

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-376 of 2023

Dated: Order with signature of Judge(s)

- 1.For orders on CMA No.3006/2023.
- 2.For orders on office objections No.11 a/w. reply as at 'A'.
- 3.For orders on CMA No.3007/2023.
- 4.For hearing of Main Case.

Date of Hearing : 9 May 2023

Petitioner : Muhammad Mehmood through
Mr. Nadeem Ahmed Azar, Advocate.

Respondents : Aisha Sultana & Others.

ORDER

Mohammad Abdur Rahman, J. The Petitioner has maintained this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against the Judgment and Decree dated 3 February 2023 passed by the VIIth Additional District & Sessions Judge, Karachi (East) in Family Appeal No.102 of 2022 emanating from the Judgment and Decree dated 15 March 2022 passed by the XVIth Civil & Family Judge, Karachi (East) in Family Suit No. 4203 of 2019.

2. The petitioner was married to the Respondent No. 1 on 27 November 2015 against a "Haq Mehr" of Rs.50,000. Out of the wedlock one child "Minor A" was born on 4 June 2017. The marriage unfortunately ended in divorce and the Respondent No.1 had instituted the subject suit bearing Family Suit No 4203 of 2019 before the XVIth Civil & Family Judge Karachi (East) seeking payments for maintenance for herself, for the Minor A and maternity expenses as follows:

“a) To direct the defendant to pay past and future maintenance of the plaintiffs at the rate of Rs.50,000/- per month to onwards on the increment of 20% annually.

b) To direct the defendant to pay the maternity and other related expenses amounting to Rs.150,000/- to the plaintiff.”

3. The matter proceeded before the XVIth Civil & Family Judge, Karachi (East) who held that:

- (i) The Respondent No.1 was not entitled to any maintenance for the period of her “Idaat” as she had “remained away” from the Petitioner;
- (ii) That in respect of payments to be made by the Petitioners for the maintenance of Minor A, a sum of Rs.10,000 per month was to be paid by the Petitioner from the date of her birth i.e. 4 June 2017 till the date of the decree of the suit i.e 15 March 2022 applying a 10% increment per annum and from the date of the decree i.e 16 March 2022 at a rate of Rs.15,000 per month with a 10% annual increment;
- (iii) That the interim maintenance payments that were made by the Petitioner during the pendency of Family Suit No.4203 of 2019 were to be adjusted against the decretal amount.
- (iv) That maternity expenses of Rs. 55,945 that were being claimed by the Respondent No. 1 were rejected as having already been paid by the Petitioner.

4. The Petitioner preferred an appeal bearing Family Appeal No.102 of 2022 before the VIIth Additional District & Sessions Judge, Karachi (East) and in which a downward revision was made in favour of the Petitioner in respect of payments that were to be made by the Petitioner for the maintenance of the minor, whereby the Minor A was liable to receive a payment of Rs.10,000 per month from the date of institution of Family Suit No. 4203 of 2019 till its disposal and thereafter at a rate of Rs.15,000/- per month with a 10% increase per annum.

5. The Petitioner has assailed the order dated 3 February 2023 passed by the VIIth Additional District & Sessions Judge, Karachi (East) passed in Family Appeal No.102 of 2022 and through his counsel has argued that as

the Petitioner has, since the passing of the judgment and decree, been rendered unemployed therefore the amount that he is liable to pay for the maintenance of Minor A should be reduced to a sum of Rs.5,000 per month from the date of the institution of Family Suit No. 4203 of 2019 upto the date of the decree with no annual increment and thereafter at the rate of Rs.7,000/- per month with a 10% annual increment. He did not rely on any reported decisions to forward his argument as to either the maintainability of the Petition or to impress that this Court has the jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to modify the orders passed by the VIIth Additional District & Sessions Judge, Karachi (East) in Family Appeal No.102 of 2022 emanating from the Judgment and Decree dated 15 March 2022 passed by the XVIth Civil & Family Judge, Karachi (East) in Family Suit No. 4203 of 2019.

6. I have heard the counsel for the Petitioner and perused the record. The jurisdiction that vests in this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 has recently been reaffirmed by the Supreme Court of Pakistan in the decision reported as **Arif Fareed vs. Bibi Sara**¹ wherein it was held that:²

“ ... 7. Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. **The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied.** No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception.”

¹ 2023 SCMR 413

² *Ibid* at pg. 417

I am clear that this court, while exercising its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 can look into the orders of both the VIIth Additional District & Sessions Judge, Karachi (East) and the XVIth Civil & Family Judge, Karachi (East) to examine whether the courts have properly exercised their jurisdiction under the Family Courts Act, 1964 or conversely that they have failed to exercise jurisdiction in matters that were vested in those courts under the Family Courts Act, 1964 or as to whether any material irregularity exists in either of the proceedings before either of those two courts. I am equally clear that the jurisdiction that vests in this court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 emanating from the jurisdiction of the Family Courts under the Family Courts Act, 1964 is not to be exercised as stated by the Supreme Court of Pakistan to be a “substitute of an appeal or a revision”.

7. Regrettably this is actually what the Petitioner is calling upon this Court to do! While, this court may have considered reviewing the evidence to see whether the VIIth Additional District & Sessions Judge, Karachi (East) or the XVIth Civil & Family Judge, Karachi (East) had mis appreciated the evidence this was not asked for and instead the plea that has been taken by the Petitioner is that as the financial circumstances of the Petitioner have changed therefore this Court should, in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, revise the amount of payments to be made by the Petitioner for the maintenance of the Minor A and therefore substitute such findings made by the VIIth Additional District & Sessions Judge, Karachi (East) or the XVIth Civil & Family Judge, Karachi (East) with the findings of this Court. This, to my mind would amount to exercising the powers in revision or in an appeal and is therefore outside the scope of the jurisdiction of this Court under Article

199 of the Constitution of the Islamic Republic of Pakistan 1973 and which cannot be granted render this Petition as not maintainable.

8. To conclude the decisions of the VIIth Additional District & Sessions Judge, Karachi (East) in Family Appeal No.102 of 2022 and the Judgment and Decree dated 15 March 2022 passed by the XVIth Civil & Family Judge, Karachi (East) in Family Suit No. 4203 of 2019 being judgments that were within the jurisdiction of each of the courts and devoid of any material irregularity renders this Petition as being not maintainable in the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and which was dismissed by me on 9 May 2023 and these are the reasons for the dismissal.

Nasir P.S.

JUDGE