

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

C.P. No. S-956 of 2009

DATE	ORDER WITH SIGNATURE OF JUDGE
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Hearing of case (Priority)

1. For hearing of CMA No. 4378/2009.
2. For hearing of Main case.

Date of hearing: 20th August, 2018.

Date of order: August, 2018.

M/s. Farhatullah & Syed Talat Shah, Advocate for the petitioner.
 Mr. Naveed Ali, Advocate for respondents No. 1to3.

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KAUSAR SULTANA HUSSAIN, J:- Through this Constitution Petition the petitioner named above has challenged the judgment dated 25.07.2009 of learned Additional District Judge, Karachi (Central) in Family Appeal No. 21 of 2009 and order dated 11.03.2009, passed by the Civil Judge-IV, Karachi (Central) in Execution Application No. 05 of 2008.

2. Relevant facts necessary for disposal of instant petition are that the Respondent filed Family Suit No.1367 of 2003 against the petitioner for maintenance as well as G&W Application No.1355/2003, which were disposed of through common judgment and decree dated 18.04.2006 by the learned trial court, ordering the petitioner to pay past maintenance of both the minors at the rate of Rs.750/= per month for each and present maintenance at the same rate with 10% enhancement per year. Both the parties challenged the said common judgment and decree and filed Family Appeals No.77 of 2006 and 86 of 2006, which were also disposed of through common judgment dated 13.02.2007 by the learned lower appellate Court, whereby the Court enhanced the rate of maintenance of minors from 750/= each to 1200/= each with enhancement of 10% per year. The respondent preferred C.P. No.S-368 of 2007, which was disposed of in the manner that the order of lower appellate court was modified

and maintenance was enhanced to Rs.2000/= per month for each child with 10% annual enhancement, while remaining portion of the order of lower appellate court was maintained. These are the admitted facts without any ambiguity from both the sides. The root of dispute arose at the eve of filing of Execution Application No.5 of 2008 by the respondents claiming arrears of maintenance of the minors for the past period from the date of original decree rather from the date of order dated 28.08.2008, passed in C.P. No.S-368 of 2007. The learned trial court vide order dated 11.03.2009 allowed the Execution Application and ordered payment of monthly maintenance of the minors at the rate of Rs.2000/= per month each with 10% awarded increment from the date of decree dated 18.04.2006. The petitioner challenged the said order by filing Family Appeal No.21 of 2009, which was dismissed by the learned lower appellate court vide judgment dated 25.07.2009 concurring with the findings of the leaned trial court. Being impugned, petitioner has preferred instant C.P.

3. Learned counsel for the petitioner while highlighting the history of this litigation mainly contended that both the courts below while passing the impugned order/judgment failed to consider the order dated 28.08.2008, passed in C.P.No.S-368 of 2007 in its true spirit. He has further argued that in view of the said order dated 28.08.2008, the rate of maintenance was modified and enhanced and that it should be charged from the date of order as it has no retrospective effect. He has further argued that both the courts below have failed to apply judicial mind and allowed the rate of maintenance from the date of decree contrary to the wisdom of the said order of this court and committed material illegality in passing the impugned order and judgment, liable to be reversed.

4. Conversely, the learned counsel for the respondent has controverted the above contention and supported the findings of both the court below. While referring the order dated 28.08.2008 passed in C.P. No.S-368 of 2007, he has argued that there is only modification in the rate of maintenance of the minors, whereas rest of the decree was remained intact and there is no ambiguity in this

regard. He has further argued that no legal ground has been urged or available with the petitioner to cause interference in the concurrent findings of the courts below on this issues.

5. Considered the submissions and perusal the impugned order so also available record in the light of citation referred by the respective parties. There is short point involved in this petition concerning interpretation and implication of an order dated 28.08.2008 passed by this Court in an earlier C.P. No. S-368 of 2007 basing thereon the order and judgments passed by both the Courts below have been challenged. The grievance put on the said order dated 28.08.2008 is reproduced as under :-

"I have heard Mr. Rehan Ahmed in person. Both the children are present with their mother. Rehan Ahmed states that he works in Pakistan Railway and his salary is Rs. 15000/- per month. He states that his father and two younger brothers are his dependents. Keeping in view the escalation in prices of necessities and increase in costs of living, in my humble view the monthly maintenance of each child should be Rs.2000/= per month. I therefore modify the order of learned Appellate Court as well as trial Court and enhance amount of maintenance from Rs.1200/= to Rs.2000/= per month for each child with 10% annual enhancement. The remaining portion of the order of learned Appellate Court is not disturbed and it is maintained in respect of meeting and on all other points."

6. From bare reading of the above order, it appears that this Court through aforesaid order only modified the order of the learned Appellate Court as well as trial Court and enhance the amount of maintenance from Rs. 1200/- to Rs. 2000/- per month for each child with 10% enhancement annually, whereas kept intact the remaining portion of the order of learned Appellate Court. It may be observed that the original decree passed by the learned trial Court with regard to maintenance allowance in respect of period from which it is to be paid was neither disturbed by the learned Appellate Court in its judgment dated 13.02.2007, nor by this Court in order dated 28.08.2008, passed in an earlier C.P. No. S-368 of 2007. It is quite explicit on record that only the rate of maintenance was modified holding

fact the rest of direction. It is an admitted fact that the appellant did not challenged such finding before apex appellate forum, as such, same hold the field. In the attending circumstances, it is abundantly clear on record that respondents had full rights to enforce the original decree of the learned trial Court in their favour with regard to maintenance as granted with only modification of rate of maintenance. Both the Courts below committed no illegality or misinterpreted the very wisdom of the order dated 28.08.2008, passed in C.P. No. S-368 of 2007 and rightly passed the impugned order as well as judgment.

7. For the reasons recorded above, I find no merits in the petition in hand, stand dismissed accordingly.

J U D G E

Faheem Memon/PA