissed with the modification that Respondent No.3 was not entitled for 15% increase in the maintenance allowance being major. Hence this petition.

3. Learned counsel for the Petitioner at the outset, submits that the petitioner is only aggrieved against the finding of the Courts below to the extent of annual increase of 15% in the maintenance allowance. He further submits that in the suit for maintenance the Respondents only prayed for increase of 10% but the learned Family Court without any reason has granted as 15% per annum. He adds that the Petitioner is a retired employee of Grade-18 from Pakistan Railways and now his pension is only Rs.40,000/- per month.

4. On the other hand the learned counsel for the Respondents has half-heartedly opposed the contentions of learned counsel for the Petitioner.

5. Arguments heard and record perused.

6. From the perusal of record, it reveals that learned Judge Family Court, Ferozwala considered the evidence of the Respondents and their witnesses, who corroborated the stance of the Respondents Nos.3 and 4. Consequently, the learned Judge Family Court, after recording issue-wise findings decreed the suit of the Respondents Nos.3 and 4 vide judgment and decree dated 26.01.2011 in the terms mentioned supra. The said judgment and decree was mainly upheld by the learned Addl. District Judge, Ferozwala in an appeal preferred by the Petitioner, which was dismissed vide judgment and decree dated 12.11.2011, but with modification to the extent of stoppage of annual enhancement in favour of Respondent No.3. There are concurrent findings of facts of the two Courts below with regard to the maintenance allowance of the

Respondent No.4. The Petitioner is father of Respondents, so he cannot deny the maintenance of his child. He is bound to pay the same as fixed by the two Courts below, which in these days of dearness is not harsh or excessive, but has little value keeping in view the price hike of daily use items. Both the learned Courts below have concurrently fixed the maintenance allowance of minor after giving due consideration to the needs/requirements of the Respondents and by taking into account the financial status of the Petitioner and has passed the impugned judgment and decrees after full appreciating the evidence on record. The learned counsel for the Petitioners has not been able to point out any illegality or irregularity in the concurrent findings of fact arrived at by the learned Courts below to call for interference.

7. As the Superior Courts have held that the High Court in its extra ordinary jurisdiction could not go behind concurrent findings of facts unless it can be shown that the finding is on the face of it against the evidence or so patently improbable and illegal, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible. Further the assessment and appraisal of evidence is the function of the Family Court, which is vested with exclusive jurisdiction in this regard as has been held in the case titled Lt. Col. Nasir Malik v. Addl. District Judge, Lahore and others (2016 SCMR 1821).

8. Furthermore, both the Courts below have concurrently enhanced the maintenance allowance after giving due consideration to the needs/requirements of the Respondents and by taking into account the financial status of the Petitioner. Besides, the concurrent findings of facts recorded by all the Courts below do not suffer from any illegality, infirmity or perversity. In this regard reliance can be placed upon the case of Syed Hussain Naqvi and others v. Mst. Begum Zakara Chatha through L.Rs. and others (2015 SCMR 1081), wherein it has been held as under:-

"15. There are concurrent findings of fact recorded by the learned courts below against the appellants. This Court in Muhammad Shafi and others v. Sultan (2007 SCMR 1602) while relying on case-law from Indian jurisdiction as well as from the Pakistani jurisdiction has candidly held that this Court could not go behind concurrent findings of fact "unless it can be shown that the finding is on the face of it against the evidence or so patently improbable, or perverse that to accept it could amount to perpetuating a grave miscarriage of justice, or if there has been any misapplication of principle relating to appreciation of evidence or finally, if the finding could be demonstrated to be physically impossible." No such thing could be brought on record to warrant interference by this Court."

Reliance in this regard can also be placed upon Mst. Nusrat and others v. Dr. Cap. Shahzad Riaz and others (2011 SCMR 1325), Waqar Haider Butt v. Judge, Family Court and others (2009 SCMR 1243), Muhammad Habib v. Mst. Safia Bibi and others (2008 SCMR 1584) and Mst. Sarwar Mai and another v. Judge Family Court, Muzaffargarh and others (2010 YLR 1234).

9. So far as the prayer of learned counsel for the petitioner for reduction in annual enhancement from 15% to 10% is concerned, learned counsel for the Petitioner has submitted that though the impugned judgments were passed before the amendment under section 17(3) of

West Pakistan Family Courts Act, 1964, which specifically deals with the issue in which it is provided that "If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the court shall automatically stand increased as the rate of ten per cent each year." but keeping in view the present status of the Petitioner that he is retired employee and except pension, he has no other source of income, the annual increase in the maintenance allowance of respondent No.4 may be reduced to 10%.

10. The concurrent findings of the Courts below do not suffer from any illegality, irregularity or infirmity. The petition in hand is therefore, dismissed. But keeping in view of present status of the Petitioner, annual increase of maintenance allowance of the Respondent No.4 is reduced to 10% from 15% by maintaining the impugned judgments and decrees.

ZC/H-6/L

Petition dismissed.