

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.370 of 2024

Syed Zain Muntazar Mehdi **V/S** *Mst. Sara Naqvi etc.*

J U D G M E N T

Date of hearing	21.03.2024
Petitioner(s) by	Malik Aamir Saleem, Advocate.
Respondent(s) by	Ms. Farzana Aziz, Advocate.

JAWAD HASSAN, J. This constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “*Constitution*”) calls in question the vires of judgment and decree dated 19.12.2023, whereby Additional District Judge, Rawalpindi, while dismissing the appeal filed by the Petitioner affirmed the judgment and decree dated 06.03.2023 passed by Judge Family Court, Rawalpindi. These concurrent findings of fact have been assailed through this constitutional petition.

2. Precisely the facts necessary for adjudication of instant petition are that the Respondent No.1 instituted a suit for recovery of maintenance, dowry articles and delivery expenses before the Judge Family Court, wherein the Petitioner was arrayed as defendant. The Petitioner contested the suit by filing a written statement, wherein he controverted the assertions contained in the plaint. From the divergent pleadings of the parties, the Judge Family Court, Rawalpindi framed the necessary issues to the following effect:

ISSUES

- i. Whether the plaintiff is entitled to get a decree for recovery of maintenance allowance? If yes, at what rate and for which period? OPP*

- ii. *Whether the plaintiff is entitled to get a decree for recovery of maintenance allowance for each minors as prayed for? OPP*
- iii. *Whether the plaintiff is entitled to get a decree for recovery of maintenance allowance for each minor as prayed for?*
- iv. *Whether the plaintiff is entitled to get a decree for recovery of delivery expenses? OPP*
- v. *Whether the plaintiff has no cause of action to file this suit? OPD*
- vi. *Whether the suit of the plaintiff is false and frivolous and liable to be dismissed? OPD*
- vii. *Relief.*

3. After framing of issues and recording of oral and documentary evidence adduced by both the parties, suit was decreed by the Judge Family Court, Rawalpindi vide judgment dated 06.03.2023 holding the Respondent No.1 entitled to recover Rs.10,000/- per month as maintenance for period of her *Iddat*. She was also held entitled to recover delivery expenses of Rs.40,000/-, whereas the issue with regard to dowry article became redundant as she had received all dowry articles. While the minors were held entitled to recover Rs.10,000/- per month each from 30.05.2020 till their legal entitlement with 10% annual increase. The Petitioner, feeling dissatisfied from the said judgment and decree, preferred an appeal before the learned Additional District Judge, Rawalpindi, but same was dismissed.

4. Learned counsel for the Petitioner *inter alia* contends that impugned judgments and decrees are result of mis-reading and non-reading of material available on record; that the Courts below have awarded maintenance allowance to the Respondent No.1 and minors at exorbitant rate by ignoring his financial status which he is unable to pay; that the Petitioner produced his salary slip (Exh.D-3/1) for the purpose of determination of his source of income, but the same has not been taken into consideration.

5. Conversely, learned counsel for Respondent No.1 contended that the impugned judgments have been passed after taking into

consideration all aspects of the matter in dispute and, as such, do not suffer from any error or material irregularity.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. It is an established principle that findings on fact recorded by a competent court in exercise of lawful jurisdiction cannot be agitated by invoking writ jurisdiction under Article 199 of the Constitution unless the same suffer from any legal infirmity, jurisdictional error or perversity causing serious miscarriage of justice.

8. At the outset, learned counsel for the Petitioner stated that the Petitioner does not press this petition to the extent of claims of the Respondent No.1 viz. recovery of dowry articles and delivery expenses, however; he is only aggrieved of by the rate of maintenance exorbitantly awarded by the Courts below without keeping in consideration monthly earnings established and proved on behalf of the Petitioner. In this view of the matter, the impugned judgments and decrees to the extent of dowry articles and delivery expenses are maintained.

9. The Respondent No.1 in her suit claimed maintenance allowance for each minor @ Rs.20,000/- and alleged that monthly income of the Petitioner is Rs.150,000/-, including income from his salary and business. The Respondent No.1 appeared as PW-1 and admitted it to be correct in her cross-examination that she does not have salary slip of the Petitioner and also no proof of his business. While the Petitioner appeared as DW-1 and took stance in his affidavit Exh.D2 that he earns Rs.18,299/- per month and in order to establish and controvert stance of the Respondent No.1, he produced his salary slip Exh.D-3/1 of KPMG as well as copy of letter from KMPG to the Manager Askari Bank Limited Exh.D-3/2 requesting to allow the Petitioner to open salary account.

10. So far as matter of obligation of husband/father regarding providing maintenance allowance to legally wedded wife and children is concerned, a husband is under legal, moral and religious

obligation to maintain his legally wedded wife. Section 272 of Mohammdan Law by Mullah provides obligation of a husband to maintain his wife with certain conditions. Section 278 postulates that if a husband refuses to maintain his wife, she may sue for maintenance. Hence, it is the obligation of husband to pay Nafqa or maintenance, if construed in accordance with the principles as laid down in "HIDAYA" translated by Charles Hamilton in Chapter XV such as "Nafqa", in the language of law, signifies all those things which are necessary to support of life, such as food, clothes and lodging. In case in hand, the courts below have held the Petitioner obliged to pay maintenance allowance of the Respondent No.1, which by no means is in deviation to law and sharia.

11. Likewise, it cannot be denied at all that, in Islamic law, a father is under legal, moral and religious obligation to maintain his children till the age specified by law/sharia and it shall not be out of context to mention here that his such obligation originates from esteemed dictates of Holy Quran reading as follows:

"And clothing and maintenance must be borne by the father in a fair manner." [AL-BAQARAH, 233].

12. The Supreme Court of Pakistan has observed in "HUMAYUN HASSAN versus ARSIAN HUMAYUN and another" (PLD 2013 SC 557) that:

"4. ... according to section 369 of the Muhammadan Law by D.F. Mullah, maintenance means and includes food, raiment and lodging. ... the same jurist in section 370 of the book has elucidated the liability of the father to pay the maintenance to his children as follows:-

"370. Maintenance of children and grandchildren.---(1) A father is bound to maintain his sons 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 (section 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 is capable 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."

13. Father's said obligation to maintain his children has repeatedly been recognized, emphasized and elaborated by the Superior Courts of the country, one instance whereof is case titled "SYEDA FARHAT JAHAN versus SYED IQBAL HUSSAIN RIZVI and another" (2010 YLR 3275), wherein it has held that "*it is the legal and moral duty of the father of minor children to keep maintaining them he being the natural guardian till they attain the age of majority. No excuse, big or small can absolve the father from his duty of maintaining his minor children which duty has been ordained on him through divine revelation of Allah Almighty.*" In the same context, the Supreme Court of Pakistan held in the case "Humayun Hassan" *supra* that "*There can be no cavil with the proposition that the maintenance issue(s), 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. In this context, according to section 369 of the Muhammadan Law by D.F. Mullah, maintenance means and includes food, raiment and lodging. 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 wellbeing 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; but obviously corresponding to and commensurating with the means and the capacity of the father to pay."

14. Hence a father is obligated to maintain his children and a reasonable standard must be assumed for determining quantum of their maintenance allowance. It goes without saying that the court while considering the quantum of maintenance will take into consideration the fundamentals of the minors education, status, general expenses. The court must also take into consideration reasonable probability of obtaining education and the ability to take care of the minors in a stable, safe and healthy environment. Without due consideration of all these factors, the court cannot conclude positively the quantum of maintenance. There is no hard and fast formula for determining quantum of maintenance and the main consideration for the Court is the ability of the father to maintain the minors. This way merely stating that he is short of resources will not discharge him of his obligation. The basic objective for determining maintenance is to ensure that in all probability the minors are maintained by the father in dignified manner with reasonable comfort and that the mother of the child is not left to bear the burden of taking care of the minors. Quantum of maintenance requires due consideration of all factors on the basis of which the court can determine the actual need of the minor. In this regard, it is important for the court to keep in consideration the expenses incurred or likely to be incurred on the minors. Yet for the purpose of maintenance it is the obligation of the father to fulfill needs of his kids. Reliance is placed on "NAZIA BIBI and others versus ADDITIONAL DISTRICT JUDGE, FEROZEWALA and others" (PLD 2018 Lahore 916).

15. Notwithstanding the fact that the Respondent No.1 was unable to procure and bring on record salary slip of the Petitioner, he himself was obliged to bring on record reliable and trustworthy record/documents disclosing his monthly salary as is desired in the case of "MUHAMMAD ASIM and others versus Mst. SAMRO BEGUM and others" (PLD 2018 SC 819), wherein it has been observed that *"Where a husband is required to maintain his wife, former wife during her iddat period or child and is required to pay maintenance, including the arrears of maintenance, his present and past earnings must be disclosed by him, because his financial status determines the amount of maintenance that should be awarded. In case of non-disclosure an adverse inference can be drawn against him. ... his conduct further betrays that he does not want to be fair and has unnecessarily embroiled his former wife and child in needless litigation."*

16. In this case, the Petitioner though has produced in evidence his alleged salary slip of KPMG Exh.D-3/1, but said salary slip by no means qualify standards to attain trustworthy status for reliance on certain counts, one that it does not conform with minimum standards of wages and; the second that it is a document handed out and produced by the Petitioner himself, which from the face of it appears to be a computer generated copy lacking any sort of verification on behalf of the Petitioner's employer. To prove said document Exh.D-3/1, the Petitioner could have easily adduced his bank statement of the salary account, got opened through Exh.D-3/2, transpiring exact deposits from his company on account of his salary as well as he could have produced his employer or any other authorized official of the company in support of sanctity, truthfulness and genuine status of Exh.P-3/1. The Petitioner's employer or his authorized official, whilst appearing in witness box, could have brought on record bank and tax record to establish & prove remittances in the Petitioner's salary account on head of his salary.

17. However, the Petitioner did not come up with task and had been satisfied only to produce Exh.D-3/1 and Exh.D-3/2 for proving his salary, which his attempt falls short of ground on account of no evidentiary value sailing along both said documents. Though the Provisions of Qanun-e-Shahadat Order, 1984 are not *stricto sensu* applicable to Family matters, but Exh.D-3/1 is bereft of any strength and evidentiary value. If salary slip had been an official/attested/verified document, then situation would have been different, but genuine origination and sanctity of Exh.D-3/1 is far from required standards for being relied upon in light of aforementioned scenario.

18. In light of above discussed failure of the Petitioner, the courts below had no option but to believe evidence produced by the Respondent No.1 regarding agitated immediate necessities of claimants of maintenance allowance and fixing up same keeping in light the Petitioner's obligations as well. Moreover, each and every aspect of the issue relevant to claimed maintenance allowance has been discussed by both courts below in light of available evidence and the Petitioner is absolutely unable to indicate any misreading or non-reading of evidence by courts below whilst reaching up to the impugned findings of facts relevant thereto. It is held by the Supreme Court of Pakistan in "ARIF FAREED versus BIBI SARA and others" (2023 SCMR 413) that "*The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception.*" In this

case, in light of attending circumstances, no ground whatsoever is available compelling this Court to substitute the concurrent findings of courts below with their own, particularly in light of situation that the Petitioner makes way through on basis of short falls of no one, but of his own.

19. For what has been discussed above, this writ petition has no merits which is hereby **dismissed**.

(JAWAD HASSAN)
JUDGE

*Usman**