

**Stereo.HCJDA 38.**  
**JUDGMENT SHEET.**

**IN THE LAHORE HIGH COURT LAHORE**  
**JUDICIAL DEPARTMENT**

**W.P.No.27141 of 2015**

***MAQSOOD PERVAIZ CH.***

***Versus.***

***MST. NAUSHEEN CHAUDHARY, ETC.***

**JUDGMENT.**

Date of hearing: **15.11.2018**

Petitioner by: Mr. Liaquat Ali Butt, Advocate

Respondent No.1: Mr. Saqib Haroon Chishti, Advocate.

**Mirza Viqas Rauf, J.** This petition under Article 199 of The Constitution of Islamic Republic of Pakistan, 1973 urges a dispute inter-se the petitioner namely Maqsood Pervaiz Chaudhry and his daughter Mst. Nausheen Chaudhary i.e. respondent No.1 (hereinafter referred as “respondent”). The background of the dispute is that the petitioner was married to Mst. Robina i.e. respondent No.2 and as a result of matrimonial tie, the “respondent” was born on 30<sup>th</sup> June, 1983. The parents of the “respondent” parted their ways through a divorce in the year 1987. As the “respondent” was minor at that time, she was handed over to her mother, who later on got married with one Muhammad Nawaz. In the year 2012, the “respondent” instituted a suit for recovery of maintenance allowance arraying her parents as defendants. During the pendency of the suit, the learned Judge Family Court fixed the interim maintenance @ Rs.18,000/- by way of order dated 15<sup>th</sup> November, 2012 with the direction to the petitioner to pay the maintenance to the “respondent” on or before 14<sup>th</sup> of each month. On failure to pay the interim maintenance, the learned Judge Family Court decreed the suit by invoking the provisions contained in Section 17-A of The Family Courts Act, 1964 by way of order dated 20<sup>th</sup> February, 2015. The appeal was though filed by the petitioner before

**W.P.No.27141 of 2015**

the learned Additional District Judge but the same was dismissed being barred by time vide order dated 4<sup>th</sup> July, 2015, hence this petition.

2. Learned counsel for the petitioner contended that petitioner being father can be held responsible for payment of maintenance to the “respondent” only when she shows obedience to him. It is contended that “respondent” is major and she is even avoiding to live with her father. Learned counsel submitted that petitioner has been knocked out on the basis of technicalities. Learned counsel argued that even in absence of any evidence, the learned Judge Family Court was obliged to consider all the relevant factors while fixing the quantum of maintenance. While making reference to the impugned judgment and decree passed by the learned Judge Family Court, learned counsel submitted that same is the outcome of inapplication of judicious mind. Learned counsel added that even otherwise petitioner has no source of income to satisfy the decree, which is harsh and arbitrary. It is contended that appeal under the circumstances should not have been dismissed by the learned Additional District Judge in a mechanical manner on the basis of limitation, which was even duly explained.

3. Conversely, learned counsel for the “respondent” vehemently resisted the instant petition and submitted that the petitioner, by his own conduct, is not entitled for the discretionary relief. He added that petitioner has failed to pay any maintenance to the “respondent” and he does not deserve any leniency.

4. After having heard learned counsel for both the sides, I have perused the record.

5. The matter in hand is not an ordinary case involving maintenance of minor child. The “respondent” no doubt is the daughter of petitioner. She is, however, a major and admittedly having age of 35 years. She instituted the suit against both her parents averring therein that soon after separation, petitioner handed over money to respondent No.2 for purchase of residential house for “respondent”, who accordingly purchased house No.91 Karim Block, Allama

**W.P.No.27141 of 2015**

Iqbal Town, Lahore but she malafidely got transferred the same in her own name instead of “respondent”. It is, however, an admitted position that house was rented out and rent derived therefrom was spent upon the maintenance of “respondent”. As per own stance of the “respondent” she was getting education from American National School and all the expenditures were catered through the monthly rent of the house till 2003 whereafter respondent No.2 refused to pay any maintenance to her. This ultimately prompted the “respondent” to file the suit against her parents.

6. It is noteworthy that claim of maintenance was though claimed against the parents jointly but only petitioner was burdened with the liability of maintenance. Record reveals that the learned Judge Family Court, while proceeding with the suit, fixed the interim maintenance @ Rs.18,000/- per month by way of order dated 15<sup>th</sup> November, 2012 and directed the petitioner to deposit the same till 14<sup>th</sup> of each month. The petitioner, feeling aggrieved filed W.P.No.30484/2012 which was disposed of with the following observations vide order dated 11<sup>th</sup> December, 2012: -

*“2. Since no evidence has been brought on record regarding the income of the petitioner, therefore, I deem it appropriate to modify the order of the learned trial Court and interim maintenance allowance is reduced to Rs.10,000/- per month with the further direction to the learned trial Court to decide the question of maintenance of the respondent/plaintiff within a period of one month from the order of this Court without being influenced from any observation of this Court.”*

The above referred order was then assailed by the “respondent” through I.C.A No.36 of 2013 but the same was dismissed vide order dated 24<sup>th</sup> January, 2013. The suit, however, was ultimately decreed vide order dated 20<sup>th</sup> February, 2015 in terms of Section 17-A of the Family Courts Act, 1964 on account of failure of the petitioner to pay interim maintenance and he was held liable to pay Rs.20,000/- per month with 20% annual increase from the date of institution of the suit till marriage of the “respondent” whereas suit to the extent of respondent No.2 was dismissed. The petitioner though filed an appeal under Section 14 of the Family Courts Act, 1964 before the learned Additional

**W.P.No.27141 of 2015**

District Judge, Lahore but same was dismissed vide order dated 4<sup>th</sup> July, 2015, being barred by time.

7. Though dismissal of appeal of the petitioner on account of limitation apparently burdens him to satisfy this Court as to what illegality is committed by the learned Appellate Court in this regard but the circumstances brought on record to this effect are sufficient to persuade the Court to ponder upon the legality and propriety of the impugned orders, instead of closing the eyes to perpetuate an illegality, which is floating on the surface of record.

8. Before advertng to the question of limitation, it would be relevant to first analyze the legality of proceedings before the family Court resulting into passing of decree for maintenance against the petitioner. No doubt father is bound to maintain his child but in the manner befitting his status and financial condition.

9. As already observed, this is not an ordinary case of maintenance of minor child but it relates to a female who attained majority and living separate from her father since separation of matrimonial tie of her parents. Admittedly, soon after separation, the petitioner (father) had arranged a source of maintenance for the “respondent” in the shape of house handed over to respondent No.2 (mother), who initially maintained her through the income of rent. This clearly shows that father was well aware of his responsibilities to maintain her daughter and for that very purpose he had made sufficient arrangements.

10. It is quite strange that suit was though instituted against parents and petitioner resisted the suit seriously with the contention that the “respondent” is a married person and she is disobedient towards him, the learned Judge Family Court burdened him with the maintenance, while ignoring all the relevant material.

11. Chapter XIX of Principles of Mahommedan Law by D.F. Mulla deals with the maintenance of relatives. Para 370 lays down the conditions of maintenance of children and grandchildren, which reads as under: -

**W.P.No.27141 of 2015**

**“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 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.”

**(Underlining supplied for emphasis.)**

It is manifestly clear from the above that father is only bound to maintain his unmarried major daughter. There is yet another condition disentitling the child from claiming maintenance if he/she could be maintained from his/her own property or the father is poor and infirm.

**12.** Bare reading of the above referred provision of law envisages that father cannot be burdened with the maintenance in all circumstances. There is no cavil that a family Court is vested with the power to pass an order for interim maintenance at any stage of proceedings in a suit for maintenance under Section 17-A of the Family Courts Act, 1964 to be paid to a child by the fourteenth day of each month, failing which the Court may strike off the defense of defendant and decree the suit but such powers are not to be exercised arbitrarily, illegally and whimsically.

**13.** Even in case of non-compliance of order of interim maintenance, the family Court is obliged under Section 17-A of the Family Courts Act, 1964 to look into the contents of plaint and other supporting documents on the record of the case. After having examined the order dated 20<sup>th</sup> February, 2015, resulting into decreeing the suit on the mandate of Section 17-A *ibid*, there can be no second opinion that suit was decreed in a perfunctory, whimsical and

**W.P.No.27141 of 2015**

mechanical manner. Learned counsel for the “respondent” even when confronted with this aspect, he has no answer rather conceded legal flaw in the order passed by the learned Family Court.

**14.** There is yet another important aspect that Section 17-A of The Family Courts Act, 1964 was inserted initially in the Act *ibid*, which was in the following form: -

**17-A. Interim order for maintenance.**—At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.

The above provision was, however, later on substituted by the Family Courts (Amendment) Act 2015 (XI of 2015) in the following manner: -

**“17-A. Suit for maintenance.**— (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.

(2) In a decree for maintenance, the Family Court may:

(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and

(b) prescribe the annual increase in the maintenance.

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.

(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.”

**(Underlining is supplied for emphasizes)**

**W.P.No.27141 of 2015**

From the collective reading of new and old form of Section 17-A of the Family Courts Act, 1964, it can safely be inferred that the said provision was inserted in order to protect the minor children and the wife during the pendency of the suit, so that they should not be hampered due to financial constraints in their daily life. After the amendment in the year 2015, the intent of legislature became more clear and unequivocal that the grant of interim maintenance relates to wife or a child. The word “Child” is nowhere defined in The Family Courts Act, 1964. For the purpose of convenience, we thus have to advert to ordinary meaning of child. The dictionary meaning of word “Child” in different law dictionaries is given as follows:-

- a. **The New International Webster’s Comprehensive Dictionary of the English Language (Deluxe Encyclopedic Edition):** *“Child” 1. An offspring of either sex of human parents; a son or daughter. 2. A young person of either sex at any age less than maturity, but most commonly one between infancy and youth. 3. A descendant in any degree: the Children of Israel. 4. A childish person; one immature in judgment or discretion. 5. A person or thing considered as an offspring or product: Poems are the children of fancy. 6. A follower or disciple. 7. Law A legitimate son or daughter. In some States, as in Louisiana, the term includes all descendants in the direct line.*
- b. **Black’s Law Dictionary (Ninth Edition):** *1. A person under the age of majority. 2. Hist. At common law, a person who has not reached the age of 14. 3. A boy or girl; a young person. 4. A son or daughter 5. A baby or fetus*
- c. **The Chambers Dictionary (12<sup>th</sup> Edition):** *“Child/Children; a very young person (up to the age of sixteen for the purpose of some acts of parliament, under fourteen in criminal law); a female infant (dialect and archaic); a son or daughter; a childish person; a person strongly influenced by, associated with, or a product of (another person, or group of people, an age or environment, etc); a disciple or adherent: (also childe or chylde) a youth of gentle birth, esp in ballads, etc (archaic); an offspring; a descendant; an inhabitant.*
- d. **GEM Advanced Practical Dictionary (English to English and Urdu With Brief General Knowledge):** *“Child” a new born human being: offspring: an infant.*



**W.P.No.27141 of 2015**

e. **Legal Terms & Phrases Judicially Defined from 1947-2012 (2013 Edition):** *“Child” youngster, baby, offspring, teenager. “The word ‘child’ according to its use in the English language has different meanings, according to the context, if used without reference to parentage, it is generally synonymous with the word ‘infant’ and means a person who has not attained the age of majority. Some times it may be used in a context which shows that it refers to quite young children, for, instance, as a notice that ‘children are not admitted to this enclosure’ would hardly be held to apply to young persons of 18 to 20; it would mean children who are too young to look after themselves. Where the word ‘child’ is used with reference to parentage, it means a descendant of the first degree, a son or a daughter, and has no reference to age”; Omar Ali Shaikh vs. Shamsunnar Begum. DLR 1965 Dac. 173 Ref. AIR 1943 Bom.48.*

After going through the definition of “child” provided in various dictionaries, no cavil left that in terms of Section 17-A of The Family Courts Act, 1964, a Family Court can fix the interim maintenance of a child falling within the definition provided hereinabove. The “respondent” was admittedly neither of tender age, infant, immature, descendant or young, rather she is having an age of about 35 years. Thus, the order fixing the interim maintenance was even not tenable on this score alone.

**15.** Now attending the question that appeal filed by the petitioner was barred by time, it is observed that learned Additional District Judge dismissed the appeal being barred by 70 days. There is no cavil that in terms of Rule 22 of The Family Courts Rules, 1965, an appeal under Section 14 of The Family Courts Act, 1964 shall be preferred within thirty days of the passing of decree or decision but appellate Court is vested with the power to condone any delay in filing the appeal on showing sufficient cause by the appellant. Perusal of record clearly reveals that petitioner provided sufficient explanation resulting into delayed appeal but same was not attended properly by the learned Appellate Court. Even otherwise, when decree under appeal was apparently



**W.P.No.27141 of 2015**

suffering illegalities and material irregularities, the learned Additional District Judge should have exercised its jurisdiction with great care and caution.

**16.** The nutshell of above discussion is that both the Courts below have proceeded in an illegal and unlawful manner. Thus, while allowing the instant petition, order dated 15<sup>th</sup> of November, 2012 as well as order dated 20<sup>th</sup> February, 2015 passed by the learned Judge Family Court, Lahore and order dated 4<sup>th</sup> July, 2015 passed by the learned Additional District Judge, Lahore are **set aside**. As a result thereof, suit shall be deemed to be pending before the learned Judge Family Court, Lahore who shall proceed with the same keeping in view the observations made hereinabove and then decide the same afresh, strictly in accordance with law within two months from the date of receipt of instant order. Office to transmit copy of this order to the learned District Judge, Lahore for compliance.

**(MIRZA VIQAS RAUF)**  
**JUDGE**

Zeeshan

**Approved for reporting.**