

Form No.HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

WP No. 15138 of 2020

Roshan Din
vs.
Rashida Ilyas 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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10.11.2021	Ch. Shakeel Gondal, Advocate for petitioner. Mrs. Zarish Fatima, Assistant Attorney General, M/s. Barrister Hassan Khalid Ranjha, AAG, Mateen ul Haq Chaudhry, Rana Muhammad Majid, and Ch. Shahid Iqbal, Advocates. Mr. Abdul Wakeel Kamboh, Advocate for Respondent Nos. 1 and 2.
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Through this constitutional petition, the petitioner has called in question order dated 18.09.2019 passed by Judge Family Court, Sheikhupura, whereby a suit for recovery of maintenance allowance filed by Respondent No. 2/minor (granddaughter of the Petitioner) has been decreed against present Petitioner for an amount of Rs. 3,000/- per month as maintenance allowance.

2. It is contended by learned counsel for the Petitioner that the impugned order is not sustainable on the ground that the same has been passed without determining whether the Petitioner, who is grandfather of Respondent No. 2/minor, is in easy circumstances or not.

3. Learned counsel for Respondent Nos. 1 and 2 after referring to *Fard Malkiyat* produced by him in the Court today states that Petitioner/grandfather was in easy circumstances as evident from *Fard Malkiyat* showing his ownership of property, therefore, the said stance is not available to the Petitioner.

4. Whether or not a grandfather is liable to maintain his grandchildren came up for consideration in the case titled **Muhammad Ramzan vs. Ali Hamza and others** (PLD 2016 Lahore 622), the relevant portion of which is reproduced below:

“The liability of a grandfather starts when the father is poor and infirm and the mother is also not in a position to provide maintenance to her children but the liability of grandfather to maintain his grandchildren is also dependent upon the fact that he is in easy circumstances. Thus in my humble view if the father and mother are alive, the grandfather cannot be held responsible for maintenance of his grandchildren unless it is first determined that he is in easy circumstances. In order to determine that grandfather is in a position to maintain his grandchildren it is incumbent upon the Family Court to first adjudicate and determine this fact which cannot be done unless he is a party to the suit, having a fair opportunity to explain his status and position....”

The same principle has been reiterated in the judgment reported as **Muhammad Nawazish Ali vs. Family Judge and others** (2021 CLC 1841).

5. Be that as it may, as per facts narrated by the petitioner it appears that son of the Petitioner/husband of Respondent No. 1/father of Respondent No. 2 died in a road accident in Saudi Arabia in 2016, whereas it is noticed that the trial court decided the matter on wrong premise by treating the Petitioner, who was defendant in the suit, as father of the minor Respondent No. 2 and has not considered that he was the grandfather, the relevant portion of the impugned order is reproduced below:

“.....It is pertinent to mention here that on 15.05.2019 defendant was ordered to pay the interim maintenance allowance @ Rs.3,000/- per month to minor/plaintiff No. 2. From May 2019 till today, the defendant remained reluctant to pay interim maintenance allowance to the

minor/plaintiff No. 2. Perusal of record further reveals that from last 05 months till today he is not paying maintenance to minor/plaintiff No. 2. The conduct of the defendant is sufficient to prove the case of the plaintiffs to the extent of recovery of maintenance allowance. It appears that the defendant has no love and affection to the minor. He neither bothered to take care of the plaintiff and even the other of the court. The paternity of minor was admitted by defendant. Therefore, the defendant being a father is morally and legally bound to maintain his family.”

“.....It was held in esteemed judgment reported as 2014 CLC 860 Sec.17-A West Pakistan Family Court Act.

“Sec-17A of the West Pakistan Family Court Act empowers the family court to struck off the defence of husband who had failed to pay the interim maintenance allowance and decree the suit without recording the evidence. Suit was rightly decreed by Family Court”.....

“.....Keeping in view financial status of the defendant, maintenance allowance of the lady plaintiff No. 1 is fixed @ Rs.5,000/- per month from the date of the institution of the suit till legal entitlement whereas the minor/plaintiff No. 2 is held entitled to recover maintenance allowance @ Rs.5,000/- per month from the date of the institution of the suit till legal entitlement with 10% annual increment.”.....

(emphasis supplied)

Besides the court has also not taken into consideration the stance of both the parties mentioned above which it was required to do to provide fair trial to the parties, therefore, prejudice has been apparently caused to their rights, especially to that of the Petitioner, hence, the impugned judgment and decree is not sustainable. Reference in this regard may be placed on the judgment reported as **Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another** (2012 SCMR 1235), the relevant portion of which reproduced below:

“Although from the very inception the concept of fair trial and due process has always been the golden principles of administration of justice but after incorporation of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973 vide 18th Amendment, it has become more important that due process should be adopted for conducting a fair trial and order passed in violation of due process may be considered to be void.”

6. For what has been discussed above, the impugned order dated 18.09.2019 is ***set-aside*** and the matter is remanded to the trial court to decide the same afresh after providing opportunity of hearing to both the parties within 30 days from receipt of order of this Court.

7. This petition is ***allowed*** in the foregoing terms.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Naveed *

APPROVED FOR REPORTING: