

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-924 of 2022

Date	Order with signature of Judge
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- 1.For hearing of MA No.6443/2022
- 2.For hearing of main case

21.02.2024

Mr. Idrees Ahmed, Advocate for petitioner.
Mr. Nawaz Ahmed Khan, Advocate for respondent No1

Through this petition, the petitioner impugns an order dated 24.09.2022 passed in Family Execution No.03/2020 (Family Suit No.2145/2019) by learned respondent No.2.

Learned counsel for the petitioner premised his case on the arguments that the learned respondent No.2 decreed the suit filed by the petitioner for recovery of maintenance of two minors namely Baby Anabia and Baby Wareesha vide Judgment dated 25.08.2020 whereby the respondent No.1 was directed to pay maintenance of Rs. 10,000 for each minor from the date of filing of the suit, however, no maintenance has been paid by the respondent No.1 but the learned respondent No.2 granted time to the respondent No.1 as well as respondent No.1 was allowed to pay the maintenance on installments. Learned lastly contended that the respondent No.1 never paid maintenance to the minors which is the obligation of the respondent No.1 and that the minors are starving, therefore, impugned order be set aside directing the learned Executing Court to execute the decree in the matter as it was passed.

Learned counsel for the respondent No.1 contended that the respondent No.1 is a poor person and can pay the maintenance on installments and that the learned executing Court having seen the circumstances allowed the respondent No.1 to pay maintenance on installment, therefore, the impugned order be sustained and petition be dismissed.

Heard and perused the 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 Dictionary¹ as under:

“Financial support given by one person to another.”

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.”

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

¹ Blacks Law Dictionary 9th Edition 2009

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.

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 also fortified by the judgment in *Arslan Humayun* and another² 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.

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 father³.

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 clothing⁴.”

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.”

² PLD 2013 SC 557

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

⁴ *Holy Qur'an, 2:233*

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

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.

All the civilized nations of the world have recognised that children have rights by virtue of being children. These obligations are also *erga omnes*⁵ 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.

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

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

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.

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.

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.”

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 Child⁶, the Convention on the Elimination of All Forms of Discrimination against Women, 1979⁷, as well as in regional instruments and many national and international laws⁸.

When assessing and determining the best interests of a child the obligation of the State to ensure the child such protection and

⁶ Declaration of Rights of Child, 1959, para.2

⁷ Article 5(b) and 16(1)(d).

⁸ 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

care as is necessary for his or her well-being⁹ should be taken into consideration. Children's well-being, in a broad sense includes their basic material, physical, educational, and emotional needs, as well as needs for affection and safety¹⁰.

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 education¹¹.

In view of the above rationale and deliberations demonstrated above, the petition at hand is allowed and impugned order dated 24.09.2022 is set aside and the learned Respondent No.2 is directed to proceed in the matter in accordance with law and conclude the proceedings without any further loss of time, but strictly in accordance with law.

JUDGE

Aadil Arab

⁹ UN Convention on Rights of Children, 1969, Article 3 para 2

¹⁰ 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.

¹¹ *Ibid.*, para 79.