

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-659 of 2021

[Ubaid-ur-Rehman .....v..... Mst. Javeria & others]

Date of Hearing : 31.01.2023  
Petitioner through : Ms. Mahmooda Suleman, Advocate.  
Respondents through : *Nemo.*

## ORDER

**Zulfiqar Ahmad Khan, J:-** The petitioner impugns the concurrent findings dated 22.12.2020 passed by learned Family Judge Karachi East in Family Suit No.227 of 2018 and Judgment dated 15.07.2021 passed by learned IXth Additional District Judge East, Karachi through this petition.

2. The respondent No.1 filed a family suit bearing No.227/2018 before learned Family Judge East Karachi for recovery of maintenance which was decreed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.18/2021 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the learned trial Court fixed very exorbitant maintenance which is not affordable, therefore, impugned judgments require interference by this Court.

4. Heard the arguments and perused the available record. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied,

and could not avoid his obligation. Apart from this, it is considered pertinent to initiate this deliberation by referring to the settled law that learned trial Court i.e. Family Court is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise.

5. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can

interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.<sup>1</sup>

6. On the factual side the Trial Court after considering all aspects of the case, and keeping well-being of the minor, set the maintenance @ Rs.8,000/- per month with increase of 10% per annum per child which sum was maintained by the Appellate Court with inflation hitting the roof, these sums could hardly buy 1200 calories<sup>2</sup> which are needed for sustenance of a child every day.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

Karachi  
Dated: 31.01.2023.

JUDGE

Aadil Arab.

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<sup>1</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).

<sup>2</sup> UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.