

**Form No. HCJD/C-121**  
**ORDER SHEET**

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

**W.P.No.2932 of 2016**

**SHABBIR AHMAD Versus CHAIRMAN ARBITRATION  
COUNCIL, ETC.**

S.No.of order / Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties counsel, where necessary
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**02.06.2017** Sheikh Akhter Javed, Advocate for the petitioner. Malik Muhammad Asif, Advocate for respondents No.4 to 7.

Shabbir Ahmad, the petitioner was married to respondent No.4 on 28<sup>th</sup> August, 2011 in accordance with The Muslim Family Laws Ordinance, 1961. During the wedlock, minors namely Shahmir Ahmed (son) and Momina Bibi (daughter) were born. On account of some matrimonial disputes, a suit was instituted by respondent No.4 on her own behalf as well as on behalf of respondents No.5 and 6 for recovery of dower, gold ornaments and maintenance. The petitioner, being defendant, resisted the suit and submitted his written statement, controverting the assertions contained in the plaint. From the divergent pleadings of the parties, multiple issues were framed. After framing of necessary issues, both the parties to the suit produced their respective evidence

and on completion of the same, suit was partially decreed by way of judgment dated 24<sup>th</sup> May, 2016. The said judgment and decree was assailed by both the sides through their respective appeals before the learned Additional District Judge, Attock. The appeals were consolidated and by way of consolidated judgment and decree dated 19<sup>th</sup> September, 2016, the appeal preferred by the petitioner was dismissed whereas appeal filed by the respondents No.4 to 6 (hereinafter referred as "respondents") was partially accepted, hence this petition.

2. Learned counsel for the petitioner submitted that suit before the learned Judge Family Court was not proceedable as in the previous round, matter in issue was resolved by the Arbitration Council. He added that after the said decision, since no remedy was availed by the respondents as per Section 9 of The Muslim Family Laws Ordinance, 1961, so order had attained finality. Learned counsel contended that even otherwise, maintenance was awarded at an exorbitant rate and the evidence to this effect has been grossly misread by both the learned Courts below. Learned counsel contended that the impugned judgments are not tenable under the law and the jurisdiction has been illegally exercised.

3. Conversely, learned counsel for the respondents submitted that there is no illegality with the impugned judgments requiring interference by this Court in exercise of constitutional jurisdiction. He added that the matter in issue clearly falls within the domain of learned Family Court and the suit was competent. Learned counsel contended that there is no jurisdictional defect in the impugned judgment, thus instant petition merits dismissal.

4. After having heard learned counsels for both the sides at a considerable length, I have also perused the available record with their able assistance.

5. It is evident from the record that "respondents" instituted suit for multiple reliefs including the maintenance. In order to prove the claim agitated in the plaint, the respondent No.4 herself appeared as PW-1 and while tendering her affidavit as Exh.P1 reiterated her grievance. The Nikahnama was produced as Exh.P2 in addition to other documents. Conversely, the petitioner appeared as DW-1 and tendered his affidavit as Exh.D1. The learned Judge Family Court, after having an appraisal of evidence, decreed the suit partially in the following manner: -

*"15. In the light of my findings upon the above discussed issues, the suit of the plaintiffs is hereby partially decreed in their favour in the term that plaintiff No1 is entitled to recover remaining dower amount Rs.50,000/-, 03-tolas gold ornaments as well as "Iddat" maintenance at the rate of Rs.5000/- per month total Rs.15,000/-. Minor plaintiffs No.2 & 3 are also entitled to recover monthly maintenance at the rate of Rs.3000/- each from 11.09.2014 till operation of law with 10% annual increase. At the same time, claim of plaintiff No.1 for recovery of maintenance from September 2014 to September, 2016 as well as one gold ring worth Rs.20,000/- are hereby dismissed. There is no order as to costs."*

6. Both the sides, being dissatisfied from the said judgment and decree, preferred their respective appeals before the learned Additional District Judge, Attock. The appeals were consolidated and by way of consolidated judgment and decree dated 19<sup>th</sup> September, 2016, the appeal preferred by the petitioner was dismissed whereas the appeal filed by the "respondents" was partially

accepted and a slight modification was made to the following effect: -

*"19. What has been discussed above, the appeal filed by Shabbir Ahmed titled Shabbir Ahmed Vs. Shahida Bibi is dismissed whereas the appeal filed by respondent Shahida Bibi is partially accepted as under: -*

- 1) Respondents No.2 and 3 the minors are declared entitled to get the maintenance at the rate of Rs.3500/- per month each from 11.09.2014, when the mother of the minor was divorced with 10 per cent per annum till their majority.*
- 2) Respondent No.1 is entitled to get the maintenance for milking her minor Shah Mir at the rate of Rs.1500/- per month for the period of two years.*
- 3) Respondent No.1's appeal to the extent of gold ring is dismissed."*

It is evident from the above that except slight change in the quantum of maintenance to the extent of minors and award of birth expenses to the respondent No.4 (mother), no other material change was introduced by way of impugned judgment and decree.

7. Before coming to the propriety of the impugned judgment, it would be relevant to observe that the main resistance to the impugned judgment by the petitioner rests upon the proceedings conducted by the Arbitration Council in terms of Section 9 of The Muslim Family Laws Ordinance, 1961. Learned counsel for the petitioner, to this effect, emphatically contended that after proceedings before the Arbitration Council, suit was not proceedable. In order to properly appreciate this question, it would be relevant to first examine the provision of Section 9 of The Muslim Family Laws Ordinance, 1961, which reads as under: -

*Maintenance.*—(1) If any husband fails to maintain his wife adequately or where there are more wives than one fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

(2) A husband or wife may in the prescribed manner, within the

*prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, [to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.*

*(3) Any amount payable under sub-section (1) or (2) if not paid in due time shall be recoverable as arrears of land revenue."*

Bare perusal of the above referred provision of law clearly postulates that the same would come into play on failure of husband to maintain his wife adequately or where there are more wives than one fails to maintain them equitably, the wife, or all or any of the wives may in addition to seeking any other legal remedy available, apply to the Chairman who shall constitute an Arbitration Council to determine the matter and Arbitration Council, in pursuance thereof, may issue a certificate specifying the amount which shall be paid as maintenance by the husband.

8. By virtue of Punjab Act XIII of 2015, sub-section 1-A was also inserted in Section 9 *ibid*, authorizing the mother or grandmother of the minor children to seek

the same remedy. The remedy available under Section 9 of The Muslim Family Laws Ordinance, 1961 is clearly a remedy in addition to other available legal remedies. Section 9 of The Muslim Family Laws Ordinance, 1961 neither imposes any embargo on institution of suit as is the present one nor any clog on the powers of the Family Court to proceed with such suit. The proceedings launched in terms of Section 9 of The Muslim Family Laws Ordinance, 1961 cannot erode the suit instituted before the Family Court under the provisions of The Family Courts Act, 1964. The stance taken by learned counsel for the petitioner is even otherwise contrary to the plea raised by the petitioner in his written statement. The relevant extract is reproduced below:-

7" غلط ہے۔ مدعی علیہ نے کبھی کوئی نفقہ یا  
تحریر یونین کونسل میں نہ دی۔ نہ بی کوئی  
فیصلہ یونین کونسل عدالت پذا پر قابل پابندی  
ہے۔ اگر کوئی ایسی تحریر ہے تو جعلی ہے۔"

After having an overview of the relevant provisions and the pleadings, no cavil is left that the contention of learned counsel for the petitioner is highly misconceived and ill-founded.

**9.** So far claim of dower and gold ornaments is concerned, Nikahnama

(Exh.P2) clearly depicts that Rs.55,000/- was fixed as dower out of which Rs.5000/- was paid and Rs.50,000/- was outstanding, which was payable on demand. In the light of admission made by the petitioner, the claim of dower to the extent of Rs.50,000/- was decreed in favour of respondent No.1.

**10.** Next comes the claim of gold ornaments weighing 3 Tolas which finds mention in the column No.17 of Nikahnama as Exh.P2. After having cursory look at the respective statements of the parties and analysis of Mark-D, which was decision of the Arbitration Council, it becomes evident that the petitioner was bound to pay 3-Tolas of gold ornaments or in lieu their price @ Rs.47,000/- per Tolas to the respondent No.1. The concurrent findings to this effect are unexceptionable.

**11.** Now adverting to the quantum of maintenance, it is observed that minor respondents No.5 and 6 were held entitled to get the maintenance @ Rs.3500/- per month w.e.f 11<sup>th</sup> September, 2014 with 10 % annual increase. Admittedly, the petitioner is running his own business, so in the light of available evidence, it cannot be said that the quantum of maintenance fixed by the learned Additional District Judge, is exorbitant or not in accord with the source of income of the

petitioner. The minors are school going children and for meeting their day to day needs, Rs.35,00/- per month in all respects is justifiable amount for upbringing them.

12. For the foregoing reasons, I am of the considered view that the petitioner has failed to point out any illegality or material irregularity in the judgment under challenge. As a result thereof, this petition fails and is dismissed in limine.

(MIRZA VIQAS RAUF)  
JUDGE

Zeeshan

Approved for Reporting.