

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, MULTAN BENCH
MULTAN
JUDICIAL DEPARTMENT

WP No. 7909 of 2017

Wahid Bukhsh

versus

Judge Family Court 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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31.05.2017	Malik Sajjad Haider Maitla, Advocate for petitioner. M/s. Azhar Hayat Balouch and Abid Hussain Ansari, Advocates for petitioner in connected petition (WP No.7911 of 2017)
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This order is passed in both the constitutional petitions (WP Nos. 7909 and 7911 of 2017) as common questions of law are involved in the same.

2. In this petition, the brief facts are that Wahid Bukhsh petitioner is father of respondent Nos. 3 and 4. Respondent No.2 is his former wife. Respondent Nos.2 to 4 claimed maintenance allowance from the petitioner at the rate of Rs.10,000/- per month for respondent No.2 i.e. former wife and Rs.5,000/- per month each for respondent Nos. 3 and 4 i.e. minor children. The Judge Family Court, Rajanpur vide order dated 07.03.2017 decreed the suit in favour of respondent No.2 for an amount of Rs.7,000/- per month from the date of institution of suit till her Iddat and Rs.4,000/- per month each in favour of respondent Nos. 3 and 4 from the date of institution of the suit till their legal entitlement with 15% annual increase.

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3. In WP No.7911 of 2017, the brief facts are that the petitioner is father of respondent Nos. 2 to 4. The respondent Nos. 2 to 4 being minors through their mother filed a suit for maintenance allowance claiming Rs.5,000/- per month per head. The Judge Family Court, Kabirwala, District Khanewal vide order dated 22.03.2017 decreed the suit in favour of respondent Nos. 2 to 4 for maintenance allowance of Rs.4,000/- per month each for previous nine years till their entitlement with 20% annual increase.

4. In both the aforementioned cases, the petitioners have directly invoked the constitutional jurisdiction of this Court to challenge the afore referred decrees without availing the remedy of appeal. The petitions came up for hearing today before this Court as urgent cases wherein the petitioners were asked how direct petition before this Court would lie as alternate remedy in shape of Section 14 of the Family Courts Act, 1964 ("Act") was available wherein it is provided that no appeal shall lie from a decree passed by Family Court for maintenance of rupees five thousand or less per month and the aggregate amount of decree in WP No.7911 of 2017 is Rs.12,000/- per month i.e. Rs.4,000/- each for three minor children and in WP No.7909 of 2017 wife was held entitled to Rs.7,000/- per month and minor children at the rate of Rs.4,000/- each which collectively taken during the months prior to expiry of Iddat becomes Rs.15,000/- per month and thereafter Rs.8,000/- per month.

5. The learned counsel for the petitioner in WP No.7909 of 2017 has relied upon recent judgment dated 19.10.2016 passed by a learned Single Judge

while gracing the Rawalpindi Bench of this Court in WP No. 2591 of 2016 wherein it is observed that amount of maintenance allowance granted to each of the plaintiffs was less than Rs.5,000/-, the appeal keeping in view Section 14(2)(c) of the Act was not maintainable. In the said case, the respondent wife was held entitled to recovery of maintenance allowance at the rate of Rs.3,000/- per month whereas the minor children three in number were entitled to maintenance allowance at the rate of Rs.45,00/- per month each. It did not find favour with the learned Single Judge to hold that appeal was maintainable. This view is also taken in a previous judgment of this Court reported as Muhammad Talib vs. Additional District Judge and others (2004 YLR 583) wherein it is held that claim of the plaintiffs having not jointly been decreed, the amount of maintenance granted to each plaintiffs in suit for maintenance jointly filed by them could not be clubbed together. Appeal against decree for maintenance of Rs.500/- per month did not lie under Section 14(2)(c) of the Act. In that case, collective decree for an amount of Rs.1500/- per month was passed in favour of the respondents i.e. wife, minor daughter and son of the judgment debtor and the threshold for filing appeal at the relevant time was fixed above Rs.1,000/-.

6. Conversely, four judgments of learned Single Judges of this Court have held appeal to be maintainable wherein it was held that the maintenance as a whole would determine the appellate jurisdiction of the court and the maintenance allowance allowed to each individual is to be clubbed together. These

judgments are reported as Muhammad Nadeem vs. Aneesa Bibi and others (2016 CLC 81), Muhammad Naseer vs. Fatima through her mother and 2 others (2009 MLD 802), Muhammad Latif Kashif vs. Judge Family Court/Civil Judge, Ist Class, Bahawalpur and 3 others (PLD 2005 Lahore 296) and Muhammad Asghar vs. Umar Asghar (Minor) and 3 others (PLD 2005 Lahore 326). Furthermore, the same view has been taken by a learned Division Bench of Peshawar High Court in Khawaj Muhammad vs. District Judge, Mansehra and others (1999 MLD 2723). In all these cases, collective amount of decree brought the case within the appellate jurisdiction of Additional District Judge otherwise taken individually the appeal would not have been maintainable.

7. As a large number of cases on the said subject are pending adjudication before this Court and question of maintainability of appeal before Additional District Judge/appellate court or direct constitutional petition before this Court is involved and the divergent views expressed by different Courts need to be reconciled, therefore, it would be appropriate that a larger Bench of this Court be constituted to resolve this controversy.

8. Let the office place these petitions before the Hon'ble Chief Justice to solicit appropriate orders in this regard.

(Muzamil Akhtar Shabir)
Judge