

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 138 of 2024

(Naimatullah Mahar v. Mst. Nazia Mahar)

Date of hearing : **16.09.2024**

Date of decision : **16.09.2024**

Mr. Abdul Hafeez Bandhani, Advocate for petitioner.

ORDER

Zulfiqar Ahmad Khan, J. – Through this Constitutional Petition, the petitioner has impugned the judgment and decree dated 08.03.2024, passed by learned Family Judge / Presiding Officer, Consumer Protection Court, Sukkur in Family Suit No.25/2022, and the judgment and decree dated 03.06.2024, passed by learned Additional District Judge-V, Sukkur in Family Appeals No.30/2024 and 31/2024.

2. The respondent, as the plaintiff, filed a Suit for maintenance stating that she is a Doctor of Physiotherapy (D.P.T) Graduate from Peoples Women Medical University, Shaheed Benazirabad, and at the time of her marriage with the petitioner, the defendant, she had just started her house job from 02.05.2019 at P.M.C. Hospital, Shaheed Benazirabad; hence, after her marriage she continued with the same job. As per respondent's claim, though it was pre-decided and also the liability of the petitioner to pay her maintenance and educational expenses, but after two months of the marriage, the petitioner refused to oblige the same. It is alleged that on 28.01.2020, after a quarrel between the petitioner and respondent, the respondent called her father, and the petitioner not only misbehaved with her father but also asked her to leave his house immediately, otherwise he will kill both of them. As a consequence, the respondent left petitioner's house in wearing apparels. Subsequently, the respondent went to the office of petitioner and showed him admission letter of Post-Graduation of

RIFFAH University, Islamabad and requested him to bear such expenses, who, as per her statement, agreed to pay not only the past maintenance and expenses but also the future educational expenses as well as maintenance, but he failed to do so. Thereafter, the respondent, finding no fruitful results after her efforts to settle the matter, filed the aforementioned Suit claiming her house job expenditures in the sum of Rs.1,60,000/- (Rs.20,000/- per month for 8 months), her educational expenditures of RIFFAH University for four semesters amounting to Rs.2,46,000/- and Rs.9,00,000/- as her maintenance @ Rs.30,000/- per month for 30 months from October 2019 to March 2022.

3. In response, the petitioner filed a written statement in terms of restitution of conjugal rights and also filed a separate Family Suit No.32/2022 before the same Family Court in this respect, which, however, was dismissed with no order as to costs vide order dated 05.10.2022 on the ground that the Suit for maintenance is pending adjudication, and in that Suit the petitioner (defendant) through his written statement has already claimed restitution of conjugal rights, hence, the latter Suit is barred under the law.

4. The trial Court ultimately decreed the Suit in favour of the respondent (plaintiff), awarding her past maintenance @ Rs.8,000/- per month from February 2020, and future maintenance @ Rs.9,000/- per month until the continuation of the marriage, with a 10% annual increment. The trial Court also mandated the respondent to return to her matrimonial home and resume cohabitation with the petitioner, emphasizing the importance of familial unity.

5. Both parties appealed the trial Court's judgment and decree. The appellate Court upheld the trial Court's findings regarding past maintenance, but held that the respondent was not entitled to the claimed educational expenses or future maintenance for herself. This decision

effectively limited the respondent's entitlements to the awarded past maintenance only.

6. During the course of hearing, learned Counsel for the petitioner placed on record a judgment and decree dated 16.08.2024 passed by learned Family Judge / Presiding Officer, Consumer Protection Court, Sukkur in Family Suit No.89/2024 concerning the dissolution of marriage of present respondent and petitioner through *khula*. However, this judgment does not affect the findings of the maintenance proceedings. The resolution of maintenance and the restoration of conjugal rights are distinct issues that have been resolved independently, and the *khula* judgment does not provide grounds for altering the maintenance awards.

7. The issues surrounding maintenance and the respondent's claims have been addressed by both the Courts below, and the petitioner has not presented any new facts or legal arguments that could warrant a re-examination of these issues. The Courts below have observed that the respondent (plaintiff) has not produced any document requiring the petitioner (defendant) to pay her academic expenses and no witness in support of such assertion has been examined. Regarding the claim of huge amount of maintenance and payment of educational expenses, nothing was written in the *nikahnama* and no written agreement in this respect is available on the record. The Courts below have rightly held that in view of the fact that the respondent denied to join her husband (petitioner) and only prayed for such claims, the petitioner is not bound to pay the same. The trial Court awarded her past maintenance @ Rs.8,000/- per month from February 2020, and future maintenance @ Rs.9,000/- per month until the continuation of the marriage, with a 10% annual increment, however, the appellate Court limited the decision to payment of past maintenance only, which was Rs.8,000/- per month.

8. Since the trial Court and the appellate Court have not allowed the educational expenses of the respondent (plaintiff), for which the petitioner (defendant) was not legally bound under the prevailing maintenance laws, and the appellate Court has held that the respondent (plaintiff) is not entitled for future maintenance for herself as she denied to join her husband (petitioner) though he was agreed to perform his part, the only thing which has left is the past maintenance, which was though claimed @ Rs.30,000/- per month but was awarded @ Rs.8,000/- per month, which seems to be a favourable decision for the petitioner. The petitioner has failed to present sufficient grounds for this Court to interfere with the well-reasoned judgments of the Family Court as well as the Appellate Court.

9. In light of the foregoing reasons, instant Constitutional Petition is **dismissed in *limine***. Above are the reasons of my short order dated 16.09.2024.

J U D G E

Abdul Basit