

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Const. Petition No.233 of 2021

Petitioner Sanaullah son of Abdul Rahim through
Mr. Irfan Ali Khaskheli, Advocate.

Respondents 1. Additional Sessions Judge-IX, Hyderabad.
2. Rabia Shaikh d/o Abdullah through Mr. Irfan
Ahmed Qureshi, Advocate.

Date of hearing **14.01.2022**

Date of order **28.01.2022**

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ORDER

SHAMSUDDIN ABBASI, J. - By means of instant constitution petition filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, the petitioner seeks following reliefs:-

(a) That this Honorable court may be pleased to set aside Judgment and Decree dated 22.09.2020 passed by learned Family Judge-VII Hyderabad and same was maintained by the court of 9th Additional Sessions Judge Hyderabad on 17.04.21. Therefore in the interest of justice modified/set aside judgment and decree and pass an order according to the financial position of petitioner.

(b) That any other relief as deems fit and proper.

2. Short but relevant facts of the case are that the respondent No.2 was married to the petitioner on 12.02.2000 at Khairpur Miras against Haq Mahar in shape of golden necklace weighing five tolas, which was handed over to the respondent No.2 at the time of marriage. The rukhsati was taken place, accordingly marriage was duly consummated. Out of that wedlock four children Muhammad Ammar, Baby Areeba, Baby Ukasha and Arwa Shaikh were born. The petitioner was working as salesman at

the shop of his brothers at Khairpur Miras and owing to meager income he was advised by the parents of the respondent No.2 to shift from Khairpur to Hyderabad and joined their business. The petitioner with the consent of the respondent No.2 settled at Hyderabad and started a general store out of the funds arranged by respondent No.2's brother and other amount obtained from sale of some of the gold belonging to the respondent No.2. Later on the general store was converted into a medical store. All of a sudden, the petitioner changed his behavior and pronounced "Talaq" to the respondent No.2 on 04.12.2018. He also failed to provide any maintenance to the respondent No.2 as well as did not pay a single penny towards school fees, grocery, utility bills, daily expenses and other necessities of life. She, therefore, filed a suit for maintenance against petitioner seeking following reliefs:-

- a. To pass a judgment and decree for the maintenance of the minors and the maintenance of the plaintiff from the day of pronouncement of Talaq till Iddat period, the maintenance of the minor are Rs.1,00,000/- per month and for four months of Iddat period to Rs.20,000/- per month for plaintiff.*
- b. Direct the defendant to pay the maintenance to the plaintiff at the rate of Rs.20,000/- for plaintiff since the day of pronounce of Talaq till the Iddat period.*
- c. That it may also be passed judgment and decree that the other amounts in lieu of examination fees, semester fees and other amounts required except the maintenance for the minors, the same will be provided as per need.*
- d. That it may also be passed judgment and decree that the increment yearly in the maintenance amount, must be more than 50% as the every item, such as education, grocery, utilities are enhancing day by day, the increment shall be allowed in the light of their increment/increase.*
- e. Any other relief which this Honourable court deems fit, just and proper may also be granted in favour of the plaintiff".*

3. The petitioner contested the suit and filed his written statement, wherein he has denied all the allegations leveled against him by the respondent No.2 and prayed for dismissal of the suit.

4. The issues were framed. The parties led their evidence. The learned Civil and Family Judge-VII, Hyderabad, after hearing the parties' respective counsel decreed the suit vide judgment dated 22.09.2020 granting maintenance @ Rs. 4,000/- per month (total 12,000/- for Iddat period of the respondent No.2) and Rs.10,000/- per month for each minor (total Rs. 30,000/- as past maintenance from filing of the suit as well as future maintenance at the same rate) with 10% increase per year till three minors attained the age of majority.

5. Impugning the judgment and decree passed by the learned trial Court, the petitioner filed appeal (Family Appeal No.65 of 2020) mainly agitating that the suit may be decreed in terms of the order dated 11.05.2019 passed on application under Section 17-A of West Pakistan Family Courts Act, 1964, whereby a sum of Rs.21,000/- was granted as maintenance. He further submitted that the impugned judgment is harsh, bad in law and facts and beyond the reach of the petitioner. The respondent No.2, on the other hand, also filed appeal (Family Appeal No.72 of 2020) seeking enhancement of maintenance.

6. The proceedings in two appeals culminated in dismissal vide judgment dated 17.04.2021, penned down by the learned Additional District Judge-I (MCAC) Hyderabad, whereby the judgment and decree passed by the learned trial Court was maintained, hence necessitated the filing of the listed petition.

7. Heard and record perused minutely.

8. Reviewing the claim of the respondent No.2 in Family Suit 121 of 2019, it is noted that she claimed Rs.20,000/- per month towards her maintenance for Iddat period as well as past maintenance at the same rate and a further sum of Rs.100,000/- per month towards maintenance of the minors including their educational expenses with

50% increase per annum emphasizing that the petitioner is earning Rs.200,000/- per month. In support of her claim, the respondent No.2 examined herself and also produced her brother, who has deposed in the same line as that of the respondent No.2.

9. On the other hand, the petitioner appeared in the witness box and denied the claim of the respondent No.2 as well as his income. The learned trial Court did not agree with the claim of the respondent No.2 in respect of her past maintenance and declined the same while holding that she was not expelled by the petitioner and despite his efforts for reconciliation she did not join him, however, she was granted maintenance for her Iddat period @ Rs.4,000/- per month. Insofar as the maintenance of four minors, the learned trial Court observed that one of the minors namely, Muhammad Ammar attained the age of 18 years, hence not entitled for any maintenance, however, granted the maintenance of three minors @ rate of Rs.10,000/- each as past and future maintenance with increase of 10% per annum till they attained the age of majority. As to the earning of the petitioner, the learned trial Court observed that the respondent No.2 failed to place on record any evidence to show that monthly income of the petitioner was Rs.200,000/- and agreed with the submission of the petitioner that his monthly income comes to Rs.40,000/-. It is also to be noted that impugning judgment and decree of the learned trial Court, the petitioner and respondent No.2 preferred their respective appeals, which were dismissed and the order of the learned trial Court was upheld.

10. Admittedly, there are concurrent findings on the issue of fact against petitioner. Under constitutional jurisdiction re-appraisal of evidence in order to have a different conclusion than already inferred by

the learned Courts below has never been considered an option to be upheld unless it is proved that both courts below passed judgments contrary to the evidence brought on record, hence learned council has failed to point any portion of evidence to contradict the same as discussed. The Court under constitutional jurisdiction has to see whether any illegality has been committed by the forums below or the findings of the fact are based on material extraneous to the pleadings of the parties to justify interference on its part. The two Courts below have concurrently refused to exercise their discretion in favour of the petitioner. The learned counsel for the petitioner too has failed to point out any illegality or irregularity and/or jurisdictional defect in the impugned judgments of the Courts below warranting interference by this Court while exercising extra ordinary constitutional jurisdiction. The impugned orders of the courts below are well reasoned and according to law, therefore, there is no reason to interfere in the concurrent findings of facts. In view thereof, the findings recorded by the learned Courts below are the outcome a proper application of judicial mind to the facts and circumstances of the case. Thus, this Court is hesitant to interfere. Resultantly, the instant petition is bereft of merit stands dismissed.

JUDGE