

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Writ Petition No.62571 of 2024.

Muhammad Imran. **Versus** Samina Kousar, etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary
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11.10.2024 Ch. Tariq Latif, Advocate for the petitioner.

Through this Constitution Petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called into question the validity & legality of order dated 14.09.2024 passed by the learned Appellate Court, pursuant whereto while accepting the appeal of respondents No.1 to 5, application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure, 1908 for deletion of the names of respondents No.2 & 3 (*major sons of the petitioner*) from the array of plaintiffs, was dismissed.

2. Facts in brevity are that respondents No.1 to 5 instituted a suit for recovery of maintenance allowance and schooling expenses etc. against the petitioner. Latter contested the suit by filing written statement in contrast. During the pendency of the suit, the petitioner filed an application under Order I Rule 10(2) of the Code of Civil Procedure, 1908, by contending therein that since the plaintiffs No.2 & 3/respondents No.2 & 3 have attained the

age of majority, hence, their names be deleted from the array of plaintiffs. Learned Trial Court, after taking its reply from the other side and providing opportunity of hearing to both sides, allowed the application vide order/judgment dated 15.12.2023 and strike out the names of respondents No.2 & 3 from the array of plaintiffs. Feeling aggrieved, the plaintiffs preferred an appeal which was allowed by the learned Appellate Court vide impugned judgment dated 14.09.2024 and consequently dismissed the petitioner's application. Hence, this writ petition.

3. Preliminary arguments heard. Record perused.

4. It evinces from the record that through the application under Order I Rule 10 C.P.C. the stress of the petitioner is that since the respondents No.2 & 3/plaintiffs No.2 & 3 have attained the age of majority, hence, as per para 370 of the "Principle of Muhammdan Law" by D.F Mulla, petitioner is no more bound to maintain them and their names be deleted from the array of plaintiffs as they are neither proper party nor necessary party. Learned counsel for the petitioner while reiterating the stance taken in the application has relied upon case laws sited as "Mst. Aila Nawaz V. Judge Family Court, Khanewal and 2 others" (2018 CLC 241) and "Muhammad Riaz ahmad V. Mst. Shaheen Akhtar and 3 others." (PLD 2023 Lahore 317).

5. There is no dispute with regard to the majority of respondents No.2 & 3 as the plaintiffs in their suit have

mentioned their ages at that time as 20 years and 18 years respectively. Perusal of the plaint further reflects that through the suit respondents/plaintiffs have not only claimed the maintenance allowance but also claimed the educational, travelling and food expenses.

6. There is no cavil with the proposition that the maintenance, in relation to Muslim relatives shall be governed and regulated by the principles/injunctions of Islam i.e as per the personal law of the parties.

7. The word ‘maintenance’ has been defined in Black’s Law Dictionary (11th Edition) as under:-

“....5. Financial support given by one person to another”.

In Oxford Dictionary it has been defined as under:-

“The money needed for somebody’s living expenses; the act of providing this money.”

It has been defined in para 369 of the “Principles of Muhammdan Law” by D.F. Mulla as

*“369. Maintenance defined _____
“Maintenance in this chapter includes food, raiment and lodging.”*

8. As per para 370 of the Muhammadon Law, a father is bound to maintain his children. To his sons until they have attained the age of puberty unless they are disabled by infirmity or disease, and to his daughters until they are married, however, he is not bound to maintain a child who

is capable of being maintained out of his or her own property. For reference, para 370 is reproduced as under:-

“370.—(1) A father is bound to maintain his son until they have attained the age of puberty. He is also bound to maintain his daughters until they are married. But he is not bound to maintain his adult sons unless they are disabled by infirmity or disease. The fact that the children are in the custody of their mother during their infancy (S. 352) does not relieve the father from the obligation of maintaining them. But the father is not bound to maintain a child who is capable of being maintained out of his or her own property.

(2) If the father is poor and incapable of earning by his own labour, the mother, if she is in easy circumstances, is bound to maintain her children as the father would be.

(3) If the father is poor and infirm, and the mother also is poor, the obligation to maintain the children lies on the grandfather, provided he is in easy circumstances.”

9. Although, according to Section 369 of the “Principles of Muhammadan Law” by D.F. Mulla, maintenance means and includes food, raiment and lodging and as per Section 370 it is described that a father is not bound to maintain adult sons unless they are disabled by infirmity or disease but Hon’ble Supreme Court of Pakistan in a case titled “Alaf Din V. Mst. Parveen Akhtar” (PLD 1970 SC 75) while elaborating the maintenance of children, has held as under:-

"Normally a child, after attaining majority, would be physically in a position to maintain itself, for, it would then be capable of earning some kind of a livelihood. But this again is a question which will depend upon the status and circumstances of each individual family. Thus, although the section does not make any reference to the age of majority, it is a consideration which must inevitably be taken into account by the Court when deciding the question as to whether the child is or is not able to maintain itself. Thus an infirm or decrepit or deformed son or daughter may be entitled to claim maintenance even up to a very advanced age, while an able-bodied son or daughter might be deprived of the right if he/she has already found suitable gainful employment and is in a position to maintain himself or herself.

Again in interpreting the word "maintenance" some reasonable standard must be adopted. Whilst it is not confined merely to food, clothing and lodging, it cannot, by any stretch of imagination, be extended to incorporate within it education at higher levels ad infinitum. What is necessary to decide in this connection is to find out as to what amount of education has to be attained by the child concerned, having regard to the status and other circumstances of his family, to enable it to earn a complete livelihood by honest and decent means. Thus it may not be sufficient to say that the child of a tradesman can maintain itself by working as coolly or by thieving. What is required is that the child must be maintained until it is in a position to earn its own livelihood, in an honest and decent manner in keeping with its family status (emphasis supplied)"

10. It is not disputed by the respondents' side, that Abdul Wassey (respondent No.2) who was born on 16.10.2002 is at the age of 22 and Abdul Raffay (respondent No.3) who was born on 04.09.2004 is at the age of 20 and they have attained the age of puberty; they are major in terms of section 3 of the Majority Act, 1875 read with section 4 of the Guardians & Wards Act, 1890 and in any case they are an adult and not a minor any more. They are not suffering from any disability on account of infirmity or disease, therefore, the petitioner being their father in the ordinary course is not obliged to maintain them. However, some renowned jurist in their exposition on the subject have expanded the scope of exception.

Neil B.E. Baillia in his book/digest Muhammadan Law has described as under:-

'And so also students of learning, when unable to earn anything; and their right to maintenance from their fathers does not abate while engaged in legal study.

Furthermore

‘when a man is absent, but has left available property maintenance may be ordered out of it by the judge to the following persons if they are poor; but to none other, viz., his parents; his male children if young, or, though adult, if unable to gain their livelihood. (emphasis supplied)

Ammer Ali (Syed) in his commentaries on Mahommedan Law, revised edition by Justice S.H.A. Raza has opined as:-

“Maintenance of male children.—The obligation of maintaining the male children lasts until they arrive at puberty. After this, a father is not bound to maintain his male children, unless they are incapacitated from work through some diseases or physical infirmity, or are engaged in study. When male children are strong enough to earn their own livelihood, though not actually adult, the father may set them to work for their own subsistence or hire them out for wages. (emphasis supplied)

If the male children are actually able to work, but the employment found for them is unsuitable or improper for their rank in life, they would be placed on the same footing as children laboring under some infirmity. Ability to work must, in such cases, be considered with reference to the social position of the children, as well as the parents; so that a father occupying a respectable position, in which the children have been brought up delicately must not hire them out for work is degrading in its nature or associations.”

In the Principles of Muhammadan Law by Dr. Nishi Purohit, it has been provided as—

“Father’s obligation of maintenance comes to an end when the sons become major. But the father is required to maintain his adult son who has been disabled on account of some disease, or physical or mental infirmity or is engaged in study (emphasis supplied).”

It means that the right of maintenance does not limit itself only to food, raiment and lodging but also entails all other necessary expenses for the mental and physical well being of the recipient.

11. The Hon'ble Supreme Court of Pakistan, in a case titled "Humayun Hassan V. Arslan Humayun and another" (PLD 2013 Supreme Court 557) while keeping in view paras No.369 and 370 of the Muhammadan Law and opinion of other renowned jurists, has held that in the present days social, physical, mental growth, upbringing and well-being of the minor, keeping in mind the status of the family, the norms of the society and the educational requirement which has now attained utmost importance are also liability of the father and observed as under:

"However, it may be observed that from the very language of the above section, such definition is neither conclusive nor exhaustive, and in our view it undoubtedly has a wider connotation and should be given an extended meaning, for the purposes of meeting and catering for the present days social, physical, mental growth, upbringing and well being of the minor, keeping in mind the status of the family, the norms of the society and his educational requirement, which has now attained utmost importance {Ahmedallah V. Mafizuddin and another (AIR 1973 Gauhati 56)}; but obviously corresponding to and commensurating with the means and the capacity of the father to pay."

Further observed as under:-

"Be that as it may, in view of the preponderance of the opinion of the jurists as has been referred to above, it emerges that the obligation of the father to maintain his adult son who has not yet accomplished his basic education, enabling him to earn his livelihood, may be considered by the court(s) in an appropriate case, a factor falling within the exception to the general rule (supra). But for that, a specific case has to be initiated and set out by the son, before the Court or original jurisdiction (competent jurisdiction); and the Court on the basis, of the case so propounded; the pleadings of the parties after conducting the trial is obliged to determine in each case, with reference to the facts of that case, whether the adult son should at all be entitled to the maintenance, as he still is pursuing his education; the Court in this regard shall keep into consideration, his age; whether he has his own resource to sustain his studies; the nature and the stage of his studies; his academic results, his fervor and zeal for the education; the extent of education which is essential, enabling him

to earn the livelihood; obviously, this shall not include the higher studies, and in any case not the education abroad; especially where the son has gone abroad for such education either of his own without there being any promise by the father or on the behest of someone else who had assured him to support. It may be pertinent to mention that while determining and adjudging whether the father should provide maintenance to his adult son one of the important factors which should be kept in view by the Court(s) is whether the son gives due respect and show regard to his father, and in any case is not disobedient or estranged man. Besides the capacity of the father in this behalf should also be kept into view.”

12. It emerges that the obligation of the father to maintain his adult son who has not yet accomplished basic education, enabling him to earn his livelihood, may be considered by the court in an appropriate case, a factor falling with the exception to the general rule (supra).

13. Education is the necessary qualification which is required to a person to enable him to earn bread and butter. It does not include higher studies and studies abroad. From the analysis of above referred case laws, this Court has observed that the learned Trial Court has to ascertain in the light of evidence of the parties as to which extent the father is bound to pay the educational expenses of an adult son. While doing so, following points must be taken into account by the learned Trial Court:-

- i) First and the foremost consideration is the capacity and financial status of father.*
- ii) Age and conduct of the adult son.*
- iii) Whether the adult son has his own resources to sustain his studies.*
- iv) The nature and stage of studies.*
- v) Academic performance of adult and his passion & zeal towards the education*

vi) The extent of education which is essential to enable him to earn his livelihood. Obviously, this shall not include the higher studies, especially studies abroad without there being a promise by the father to support him.

vii) Whether the son gives due respect and show regard to his father and in any case is not disobedient or estranged man.

14. It shall also be determined by the learned Trial Court after recording evidence of the parties and analyzing status of the father as to whether the adult sons are entitled to receive maintenance allowance or not.

15. No doubt the court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out. The party who has no connection with the relief sought may be struck off from the record as a party. The court can also strike out a party over whom it has no jurisdiction. Whether a party is to be struck out or not is to be determined on the basis of plaint as framed. The word ‘Party’ has been defined in West Pakistan Family Courts Act, 1964 as under:-

Section 2 (d)

“Party” shall include any person whose presence as such is considered necessary for a proper decision of the dispute and whom the Family Court adds as a party to such dispute.”

The Hon’ble Supreme Court of Pakistan in a case titled Muhammad Arif and others Vs District & Sessions Judge, Sialkot and others (2011 SCMR 1591) defined it as under:-

“5.....This definition has two parts which for convenience are serialized (a) and (b):-

(a) Any person whose presence as such is considered necessary for the proper decision of the dispute.

(b) Any person who the Family Court adds as a party to such dispute.

6. The nature of family dispute and jurisdiction of the family court is special as well as peculiar. The West Pakistan Family Courts Act, 1964 was therefore, legislated “to make provision for the establishment of Family Courts for the expeditious settlement and dispose of the disputes relating to marriage and family affairs and for matters connected therewith”. It was in this perspective that the definition of the term ‘Party’ was specifically codified in section 2(d) in this Act. This definition is though not very different from the one obtaining under C.P.C. yet it is comparatively more liberal and extensive than the proverbial ‘necessary or property party’ of a civil suit.”

16. In view of above discussion it is observed that respondents No.2 & 3 are proper and necessary party and their presence is necessary for the proper decision of the controversy involved in the respondents’ suit.

17. For the foregoing reasons, learned Appellate Court has rightly allowed appeal of the respondents. Learned counsel appearing on behalf of the petitioner remained unable to point out any illegality, irregularity or jurisdictional defect in the impugned order. Impugned order is well-reasoned and passed after due appreciation of the record as well as merits of the case which is not open to any exception or interference by this Court while exercising constitutional jurisdiction. The case laws referred to by the learned counsel for the petitioner are not relevant to the facts and circumstances of this case, therefore, not helpful for the petitioner.

18. The epitome of above discussion is that instant petition is meritless, hence, the same is **dismissed-in-limine**.

(AHMAD NADEEM ARSHAD)
JUDGE

APPROVED FOR REPORTING.

*M. Arsalan**

JUDGE