

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1288 of 2023

[Mst. Ruqaya & others .....v.....Iftikhar Ahmed Siddiqi & others]

Date of Hearing : 13.03.2024

Petitioners through : Mr. Muhammad Nazim Khokhar,  
Advocate.

Respondents through : Mr. Imtiaz Ali Khoso, Advocate for  
respondent No.1  
Mr. Ahmed Khan Khaskheli, AAG.

## ORDER

**Zulfiqar Ahmad Khan, J:-** The petitioner mother impugned the Judgment of the learned trial Court dated 22.07.2023 passed in Family Suit No.95/2022 and Judgment dated 15.11.2023 passed in Family Appeal No.149/2023 by learned Additional District Judge-VII South, Karachi (“Impugned Judgments”).

2. The anxiety of the petitioner is that the petitioner No.2/minor is going to school and that the maintenance granted by the learned trial Court at the rate of Rs.7500/- is not meeting the requirements of the minor, therefore, the maintenance amount fixed by the learned trial Court be increased as prayed in the suit and side by side the Iddat period maintenance be increased which was fixed at the rate of Rs.5000/- by the learned trial Court.

3. Learned counsel for the respondent No.3 contended that the instant petition is not maintainable as the same challenges concurrent findings in the family matter, therefore, the instant petition be dismissed.

4. I have heard the arguments of learned counsel for the petitioner and examined the available record. In Pakistan, issues

related to child maintenance are dealt with by the Muslim Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964. However, these laws do not provide a specific definition for "maintenance." For better understanding it is suitable to rely on the dictionary meaning of the term. 8. The word "maintenance" is derived from Arabic word "Nafaq" which means "to spend" and in literal sense, the word "nafaqah" means what a person spends on his family. The word "maintenance" has been defined in Black's Law Dictionary<sup>1</sup> as under:

"Financial support given by one person to another."

5. It has been defined in Section 369 of the Principles of Muhammadan Law by D.F Mulla in following words: "369. Maintenance defined.

"Maintenance" in this Chapter includes food, raiment and lodging."

6. Such definition of maintenance is not exhaustive. The word "includes" is generally used in interpretation clauses in order to enlarge the meaning of words or phrases, occurring in the body of the Statute; and when it is so used those words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

7. In this view of the matter, it does not exclude other necessary expenses for mental and physical well-being of a minor. This view is

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<sup>1</sup> *Blacks Law Dictionary 9<sup>th</sup> Edition 2009*

also fortified by the judgment in Arslan Humayun and another<sup>2</sup> wherein it was held that Section 369 ibid has a wider connotation and should be given an extended meaning, for the purposes of social, physical, mental growth, upbringing and wellbeing of the minor.

8. Undeniably, the Almighty Allah is the only sustainer, but, He has created means through which this task is accomplished. Bearing the expenses of children is the second most important task of the father<sup>3</sup>.

9. In Islamic law “maintenance” is termed as Nafaqah and signifies all those things which are necessary to support life. It is the legal and religious duty of a man to maintain his wife and children. The obligation to maintain wife and children is derived from the Holy Quran and is one of the incidences of marriage. Verse 233 of Surah Al-Baqarah says:

“...and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing<sup>4</sup>.”

10. Furthermore, Verse 34 of Surah An-Nisaa enjoins:

*“Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means.”*

11. Thus, right of child to be maintained by the father is ordained by Islamic law as mentioned above.

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<sup>2</sup> PLD 2013 SC 557

<sup>3</sup> Nasr, Sayyad Hossein, *Islmaic Spirituality Foundations, Crossroad, New York, 1987.* page 147.

<sup>4</sup> Holy Qur'an, 2:233

12. Similarly, under Pakistani law, the maintenance of a child is an obligation primarily upon the father. The Family Courts Act 1964 and the Muslim Family Laws Ordinance 1961 (“MFLO”) deal with the issue of maintenance of minors in Pakistan.

13. All the civilized nations of the world have recognised that children have rights by virtue of being children. These obligations are also *erga omnes*<sup>5</sup> and have since been codified in the United Nations Convention on the Rights of the Child, 1989 (the “UNCRC”). UNCRC is an international treaty which sets out the rights of children. The State of Pakistan ratified the UNCRC on 12.11.1990 with its only reservation that its Articles will be interpreted in light of Islamic injunctions. However, in 1997, this reservation was withdrawn, thus, ratification became absolute.

14. Article 27 of the UNCRC is reproduced below for ease of reference;

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

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<sup>5</sup>*Erga omnes* means those obligations that are owed to international community as a whole.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

15. Said Article must be read with Article 3 paragraph 1 of the UNCRC, which reads as under

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

16. The concept of the “child's best interests” is not new. Indeed, it pre-dates the Convention and was already enshrined in the 1959 Declaration of the Rights of the Child<sup>6</sup>, the Convention on the Elimination of All Forms of Discrimination against Women, 1979<sup>7</sup>, as well as in regional instruments and many national and international laws<sup>8</sup>.

17. When assessing and determining the best interests of a child the obligation of the State to ensure the child such protection and care as is necessary for his or her well-being<sup>9</sup> should be taken into consideration. Children's well-being, in a broad sense includes their

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<sup>6</sup> Declaration of Rights of Child, 1959, para.2

<sup>7</sup> Article 5(b) and 16(1)(d).

<sup>8</sup> 8 UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para.2

<sup>9</sup> UN Convention on Rights of Children, 1969, Article 3 para 2

basic material, physical, educational, and emotional needs, as well as needs for affection and safety<sup>10</sup>.

18. It is in the best interests of the child to have access to quality education, including early childhood education. All decisions on measures and actions concerning a specific child must respect the best interests of the child or children, with regard to education<sup>11</sup>.

19. The above discussion leads me to draw a conclusion that it would be absolutely safe to include educational expenses also within the concept of maintenance of a child. Admittedly, minor/petitioner No.2 is studying in school, thus, in order to meet his educational expenses and other miscellaneous including medical, he requires sufficient amount. Therefore, the instant petition is allowed and the Judgment of the learned trial Court is set aside to the extent that the maintenance should be payable at the rate of Rs.10,000/- per month for the petitioner mother and same for the minor from the date i.e. 20.10.2013 when the petitioner mother and the minor (petitioner No.2) were kicked out from the respondent No.1's house.

Karachi  
Dated: 13.03.2024

JUDGE

Aadil Arab.

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<sup>10</sup> UN Committee on the Rights of the Child (CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC /C/GC/14, para 71.

<sup>11</sup> *Ibid.*, para 79.