

IN THE HIGH COURT OF SINDH AT KARACHI**C.P No. S-1765 of 2018**

Date of hearing : 05.11.2020

Date of Judgment: 08th December, 2020

Petitioner : Muhammad Imran Khan, Advocate.

Respondent : Nemo.

J U D G M E N T

Kausar Sultana Hussain, J.:- Through this Constitution Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has impugned judgment and decree dated: 09.05.2018 and 10.05.2018 respectively passed by the learned IIIrd Additional District Judge Karachi (Central) in Family Appeal No. 42 of 2016 (Re-Shaikh Farrukh Hussain v. Mst. Farah Nishat and another) filed by the petitioner against the judgment and decree dated 28.4.2016 passed by the learned IInd Family Judge, Karachi (Central) in Family Suit No.1599 of 2010.

2. Brief facts of the present constitution petition are that the respondent No.1, Mst. Farah Nishat filed Family Suit No. 1599 of 2010 before the learned trial Court, stating therein that petitioner and respondent No.1 solemnized marriage on 02.07.2008 against dower amount of Rs.50,000/-. Her parents given her dowry articles worth about Rs.3,36,280/-, so also gifts items worth of Rs.10,000/-. During her stay at the house of the petitioner, she was subjected to mental tortures and also physical maltreatment and humiliation and finally she was made to turn out from the house of petitioner/defendant on

30.10.2008 in three clothes, while at that time she was on the family way. Dowry articles of the respondent No.1 were remained with the petitioner / defendant at his house; since then the respondent No.1/plaintiff No.1 is living at the house of her parents without any maintenance by petitioner / defendant. On 15.7.2009 respondent No.2 / plaintiff No.2 Master Sheikh Yaseen was born and all delivery expenses up to Rs.75,000/- were borne by brothers of the respondent No. 1/ plaintiff No.1. The petitioner / defendant is liable to return her dowry articles including gift articles or as an alternate, pay Rs.3,46,280/- and maintenance to respondent No.1/plaintiff No.1 from 02.07.2008 the day of her marriage onwards as the Khula has not become effective so far under the law and maintenance to the minor respondent No.2/ plaintiff No.2 from 15.07.2009 onwards.

3. The petitioner / defendant has submitted his written statement, whereby he denied the claim of the respondent No.1 agitated in her plaint and further submitted that the dowry articles brought by her had not worth of Rs.3,46,280/-, further most of her dowry articles had already been shifted by her to her parent's house with the help of her family embers except furniture, refrigerator, washing machine, T.V, fan and some other minor articles including crockery. The petitioner / defendant shown his willingness to return dowry articles of the respondent No.1 / plaintiff. Per petitioner / defendant, being teacher in coaching center his salary was Rs.7000/- per month and he had been paying Rs.1000/- per month as maintenance of respondent No.1 / plaintiff from the day she left his house and Rs.500/- on account of maintenance of his minor respondent No.2 / plaintiff No.2, he has also paid Rs.5000/- to respondent

No.1 / plaintiff for her delivery expenses. Petitioner / defendant has denied alleged medical expenses of the respondent No.1 / plaintiff at Rs.75,000/- being managed one; the respondent No.1 / plaintiff has never allowed to the petitioner / defendant to see his child in spite of receiving maintenance sent by him for both the respondents / plaintiffs.

4. After failure of pre-trial proceedings, issues were framed by the learned Family Judge. The Respondent No.1 /plaintiff No.1 and petitioner/defendant have examined themselves and produced documents in support of their respective versions. Respondent No.1/plaintiff No.1 examined two witnesses in support or her claim.

5. After hearing both the side, the learned Family Judge passed the impugned Judgment and decree dated 28.4.2016 in favour of the Respondent No.1&2/Plaintiffs No.1&2, whereby the petitioner / defendant was directed to hand over the dowry articles of respondent No. 1 / plaintiff No.1 to her as per his own admission and including annexures P-1/1, D, E, F, G, H, I, L, M or in alternative he was directed to pay Rs. 1,82,700/-, pre and post natal and delivery expenses Rs. 20,395/- to the respondent No.1/plaintiff No.1 and Rs.5000/- per month to Respondent No.2 / plaintiff No.2 from the date of decree with increase amount at Rs.10% per annum till minor will attain majority.

6. Both the parties have filed appeals separately against aforesaid Judgment under Section 14 of the West Pakistan Family Courts Act, 1964 before the learned District and Sessions Judge Karachi (Central), bearing Family Appeal No.42 of 2016 and 43 of 2016 and after hearing both the side, the learned Ist

appellate court has passed the consolidated judgment and decree dated 10.05.2018. The learned appellate court has modified the judgment to the extent of the tenure of future maintenance of the minor as from his birth till his legal entitlement.

7. The petitioner. Shaikh Farrukh Hussain preferred this constitutional petition against the said judgment and decree and prayed that the quantum of maintenance of respondent No.2 may be reduced from Rs.5000/- per month to Rs.3000/- per month and restore the tenure of the maintenance from the date of decree to onward as per judgment of the learned Family Judge, hence, the instant matter.

8. The learned counsel for the petitioner inter-alia contended that impugned Judgments and Decrees dated: 28.04.2016, 09.05.2018 & 10.05.2018 mentioned above are misconceived and untenable in law thus a Hains nullity in the eyes of law; evidence on record does not support the case of the respondent No.1&2; findings of the learned trial Court are arbitrary and without any evidence or material on record, due to which petitioner has been seriously prejudiced; that the impugned judgments passed by the learned Family Judge/trial Court and learned appellate court are mainly cursory and not judicial in true sense; suffered from illegality, infirmity, misreading and non-reading of evidence on record and are based on extraneous material, hence, petitioner prayed for setting aside the aforesaid Judgments and Decrees.

9. On the other hand, the Respondent No.1 once had appeared before this court in person on 13.03.2020 and after

that she never appeared, however, in the interest of justice after providing several opportunities the learned counsel for the petitioner was allowed to argue his case in absence of the respondents or their counsel.

10. Record shows that the petitioner through filing present petition has challenged the terms of modifications made by the learned appellate Court in the impugned judgments dated 09.05.2018 passed in his appeal to the extent of rate of maintenance allowance for the minor at Rs.5000/- per month from the date of his birth i.e. 15.07.2009. He prayed that the maintenance of minor may be reduced from Rs.5000/- to Rs.3000/- per month and period of payment for past maintenance be fixed from the date of judgment and decree dated 28.04.2016 as fixed by the learned IInd Family Judge, Karachi (Central) in Family Suit No. 1599 of 2010 of the respondents.

11. I have gone through the impugned judgments as well as entire record. While going through the record it reveals that the petitioner in compliance of the directions issued by the learned trial Court deposited the decretal amount in Execution No. 19 of 2018 as per decree passed by the learned trial Court on 28.04.2016. Nazir report in this regard was called to ascertain the prevailing situation of this case. Report submitted by the learned IInd Civil & Family Judge, Karachi (Central), shows that the petitioner in compliance of the decree passed in Family Suit No. 1599 of 2010 has deposited Rs.1,82,700/- in respect of dowry articles of the respondent No.1, Rs.20,400/- on account of delivery expenses and also he is also depositing Rs.5000/- per month on account of maintenance allowance of the minor

without fail. As such till September, 2020 the petitioner has deposited Rs.5,031,00/- and the respondent No.1 withdrew Rs.2,50,100/- till such time from the deposited amount. Report further shows that now the petitioner is depositing Rs.7000/- per month on account of maintenance of respondent No.2.

12. Per record the petitioner has been sending Rs.1000/- per month to the respondent No.1 in her account for maintenance since October, 2008 and the petitioner had also sent maintenance to respondent No.2 from July, 2009. Money order receipts available on record do show the conduct of the petitioner that he was not avoiding to pay monthly maintenance of the respondents. However, the respondent No.1 raised objection on quantum of the maintenance paid by the petitioner. The petitioner filed appeal against the fixation of rate of maintenance at Rs.5000/- per month for respondent No.2 and prayed that it may be fixed at Rs.3000/- per month. In my view the learned appellate court had modified the order of the learned trial Court in respect of fixation of monthly maintenance of the respondent No.2 from the date of his birth i.e. 15.07.2009 instead of from the date of filing suit for maintenance. The respondent No.1 has filed suit for maintenance for respondent No.2 within three years of his birth, therefore, the appellate court has rightly granted the maintenance of respondent No.2 from the date of his birth.

13. The petitioner has also assailed the quantum of fixed maintenance amount at Rs.5000/- per month with increased amount at 10% per annum from July, 2009. The petitioner has produced his salary certificate dated 28.10.2009 available on record as Exh. D/1-A (page No.43), which shows that in the year

of 2009 he was getting salary of Rs.7000/- from Dhaca Secondary School. The respondent No.1 has not brought any documentary evidence on record, which could prove that he was earning much more than he disclosed. No doubt father is bound to maintain the child but in the manner befitting his status and financial condition. However, the petitioner has never avoided to pay maintenance of the respondent No.2, hence keeping in view his meager salary amount, I reduced the monthly maintenance of the respondent No.2 from Rs.5000/- to Rs.3000/- per month from 15.07.2009 to July, 2012 and from August, 2012 to onwards at Rs.5000/- per month with increase amount at 10% per annum.

14. It is pertinent to mention here that the amount sent by the petitioner to respondent No.2 through Money Orders from July, 2009 directly, receipts thereof available on record (Whether acknowledged or not) be adjusted in past maintenance of the respondent No.2. It is necessary to clear here that duly issued Money Order receipt is a sufficient documentary evidence to prove by the sender that payment has been made to the receiver. The judgment passed by the learned appellate court is modified accordingly. Appeal allowed on the terms mentioned above.

J U D G E

Faheem/PA