

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 3179-L of 2023

*(Against the order dated 21.09.2023 of the
Lahore High Court, Lahore passed in Writ
Petition No. 61184 of 2023)*

Muhammad Irfan.

... *Petitioner*

Versus

*Additional District Judge, Ferozwala, District
Sheikhupura and others.*

... *Respondents*

For the Petitioner:

Ch. Zulfiqar Ali, ASC.
[Via video-link from Lahore]

For the Respondents:

Not represented.

Date of Hearing:

18.02.2025.

ORDER

Muhammad Shafi Siddiqui, J. Respondent No. 3 for herself (as wife of petitioner) and their minor son filed suit for recovery of maintenance allowance, dowry articles whereas dissolution of marriage for herself. After a contest by the petitioner the suit was decreed and respondent No. 3 was held entitled to recover ten thousand rupees per month till her *Iddat* period from the date of declaration of divorce, for minor (respondent No. 4) the maintenance allowance was held at the rate of Rs.12,000/- per month till his legal entitlement; respondent No. 3 held entitled to recover dowry articles or in the alternate an amount of Rs.500,000/-; respondent No. 3 was further held entitled to recover delivery expenses in the sum of Rs.25,000/- and an additional amount of one lac as medical treatment of

minor (respondent No.4). Respondent No.3 aggrieved of quantum assessed, filed an appeal for herself and for her minor son being Family Appeal No.29 of 2023 which was partially allowed *vide* judgment and decree dated 11.08.2023, whereby the maintenance allowance of respondent No.4 was enhanced from Rs.12,000/- to Rs.20,000/- whereas medical expenses (medical treatment) were also enhanced to two lacs. The petitioner assailed the said judgment before the High Court by filing Writ Petition No.61184 of 2023, which was dismissed *vide* judgment dated 21.09.2023, impugned in this civil petition for leave to appeal.

2. We have heard the learned counsel and perused the record. Notwithstanding the numerous irrelevant grounds taken in the memo of the petition not germane to our exercise of jurisdiction being question of facts, the solitary oral submission of the counsel was to the extent that the law does not identify "medical treatment" under the head of maintenance. We are not in agreement with the view expressed by the counsel in support of interpreting the word '*maintenance*' in the context of Muslim family laws. The word '*maintenance*' as far as wife and children are concerned, is inclusive of many heads not explained but is not exhaustive. It cannot be limited by cap and has to be looked into with reference to each case. If the medical treatment either for a wife or minor does not fall within the definition of maintenance per petitioner's counsel, then no husband would take either his wife or children for medical treatment and those dependents (under the law) would then be deprived of such maintenance allowance. Maintenance in the above context has a wide definition and is inclusive of every possible actions for the wellbeing of children and wife, indeed within means. Medical treatment is one of those which cannot be scrapped from

such definition and hence cannot be disregarded as being one of the components to be considered as part for maintenance.^{1,2}

3. Per *Haseen Ullah*³ Justice Syed Mansoor Ali Shah expressed his views while explaining as under:⁴

The Holy Quran enunciates that men are the protectors and maintainers of women because the God Almighty has given the one more strength than the other and because they support them from their money. And the Holy Prophet of Islam (pbuh) has instructed Muslim men to provide their wives with maintenance in a fitting manner and declared it to be the right of the women.

4. In *Humayun Hassan*⁵ Justice Mian Saqib Nisar expounded himself in defining the word 'maintenance' as under:⁶

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.

The cumulative effect of the above is that the word 'maintenance' is of wide connotation and cannot be limited by a cap in the context of Muslim family laws. Maintenance is inclusive of many heads but is not exhaustive.

¹ 1. Azizah Mohd, et al., Muslim Wives Rights To Maintenance: Husbands Duty To Maintain A Working Wife In Islamic Law (2010) 18 IIUMLJ 103.

https://www.researchgate.net/publication/328287539_MUSLIM_WIFE'S_RIGHTS_TO_MAINTENANCE_HUSBAND'S_DUTY_TO_MAINTAIN_A_WORKING_WIFE_IN_ISLAMIC_LAW_AND_THE_LAW_IN_MALAYSIA

<https://journals.iium.edu.my/iiumlj/index.php/iiumlj/article/view/16/16>

2. Al-Mubarakpuri, Tuhfat al-Ahwadhi bi Sharh Jamia Altarmidhi, Second Edition, Vol. 4, Maktabat al-Salafiyyah, Medina (1965), p. 326.

<https://www.kalamullah.com/Books/Hadith/Jami%20at-Tirmidhi%20Vol.%204%20-%201897-2605.pdf>.

² Qudrat Ullah v. Additional District Judge, Renala Khud District Okara and others (PLD 2024 Supreme Court 581).

³ Haseen Ullah v. Mst. Naheed Begum and others (PLD 2022 Supreme Court 686)

⁴ *Ibid*, p.693H.

⁵ Humayun Hassan v. Arslan Humayun and another (PLD 2013 Supreme Court 557)

⁶ *Ibid*, p.562A.

5. In the light of above, we do not find any error in the impugned order of the High Court calling for interference. The petition, therefore, has no merit which is dismissed. Leave refused.

Chief Justice

Judge

Judge

Islamabad:
18.02.2025
(M. Tauseef)