

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 6694 of 2021

Muhammad Nawazish Ali

Vs.

Family Judge etc.

JUDGMENT

Date of hearing	25.5.2021
Petitioner by:	Rana Bakhtiar Ali, Advocate.
Respondents No.2 & 3 by:	Mr. Irfan Younas Dar, Advocate.

“[Due process means] a law which hears before it condemns, which proceeds upon inquiry, and renders judgment only after trial.”¹

Tariq Saleem Sheikh, J:- Through this judgment I propose to decide W.P. Nos. 6694/2021 and 30995/2021 as a common thread weaves through them.

2. Brief facts of the case are that on 1.2.2014 Petitioner’s son Sarfraz Hussain married Respondent No.2 and out the wedlock Respondent No.3 (daughter) was born who is now about six years old. The marriage could not continue and Sarfraz Hussain divorced Respondent No.2. He is now employed in Dubai. On 29.9.2015 Respondent No.2 filed a suit against him for recovery of alimony, dowry articles and bridal gifts. Respondent No.3 joined in the said suit and claimed her maintenance allowance. The Family Court, vide judgment and decree dated 19.4.2018, held Respondent No.2 entitled to alimony at the rate of Rs.50,000/- per month for the *Iddat* period, maternity expenses in the sum of Rs.30,000/- and recovery of dowry articles (as per list Exh. PD excluding those received through the

¹ *Trustees of Dartmouth College v. Woodward*, 17 US 518 (1819).

commission appointed by the court) or Rs.600,000/- in lieu thereof. Her claim in respect of the bridal gifts was dismissed. The Family Court allowed Respondent No.3 maintenance at the rate of Rs.50,000/- per month from the date of institution of the suit till she was legally entitled to receive it. Both the sides appealed. The Additional District Judge, vide judgment and decree dated 25.6.2019, held that Respondent No.2 would also be given maintenance at the rate of Rs.20,000/- per month from September 2015 till the date of her divorce. He also modified the quantum of maintenance of Respondent No.3 and ordered that she would be paid Rs.20,000/- per mensem from September 2015 till the date of decision of the family suit and thenceforth at the rate of Rs.40,000/- per month with 10% annual increase. Respondents No.2 & 3 petitioned the Family Court for execution of the decree which remains unsatisfied todate because Sarfraz Hussain is continually avoiding the process of law. Confronted with this situation, on the request of Respondent No.3, the Family Court issued warrant of arrest against the Petitioner, her grandfather, vide order dated 27.11.2020 whereupon he was arrested. He filed an application for his release but the Family Court dismissed it on 23.12.2020. He challenged orders dated 27.11.2020 and 23.12.2020 before this Court in Writ Petition No.6694/2021 and was admitted to bail. Respondent No.3 then moved an application for attachment of the Petitioner's property situated at Shah Faisal Colony, Dinga, District Gujrat which was accepted by the Family Court vide order dated 27.4.2021. The Petitioner assailed the same before this Court through Writ Petition No.30995/2021.

3. The learned counsel for the Petitioner contended that the Petitioner was not a party in the suit so the decree could not be executed against him. He argued that orders dated 27.11.2020, 23.12.2020 and 27.4.2021 (the "Impugned Orders") were without lawful authority and thus liable to be set aside.

4. The learned counsel for Respondents No.2 & 3 contended that the Impugned Orders were unexceptionable. Since Sarfraz Hussain had failed to discharge his obligations, Respondent No.3 was the responsibility of the Petitioner. As grandfather he was bound to satisfy

the decree and provide her maintenance. He could not be permitted to duck his liability on the technical ground that he was not a party to the suit.

Opinion

5. In Islamic law “maintenance” is termed as *Nafaqah* and signifies all those things which are necessary to support life, such as food, raiment and lodging. It is the legal and religious duty of a man to maintain his wife and children. The obligation to maintain wife is derived from the Holy Quran and is one of the incidences of marriage. It is not an *ex gratia* grant.² Verse 233 of Surah Al-Baqara says:

وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ ۖ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ۚ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا ۚ لَا تُضَارَّ وَالِدَةٌ بِوَلَدِهَا وَلَا مَوْلُودٌ لَهُ بِوَلَدِهِ ۚ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ ۚ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا ۚ وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُمْ بِالْمَعْرُوفِ ۚ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ﴿٢٣٣﴾

“The mothers shall give suck to their offspring for two whole years if the father desires to complete the term. But he shall bear the cost of their food and clothing on equitable terms. No soul shall have a burden laid on it greater than it can bear. No mother shall be treated unfairly on account of her child nor father on account of his child. An heir shall be chargeable in the same way if they both decide on weaning by mutual consent and after due consultation there is no blame on them. If ye decide on a foster-mother for your offspring there is no blame on you provided ye pay (the mother) what ye offered on equitable terms. But fear God and know that God sees well what ye do.”

Verse 34 of Surah An-Nisaa enjoins:

الرِّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِأَنْفُقُوا مِنْ أَمْوَالِهِمْ

“Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means.”

² *Iqbal Hussain v. Deputy Commissioner/Collector, Lahore and 3 others* (PLD 1995 Lahore 381); and *Abdul Fahim v. Mst. Shahnaz Begum and another* (2003 CLC 1450).

Further reference may be made to the following tradition of the Holy Prophet (peace be upon him):

وَلَهُنَّ عَلَيْكُمْ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ۔

ترجمہ: اور تم (شوہروں) پر لازم ہے اپنی عورتوں (بیویوں) کا کھانا اور پہننا رواج کے مطابق۔

6. The wife's right of maintenance is, however, subject to the condition that she is faithful and obedient to the husband and does not refuse herself to him unless the refusal or disobedience is justified by non-payment of prompt dower or she leaves his house on account of his cruelty.³ Subject to the said condition, a divorced wife is entitled to claim maintenance from her husband for the time they remain in marital bond and also for the *Iddat* period.⁴

7. The father's obligation to maintain his children is separate and distinct from his duty towards the wife. Section 370 of the Principles of Mahomedan Law by D.F. Mulla sets out the legal position 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 (S. 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.

8. In the case of children, it may be pointed out, maintenance includes not only the provision of food, clothing and housing, but also

³ Section 277, Principles of Mahomedan Law by D.F. Mulla. Also see: *Mst. Hajiran Bibi v. Abdul Khaliq* (PLD 1981 Lahore 761); *Mukhtarul Hassan Siddiqui v. Judge Family Court, Rawalpindi and 4 others* (1994 CLC 1216); and *Muhammad Asad v. Mst. Humera Naz and others* (2000 CLC 1725).

⁴ *Muhammad Najeeb v. Mst. Talat Shahnaz and others* (1989 SCMR 119); *Mansoor Tariq Khan v. Mst. Nafeesa and 2 others* (1999 CLC 305); and *Mian Arif Mehmood v. Mst. Tanvir Fatima and another* (PLD 2004 Lahore 316).

other necessary expenses to promote their mental and physical well-being.⁵ In *Humayun Hassan v. Arslan Humayun and another* (PLD 2013 SC 557) the apex Court held:

“In this context, according to section 369 of the Muhammadan Law by D.F. Mulla, 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 (sic) social, physical, mental growth, upbringing and well-being 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.”

9. In *Mst. Rehmat Bibi v. Muhammad Ali* (PLD 1971 Lahore 151), while relying on Verse 233 of Surah Al-Baqara, a Division Bench of this Court held:

“There is no doubt or dispute as to the primary and absolute responsibility of the father to maintain the child which the mother does not share with him provided the child is not possessed of property. Even in cases where the mother, being in a position to do so, has shouldered this responsibility, she can recover the amount spent by her as a debt from the father. Not only this, but she has also been considered to be within her rights to claim compensation from her husband for suckling the infant and can, in certain circumstances, even refuse to do so in which case the father, if possessed of sufficient means, has to make alternative arrangements by requisitioning the services of a nurse.”

10. The father cannot elude responsibility towards his siblings on any pretext. In *Mst. Razia Begum v. Ghulam Rasul* (1972 PCr.LJ 1286) this Court held:

“... if a man does not work or does not earn enough to support his children, that in itself is no ground to justify his omission to supply them with reasonable maintenance because having brought them forth in the world, it is his bounden duty to provide for their maintenance.”

Similar opinion was expressed in *Muhammad Yusuf v. Shazia Bibi* (1992 MLD 235); *Muhammad Asad v. Mst. Humera Naz and others* (2000 CLC 1725) and *Syed Zia ul Hasan Gilani v. Mian Khadim Hussain and 7 others* (PLD 2001 Lahore 188). However, the

⁵ Mudrasa Sabreen, *Maintenance of the Child in Pakistan: A Much-Needed Legislation*. Available at: <https://sahsol.lums.edu.pk/law-journal/maintenance-child-pakistan-much-needed-legislation>.

quantum of maintenance is to be fixed keeping in view the laws of the country and the financial condition of the father and his other liabilities.

11. The father is bound to pay maintenance even if the children are in the mother's custody.⁶ In *Muhammad Ramzan v. Mst. Fazal Nishan* (1968 SCMR 1435) the Hon'ble Supreme Court of Pakistan held that maintenance of the child is the duty of the father and the mother cannot be deprived of his custody on the ground that she does not have enough means to bring him up.⁷ In *Masroor Hussain v. Additional District Judge, Islamabad and 2 others* (2011 CLC 851) the Islamabad High Court held that if the father fails to maintain the child, he would lose the right to custody and guardianship.⁸

12. The Petitioner's son, Sarfraz Hussain, married Respondent No.2 and out of the wedlock Respondent No.3 (daughter) was born. The marriage between Sarfraz Hussain and Respondent No.2 broke down and now Respondent No.3 holds a decree against Sarfraz Hussain for maintenance in the sum of Rs.20,000/- *per mensem* from September 2015 till the date of decision the family suit and thenceforth at the rate of Rs.40,000/- per month with 10% annual increase. The said decree remains unsatisfied to date and she wants to get it executed against the Petitioner, her grandfather. The first question that arises for consideration is whether a grandfather is obliged to pay maintenance to his grandchildren if the father is unable to do so.

13. In *Mst. Rehmat Bibi v. Muhammad Ali* (PLD 1971 Lahore 151) a Division Bench of this Court observed that the jurists of Islam have three different views on the aforementioned issue: (a) the responsibility of maintenance is entirely that of the mother if both the mother and the grandfather have means; (b) the responsibility will be proportionately shared by the mother and the grandfather in accordance with inheritance; and (c) the responsibility is solely of the grandfather.

⁶ *Khalid Mahmood v. District Judge, Jhelum and 6 others* (PLD 1986 Lahore 272); *Muhammad Ashraf v. Nasreen Begum through Legal Heirs and 3 others* (PLD 1989 Lahore 69); *Captain S. M. Aslam v. Mst. Rubi Akhtar* (1996 CLC 1); *Muhammad Shafi alias Papan v. The State* (2011 PCr.LJ 1424) and *Farid Khan v. Saeeda Bibi and others* (2014 MLD 351).

⁷ Also see: *Mst. Feroze Begum v. Lt. Col. Muhammad Hussain* (1983 SCMR 606) and *Munawar Bibi v. Muhammad Amin and another* (1995 SCMR 1206).

⁸ Also see: *Mst. Rasheedan Bibi v. Additional District Judge and 2 others* (2012 CLC 784).

The Division Bench agreed with the last view for the following reasons:

“In our humble opinion the relevant Quranic Injunction which forms the basis of reasoning and analogy is contained in Verse No.233, Surah Al-Baqara reproduced earlier وعلى الوارث مثل زالك. The responsibility of maintenance is exclusively that of the father who has been placed under an obligation to feed and clothe the mother of the infant even though she may no longer be his wife and the same responsibility has been laid on his heirs. Even otherwise, it does not stand to reason that while on the one hand the mother is under no statutory obligation to suckle her own baby, she may be forced to share the responsibility of his maintenance with the grandfather notwithstanding her poverty. Again, the precedent of the first Caliph, Abu Bakr Siddique, offers a safe guide for the determination of the issue which was followed by Imam Abu Hanifa as was stated in Fatwa Qazikhan and referred to in Fateh-ul-Qadir (Sharah Hidayat) by Burhan-ud-Din-al-Marghniani, page 380 in the following words:

ان كان له جد وام، موسران فنفقته على ماروى الحسن عن ابى حنيفه الها الجد وحده لجعله ما الاب.

“If he (the child) has grandfather and mother possessed of means, the liability to maintain will be as reported by Hassan on the authority of Abu Hanifa solely on the grandfather who will take the place of the father.’ This also is the view of Imam Shafi.”

14. In *Haji Nizam Khan v. Additional District Judge, Lyallpur and others* (PLD 1976 Lahore 930) while referring to a number of Verses,⁹ Muhammad Afzal Zullah, J. of this Court argued that Islam stands for social justice and casts a duty on the opulent to support (maintain) their indigent relatives and held:

“The poor under some restrictions are entitled under Muslim Law to have recourse for maintenance to their relatives who are in easy circumstances (*Muhammadian Jurisprudence* by A. Rahim, pp. 343-344). Every relative within the prohibited degree is entitled to maintenance provided that, if a male, he is either a child and poor, or, if adult, he is infirm or blind and poor and, if a female, she is poor whether a child or adult. Correspondingly, all persons not themselves poor are obliged to maintain their poor relatives within the prohibited degrees. Maintenance of wife and children, however, depends upon other considerations (see: *A Digest of Muhammadan Law* – B. E. Baillie, Chap. III, and The Hedaya, Book IV, Chap. XV, Section V). It is from the above main provisions of the Islamic Law on the question of the obligations and rights of the opulent and needy relations in Muslim society that as corollary it has been unquestionably accepted that a grandfather in easy circumstances is bound to maintain and support his needy grandchildren – see also Mulla’s *Principles of ‘Muhammadian Law’* by Faiz Badruddin Tyabji, III Edn., sections 288 and 327.”

⁹ Verses 83, 177 and 215 of Surah Al-Baqara; Verses 7, 9 and 36 of Surah An-Nisaa; Verse 41 of Surah Al-Anfal; Verse 90 of Surah Al-Hijr; Verse 22 of Surah An-Nur and Verse 23 of Surah Ash-Shura.

15. In *Ghulam Nabi v. Muhammad Asghar and 3 others* (PLD 1991 SC 543) the Hon'ble Supreme Court held that affluent grandparents are obliged to maintain grandchildren if they are destitute. "But the command would issue in this behalf when there is no other nearer relation and/or more responsible in this behalf." In *Abdullah v. Jawaria Aslam and 2 others* (2004 YLR 616) record showed that the grandfather was a man of means. The court held that he was bound to maintain the minor children of his deceased son who could not sustain life.

16. Today the courts generally follow section 370 of the Principles of Mahomedan Law by D.F. Mulla regarding maintenance of children and grandchildren which has been reproduced in the earlier part of this judgment. The Hon'ble Supreme Court also approvingly cited it in *Humayun Hassan v. Arslan Humayun and another* (PLD 2013 SC 557). According to section 370, primarily it is the father who has to maintain his children upto the age specified therein. In case the father is indigent and incapable of earning by his own labour, the responsibility lies with the mother if she is in easy circumstances. The grandfather becomes liable on two conditions: firstly, the father is impoverished and infirm and the mother is also penurious, and secondly, he (the grandfather) is in easy circumstances. The issue as to whether in a given case these conditions are fulfilled would always be a question of fact. In *Muhammad Ramzan v. Ali Hamza and others* (PLD 2016 Lahore 622) a learned Single Judge of this Court held:

"The liability of 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 ..."

17. Apparently Mulla's book does not address the situation where the father goes into hiding to avoid execution of a decree for maintenance or, as in the instant case, immigrates and is beyond the reach of the courts of his home country. Law can never allow the

children of such a man to be left in the lurch. Despite all the reverence that it receives from the courts, Mulla's formulations are not a legislative dispensation so the rules of interpretation of statutes do not strictly apply to it. Consequently this Court is competent to read into section 370, *ibid*, and hold that the grandfather is obligated to provide for maintenance of grandchildren if he is in easy circumstances and the father is dead or not traceable or is residing abroad or is impecunious or infirm and the mother is also down-and-out. In ***Ghafoor Ahmed Butt v. Mst. Iram Butt and 6 others*** (PLD 2011 Lahore 610) the father was in Saudi Arabia and neglecting his children. This Court held that the grandfather was obligated to provide for their needs.

18. Admittedly, in the instant case, the Petitioner was not a party in the family suit filed by Respondent No.3 and she holds a decree only against her father Sarfraz Hussain. Can the said decree be executed against the Petitioner and can he be made to pay thereunder?

19. The right to fair trial is considered to be the bedrock of rule of law and is closely linked with human rights protection, more particularly the rights to life, liberty and property. According to some scholars, the right to fair trial is rooted in the twin canons of natural justice, namely, *nemo debet esse judex in propria causa* (no one should be a judge in his own cause) and *audi alteram partem* (no one should be condemned unheard). The said right is now universally recognized as a norm of international human rights law. Universal Declaration of Human Rights, 1948, is of paramount importance as it is considered to be declaratory of the customary international law. However, there are other multilateral treaties like the International Covenant on Civil and Political Rights, 1966, and regional human rights instruments, including the European Convention for Protection of Human Rights and Fundamental Freedoms (European Convention), American Convention on Human Rights (American Convention) and African Charter on Human and Peoples' Rights (African Charter), which impose a binding obligation on the States who have ratified them to guarantee the aforesaid right to their people.

20. Pakistan is a constitutional democracy which rests on rule of law that in turn is pillared on fairness and due process.¹⁰ The right to fair trial has always been the cornerstone of our judicial system but, in the year 2010, the Parliament enacted the Constitution (Eighteenth Amendment) Act, 2010, *inter alia* to insert Article 10A in the Constitution of Pakistan to elevate it to the status of an independent fundamental right guaranteed thereunder. Article 10A reads as follows:

10A. Right to fair trial– For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

21. The courts have dilated on the significance of Article 10A in a number of cases. In *Babar Hussain Shah and another v. Mujeeb Ahmed Khan and another* (2012 SCMR 1235) the Hon’ble Supreme Court of Pakistan held:

“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 in the Constitution of the 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.”

22. Article 10A recognizes the right to fair trial in civil proceedings as much as in criminal cases. In *Nadeem Asghar Nadeem and others v. Province of the Punjab and others* [2015 CLC 1509 : 2016 PLC (C.S.) 155] this Court explained its civil dimension as under:

“It is now a fundamental right that determination of civil rights and obligations of a person shall be through fair trial and due process. Civil rights are the rights guaranteed by the Constitution and the legislation. Obligations may refer to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness or morality. ‘Anything that an individual is required to do because of a promise, vow, oath, contract, or law. It refers to a legal or moral duty that an individual can be forced to perform or penalized for neglecting to perform.’ Right of one person is an obligation of the other and vice versa. This mutually corresponding and symbolic relationship between civil rights and obligations, expands the proportions and broadens the amplitude of Article 10A and places it as one of the most robust, dynamic and an evergreen fundamental right that is not frozen in time or moored to serve, only the age old vested rights. Article 10A, is a constitutional right, hence it is open and all embracing and is there to include all kinds of rights and obligations

¹⁰ *Liaqat Ali Chughtai v. Federation of Pakistan through Secretary Railways and 6 others* (PLD 2013 Lahore 413)

that emerge from the Constitution, legislation, ‘law, contract, promise, social relations, courtesy, kindness or morality.’ Article 10A cannot be put in shackles and in fact goes beyond vested rights.”¹¹

23. Article 10A of the Constitution covers both substantive and procedural due process. It is, if I may use the words of the Supreme Court of Philippines, “designed to secure justice as a living reality.”¹²

24. “Fair trial and due process” in civil lawsuits/proceedings contemplates notice and opportunity to be heard before judgment is rendered. Since a person who is not a party to the suit does not have the opportunity to present his case, two principles have developed: (a) decree cannot be executed against such a person,¹³ and (b) the executing court cannot go behind the decree.¹⁴ In the instant case, the Impugned Orders are bad in law because the Family Court has overlooked both these canons. I am fortified in my view by *Muhammad Ramzan v. Ali Hamza and others* (PLD 2016 Lahore 622) and *Muhammad Yaqoob v. Additional District Judge, Kharian, District Gujrat* (2017 YLR Note 360).

25. The Impugned Orders are liable to be struck down also on the ground that Respondent No.3 has not established that the conditions exist on which the Petitioner may become liable for her maintenance. As already discussed, this is a question of fact which cannot be determined without recording evidence.

26. The learned counsel for Respondents No.2 & 3 has relied upon *Muhammad Ali and 2 others v. Abdul Sattar and others* (2006 YLR 616), *Sultan Ahmad v. Judge Family Court and 5 others* (PLD 2012 Lahore 148) and *Mst. Haleema Bibi and 4 others v. Additional District Judge, Layyah and 2 others* (2018 CLC Note 12) to defend the Impugned Orders. *Abdullah’s* case is distinguishable on facts. The suit

¹¹ Internal citations omitted.

¹² *Mariano A. Albert v. University Publishing Co. Inc.* (1965), G.R. No.L-19118 decided by the Supreme Court of Philippines.

Accessed at <https://www.chanrobles.com/cralaw/1965januarydecisions.php?id=30>

¹³ See: *Sh. Shajar Hussain v. Haji Abdul Majeed and others* (2006 SCMR 913)

¹⁴ See: *Shafqat Ullah and 2 others v. Land Acquisition Collector (D.C.), Haripur and 2 others* (2006 CLC 1555); *Province of Punjab through Secretary Industries, Government of the Punjab, Civil Secretariat, Lahore v. Burewala Textile Mills Limited* (2001 SCMR 396); *Irshad Masih and others v. Emmanuel Masih and others* (2014 SCMR 1481) and *National Bank of Pakistan through Vice President/General Attorney v. Messrs Murtaza Haseeb Textile Mills Ltd. through Chief Executive and 13 others* (2016 CLD 784).

was instituted by the minors against their grandfather who contested it. The Family Court recorded evidence and dismissed the minors' claim but the Appellate Court reversed its decision. Abdullah filed constitutional petition but this Court dismissed it *in limine* as the evidence available on record showed that he was a man of means and could easily maintain the minors. In the instant case, we do not have any such evidence at this stage. The other two cases, *Sultan Ahmed* and *Haleema Bibi*, are not good law because they are violative of Article 10A of the Constitution.

27. The counsel for Respondents No.2 & 3 half-heartedly attempted to argue that the decretal amount payable to Respondent No.3 could be realized from the Petitioner as he was pursuing the cases on behalf of Sarfraz Hussain. This contention deserves a short shrift. The Petitioner is the special attorney of Sarfraz Hussain and never assumed any liability on his behalf. He neither posted surety bond nor otherwise gave an undertaking to the court at any point of time for payment of any money.

28. In view of what has been discussed above, both the petitions are accepted and the Impugned Orders are set aside. However, nothing in this judgment shall be construed to preclude Respondent No.3 from asserting her rights, if any, against the Petitioner through appropriate proceedings.

(Tariq Saleem Sheikh)
Judge

Announced in open Court on _____.

Judge

Approved for reporting

Judge

Naeem