

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-88 of 2023

[Mehboob Ali versus Mst. Sunaina & Ors]

Petitioner : **Through Syed Shafique Ahmed Shah advocate**
Respondent : **Through Mr. Aghis-us-Salam advocate**
Date of hearing : **06.10.2023**
Date of Order : **06.10.2023**

ORDER

MAHMOOD A. KHAN J:- This constitutional petition has been filed after conclusion of the family proceedings after full length trial wherein respondent No.1 had filed a suit for maintenance for herself as well as their children from the wedlock of the parties, the same was granted to the extent of children, however, despite discussion as to legal status of a disobedient wife (irrespective to being contrary to record but not being relevant needs no discussion) the trial Court considering a photocopy of divorce deed which accompanied statement dated 30.11.2022 was pleased to pronouncing divorce to be present restricted the same for Iddat period. The petitioner challenged the same before the appellate Court wherein the learned appellate Court was pleased to hold that as divorce has not been effected maintenance is available to the wife/respondent No.1 in the sum of Rs.5,000/- per month. Petitioner requires following prayers:-

- (a) *To declare that respondent No.1 is not entitled for relief/ maintenance granted in issue No.1 because the petitioner has pronounced divorce to the respondent No.1.*
- (b) *To declare that the relief granted in issue No.2 of Judgment dated 14-02-2023 passed by learned respondent No.2 is illegal, unlawful and nullity in eyes of law;*
- (c) *That this Honorable Court maybe please to pass an interim order thereby suspend the operation of impugned judgments & decree passed by both learned lower courts and further this Honorable Court may be pleased to stay the proceedings of Execution Application No.02 of 2023 pending before learned Family Court Tando Allahyar;*
- (d) *Any other relief which may deems fit and proper in favor of the petitioner.*

2. Learned counsel for the petitioner makes his submissions according to the grounds of memo of petition and states that entertainment for maintenance, favouring the respondent No.1, was not called for by the learned appellate Court as divorce between the parties was present, which is established by the pleadings present and in the said circumstances only the Iddat period of divorce has been

extended on account of notice of divorce under Section 7 of West Pakistan Family Court Act 1964 is not available as irrespective to the notice divorce was ever present. In this regard he has referred to the case of ALLAH DAD versus MUKHTAR and another [1992 SCMR 1273]. It is also contended that that the amount of maintenance, as provided to the minors, is not available on the ground that minors were not made party in the first place, but it was not considered by the learned trial Court as well as appellate Court and that the monthly income of petitioner is Rs.30,000/-, only out of which Rs.10,000/- and 5,000/- having been awarded as maintenance, leaving nothing for the petitioner.

3. Learned counsel for the respondent, however, relied upon the judgment of learned appellate Court and prayed for dismissal of this petition.

4. I have heard the learned counsel for the parties and have gone through the record with their able assistance.

5. It may first be observed that the entertainment of matters before this Court in the exercise of powers under Article 199 of the Constitution is available requires a certain qualification especially in case where the full length trial has taken place before the special forum provided under the family laws i.e the special law providing for the same; the present case as not found qualifying to the same. Perhaps learned counsel for the petitioner has not gone through the record. Had he gone through the record he would have seen that the alleged divorce deed dated 04.08.2022 never saw the light of the Court despite evidence of the alleged executed deed on 19.10.2022 when even the existence thereof has failed to come up. The learned appellate Court in the circumstances is found correct in considering that divorce between the parties is not present and as a result awarded maintenance of Rs.5,000/- to her to which no objection is found entertainable to entertain any of the prayers made.

6. In the above circumstances instant petition stands dismissed with costs throughout.

JUDGE

Sajjad Ali Jessar