

IN THE HIGH COURT OF SINDH AT KARACHI

CP No. S-279 of 2018

Present

Mrs. Justice Kausar Sultana Hussain

Umer Daras..... Petitioner

Versus

Learned Family Judge & Ors.....respondents

Date of Hearing 19.02.2018

Date of Order .03.2018

Mr. Sikandar Ali Shar, advocate for petitioner  
Ms. Rukhshanda Waheed, State Counsel

ORDER

Mrs. Kausar Sultana Hussain, J: Learned counsel for the petitioner was heard on the point of impleading respondent No. 2 & 3 i.e. Director Bait-ul-Maal and District Officer, Bait-ul-Maal as parties in the present petition, while these respondents No. 2 & 3 have never been the parties either in the Family Suit No. 643/2013 or before the learned IV-Additional District Judge, Malir, where he had assailed the judgment passed by the learned Family Court, Malir in the said family suit. The learned counsel for the petitioner has argued that he has impleaded these respondents No. 2 & 3 as parties in this petition as petitioner being poor person having meager source of income is unable to pay decretal amount to the respondent No. 4 and his two minor sons as ordered by learned trial court, as well as learned appellate court hence, in the light of case law reported in PLD-2012 Lahore 445 relied upon by the learned counsel for the petitioner he has not only impleaded respondent No. 2 & 3 as parties in this petition but also claimed against them that being Government functionaries Bait-ul-Maal is liable to provide maintenance to needy and weaker persons of the society. I have gone through the case law relied upon by the learned counsel for the petitioner. The learned Judge of Lahore High court Mr. Justice Ibad-ur-Rehman Lodhi while deciding CP No. 22305/2010 was of the view that petitioner the grandfather of minors failed to provide them maintenance allowance as fixed by Family Court. Plea raised by petitioner was that he being pensioner having meager sources of income as such unable to pay maintenance to minors as fixed by Family Court. The learned Judge of Lahore High Court observed that system

of Zakat could be linked up with Family Court to the extent that if Family Court is of the view that persons liable to pay maintenance are poor, who should have to release maintenance also fall under the clause of eligible persons entitled to receive Zakat funds then suitable directions to Zakat and Ushr Council be also issued. The learned Judge of High Court directed the authorities to register the minors as regular beneficiaries of District Bait-ul-Maal. The learned High court in support of his view has been fortified by the case laws reported in PLD 1989 Karachi 404, 1998 MLD 1972, PLD 1976 Lahore 930, PLD 1991 SC 543, 1994 CLC 444, 2004 YLR 616 and 2005 SCMR 1293 as referred in the judgment. The logic discussed in the above case laws supported the plea of petitioner's counsel. However, learned counsel for the petitioner has impleaded the respondent No. 2 & 3 without impleading the state simultaneously. Since official respondents are formal parties and not the contesting parties, hence no need to issue notices against them.

3. In present petition the petitioner Umar Daraz has impleaded Director and District Officer, Bait-ul-Maal as respondents No. 2 & 3 claiming against them that they may be directed to pay the remaining decretal amount on behalf of the petitioner in the execution proceedings as ordered by the Family Court against him for payment of maintenance for his two minor sons namely Dildar and Zeeshan both sons of Umar Daraz/petitioner.

4. I am fortified with the decision reported in PLD 2012 Lahore 445, and of the view that if at the end of this petition, this court reach at the conclusion that the petitioner is liable to pay the maintenance allowance of his minor sons as ordered by two courts below and petitioner due to his poverty would not be able to pay maintenance allowance to minor sons then the relevant organ or authority of the State including Bait-ul-Maal and the Local Government would liable to pay the maintenance of the minors, therefore, petition filed by the petitioner by impleading Director and District Officer, Bait-ul-Maal as parties of it is not out of question, hence the present petition filed by the petitioner is maintainable in law.

Adjourned to a date in office. Let notice be issued to respondents No. 1 to 4.

J U D G E