

**2023 Y L R 509**

**[Lahore (Rawalpindi Bench)]**

**Before Jawad Hassan, J**

**MUHAMMAD MUMTAZ HUSSAIN---Petitioner**

**Versus**

**ADDITIONAL DISTRICT JUDGE and others---Respondents**

Writ Petition No. 2516 of 2013, decided on 6th September, 2022.

**Family Courts Act (XXXV of 1964)---**

---S. 5---Divorce---Proof---Maintenance allowance---Concurrent findings of facts by two Courts below---Petitioner/husband was aggrieved of judgments and decrees passed by two Courts below fixing maintenance allowance of respondent/ wife and minor children---Plea raised by petitioner/husband was that he had divorced respondent/wife--- Validity---High Court in Constitutional jurisdiction refrained from interfering in findings of fact recorded by two Courts below, as they were not contrary to record nor arbitrary or whimsical---Bald assertions and no specific instance was brought to the notice of Court that could be regarded as case of misreading or non-reading of material evidence having direct and decisive bearing on the issues causing miscarriage of justice---Both the Courts below exercised jurisdiction vested in them without violating any principle governing assessment and appraisal of evidence---Constitutional petition was dismissed, in circumstances.

Muhammad Bashir Ali Siddiqui v. Mst. Sarwar Jahan Begum and another 2008 SCMR 186; Muhammad Sajjad v. A.D.J. and others 2022 CLC 729 and Muhammad Asif v. Mst. Nazia Riasat and 2 others 2018 CLC 1844 distinguished.

Mst. Farah Naz v. Judge Family Court, Sahiwal and others PLD 2006 SC 457; Lt. Col. Nasir Malik v. Additional District Judge, Lahore and others 2016 SCMR 1821 and Waqar Haider Butt v. Judge, Family Court and others 2009 SCMR 1243 rel.

Sardar Abdul Raziq Khan for Petitioner.

Raja Farrukh Arif Bhatti for Respondents Nos. 2 and 3.

## **ORDER**

**JAWAD HASSAN, J.**---Through the instant Constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner has called in question the judgments and decrees dated 14.09.2013 and 17.09.2012, passed by learned Additional District Judge and Judge Family Court, Rawalpindi respectively, whereby the suit filed by the Respondent No.2 Mst. Zahida Parveen and others was decreed and appeal preferred there-against by the Petitioner was dismissed. These concurrent findings of fact have been assailed through this constitutional petition.

2. The relevant facts, as per petition are that a suit was filed by the Respondent No.2 and others for recovery of maintenance allowance asserting that she was married to the present Petitioner on 24.05.1982. Out of the wedlock four children were born amongst them the eldest daughter Saima was married while the other daughter and two sons were of 22, 20 and 13 years of age respectively. The Petitioner, allegedly being an electronic accessories mechanic, is stated having worked in Dammam Saudi Arabia earning an amount of Rs.2,50,000/- per month. As the Petitioner failed to maintain said Respondents, therefore, Respondent No.2 being his legal wedded wife filed the said suit claiming maintenance for herself, her unmarried daughter and her minor son. She further claimed that the house in which she was residing was purchased and owned by her. The Petitioner filed written statement contending therein that Respondent No.2 had no cause of action and the suit filed by her was frivolous and thus was liable to be dismissed, as Respondent No.2 being a disobedient wife while Sumaira Mumtaz and Adil Mumtaz being adults and holding jobs in some private organizations were not entitled to claim maintenance. The Petitioner assumed stance that he had gifted above said house to his wife and that he being an abroad jobber was earning an amount of Rs.18000/- per month; however, he denied rest of the claim of Respondent No.2. On the divergent pleadings of the parties, the following issues were framed:--

1. Whether the plaintiffs are entitled to get maintenance if so, at what rate, and for which period? OPP.
2. Whether the suit is not maintainable in its present form and is liable to be dismissed?
3. Relief.

The parties led their evidence. The said suit was decreed by learned Judge Family Court vide judgment and decree dated 17.09.2012 holding Respondent No.2 entitled to maintenance at the rate of Rs.4,000/- per month from the date of institution of the suit onward till she was legally debarred and Respondent No.3 Sumaira Mumtaz and minor Bilal Mumtaz were held entitled to recover their maintenance allowance respectively at the rate of Rs.4000/- each per month, moreover, Respondent No.3 Sumaira Mumtaz was held entitled to recover her maintenance allowance till May 2012 i.e. the date of her marriage, and minor Bilal Mumtaz was held entitled to recover maintenance allowance till his attaining the age of majority. Appeal preferred against which decree was dismissed by learned Additional District Judge, Rawalpindi with the observations that the quantum of maintenance allowance determined by the learned trial court is reasonable. Hence, this Writ Petition.

3. Learned counsel for the Petitioner inter alia argued that both the impugned judgments and decrees are the outcome of misreading and non-reading of the evidence, as it has totally been ignored that Respondent No.2 being a disobedient wife was not performing her matrimonial obligations and that the Petitioner during proceedings of the case had also pronounced Talaq to her by sending a written notice on 07.06.2012; that it was also not taken into account that Sumaira Mumtaz/Respondent No.3 had got married and that minor Bilal Mumtaz shown to be a minor actually was major and holding a job; that learned Additional District

Judge, while taking up issue for entitlement of maintenance qua respondent No.3 Mst. Sumaira Mumtaz at one hand held that she being a married lady was not entitled to the maintenance but while arriving at his conclusion dismissed appeal of the Petitioner instead of partly allowing the same, thus, in this alone score this judgment suffers from grave illegality warranting interference of this Court; that both the Courts below have not applied their judicious mind and in a slipshod manner have fixed the maintenance allowance of Respondents Nos. 2 and 3 (Mst. Zahida Parveen and Sumaira Mumtaz); that Respondent No.2 has not given a single proof of income of the Petitioner being Rs.2,50,000/- rather Petitioner himself mentioned it as Rs.18000/- per month but, despite this very fact, the learned Courts below have passed the impugned judgments and decrees which are liable to be set-aside. In support of his arguments, learned counsel has placed reliance on "Muhammad Bashir Ali Siddiqui v. Mst. Sarwar Jahan Begum and another" (2008 SCMR 186), "Muhammad Sajjad v. A.D.J. etc." (2022 CLC 729) and "Muhammad Asif v. Mst. Nazia Riasat and 2 others" (2018 CLC 1844).

4. On the other hand, learned counsel for Respondents Nos.2 and 3 has supported the impugned judgments and decrees and contended that both the Courts below have concurrently passed the impugned judgments and decrees after taking into consideration the evidence available on record, therefore, no exception can be taken to it in constitutional jurisdiction of this Court. Lastly, he prayed for dismissal of the writ petition

5. Arguments heard. Record perused.

6. The main argument of learned counsel for the Petitioner is that despite the fact that he had pronounced Talaq by sending a written notice to Respondent No.2 on 07.06.2012, yet learned courts below held that the marriage between him and Respondent No.2 was still intact and in this view of the matter she had been held entitled to receive maintenance which is sheer violation of law. Similarly, it has been pointed out that in Paragraph No.10 of his judgment, learned Additional District Judge observed that Respondent No.3 Sumaira Mumtaz has been married and thus not entitled to receive the maintenance, but conclusion/judgment was rendered vice versa by holding her entitled to maintenance.

7. As for as claim of the Petitioner regarding pronouncement of Talaq and issuance of written notice dated 07.06.2012 in said regard to the Petitioner is concerned, there is no documentary evidence available on record except his verbal stance in Paragraph No.4 of this Appeal, therefore, in this scenario Talaq alleged by petitioner is not proved and Mst. Zahida Parveen/ Respondent No.2 can't be held disentitled from receiving maintenance till subsistence of her marriage with petitioner. This very issue has also been enlightened by the Hon'ble Supreme Court in Mst. Farah Naz v. Judge Family Court, Sahiwal and others (PLD 2006 Supreme Court 457) while highlighting failure of husband to prove such alleged tallaq as well as entitlement of wife to maintenance allowance observing that "His bald statement that he had announced Talaq to her on 13-12-1997 cannot be accepted at all as he utterly failed to substantiate it. In law, he was required to send notice to the Arbitration Council under the Muslim Family Laws Ordinance, 1961 and also to send a copy of notice to the appellant by registered post. No such proceedings

having been ever conducted, oral allegation of Talaq would neither be effective nor valid and binding on the appellant, who would, in all fairness, be legally entitled to past maintenance as claimed by her". In this case, though the Petitioner claimed to send the notice, but nothing in corroboration thereto is brought on record and neither had it been admitted by Respondent No.2 in the earlier round of litigation nor before this Court. Therefore, she is entitled to receive past maintenance till subsistence of her marriage. However, as far as Respondent No.3 Sumaira Mumtaz is concerned, admittedly she has got married, therefore, she will be entitled to maintenance from date of institution of the relevant suit till the date of her said marriage while the minor Bilal Mumtaz, not arrayed as a Respondent in this petition, is also held entitled to maintenance. It is admitted fact that Minor Bilal Mumtaz is real son of the Petitioner, therefore, petitioner is legally, morally and religiously bound to maintain him at every cost, therefore, no exception can be taken to it.

8. The Hon'ble Supreme Court of Pakistan in "Lt. Col. Nasir Malik v. Additional District Judge, Lahore and others" (2016 SCMR 1821) held that "the legislature has established the Family Courts for expeditious settlement and disposal of the disputes relating to marriage and family affairs and the matters connected therewith. Under the provision of section 5 of the Family Courts Act, the Family Court is vested with the exclusive jurisdiction to entertain and adjudicate upon the matter specified in the schedule. The matter of maintenance is at serial No. 3 in the schedule. Thus, the Family Court has exclusive jurisdiction relating to maintenance allowance and the matters connected therewith.

9. From the perusal of impugned judgments and decree it reveals that both the Courts below have concurrently passed the impugned judgments and decrees after carefully appreciating the evidence on record. Regarding concurrent findings, reliance is also placed upon "Waqar Haider Butt v. Judge, Family Court and others" (2009 SCMR 1243), where it stands held that "It is also a settled principle of law that this Court would not normally go behind a concurrent finding of fact recorded by the courts below, unless it can be shown that the finding is on the face of it against the evidence or so patently improbable or perverse that to accept it could amount to perpetuating a grave miscarriage of justice or if there has been any misapplication of a principle relating to appreciation of evidence, or, finally; if the finding could be demonstrated to be 'physically impossible". No convincing arguments were advanced by the learned counsel for the Petitioner to show that both the Courts below have committed any illegality. Furthermore, the Petitioner has not produced any documentary proof/ evidence in order to support his version. Keeping in view the prevailing inflation, the quantum of maintenance allowance fixed by learned Family Court cannot be termed as harsh as it is hardly sufficient to meet the needs of daily life of the minor.

10. This Court in constitutional jurisdiction refrains from interfering with the findings of fact recorded by the learned Courts below, particularly when they are not shown to be contrary to record or to be arbitrary or whimsical. In the instant case, apart from the bald assertions, no specific instance was brought to the notice of the Court that might be regarded as a case of misreading or non-reading of material evidence, having direct and decisive bearing on the issues causing

miscarriage of justice. Both the Courts below exercised the jurisdiction vested in them, without violating any principles governing the assessment and appraisal of evidence.

11. Both the judgments are well-reasoned and well-argued having been passed after taking into consideration every aspect of the case. Needless to add that judgments referred by the learned counsel for the Petitioner cannot be relied upon being distinguishable from the facts and circumstances of the case in hand as each and every case has its own merits.

12. Summing up this all, the impugned judgments passed by learned courts below are maintained in the manner that Mst. Zahida Parveen/Respondent No.2 (wife), Mst. Sumaira Mumtaz/Respondent No.3 (daughter) and Bilal Mumtaz, (minor son) are held entitled to maintenance at the rate of Rs.4000/- per month each from the date of institution of the suit, whereas decreed maintenance allowance shall be recoverable to the extent of Respondent No.2/Mst. Zahida Parveen till subsistence of her marriage with Petitioner, to the extent of Respondent No. 3/Mst. Sumaira Mumtaz till date of solemnization of her marriage and to the extent of minor Bilal Mumtaz till his attaining age of majority.

13. For what has been stated above, this appeal is dismissed with slight modification made above.

MH/M-208/L Order accordingly.

