

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. S- 80 of 2023
(Ghulamullah Dasti vs. Mst. Sabhai and others)

Date of hearing and Order: 24.02.2025.

Mr. Ashique Hussain Leghari, Advocate for Petitioner.

Mr. Ghulam Abbass Kuber, Assistant Advocate General Sindh.

ORDER

Adnan-ul-Karim Memon J:- The Petitioner prays that this Court grants the instant petition, by setting aside the judgment and decree dated March 22, 2023, and March 23, 2023, respectively, passed by the Additional District Judge, Mirwah, in Family Appeal No. 34/2022, and remand the case to the appellate court for a fresh decision on the merits. Alternatively, the Petitioner prays for any other relief this Honorable Court deems just and equitable, as the Petitioner is not obligated to pay maintenance to the Respondent, Mst. Sabhai, due to her status as a divorced woman. An excerpt of the order passed in the family suit is reproduced as under:-

“ It is ordered that the plaintiff is entitled for recovery of maintenance at the rate of Rs:10000/-per month from the filing of her suit till the subsistence of her marriage and the defendant is directed to pay the maintenance Rs: 7000/- per month for minors namely Aleeza aged about 10 years and Tahira aged about 15 years and maintenance for minor Aresha fixed Rs.6000/- per month till their legal entitlement and for adult male Gul Mohammad aged about 18/19 fixed Rs: 6000/- per month from the filing of the suit till completion of his university education, further other females adult namely Aneela and Aqeela are married therefore they are not entitled for maintenance as they are residing with their husbands.”

2. The respondent is seeking maintenance from her husband/petitioner after a long-term marriage that had deteriorated. They were married approximately 30 years ago, according to Islamic law, and have six children together. The husband failed to pay the agreed-upon dowry (Haq Mehr) of 10 Tola of gold. The marriage was initially harmonious, but the husband allegedly began mistreating his wife, neglecting his financial responsibilities, and marrying another woman without her consent in 2009. His behavior worsened after the second marriage and at the urging of his second wife, he forcibly evicted his first wife/respondent and four of their minor children from their marital home. Respondent has since been living with her parents, who have borne all their expenses. The petitioner has provided

no financial support or contact. The respondent/wife reports suffering emotional distress and developing diabetes due to his actions. Her parents have incurred significant medical and living expenses for her and the children. The petitioner, an Assistant Professor, is financially capable of providing for his family but has willfully neglected his legal and Islamic obligations. The respondent is seeking legal intervention to obtain maintenance for herself and her minor children, which family suit was decreed and appeal preferred by the petitioner was too dismissed vide the judgment and decree dated March 22, 2023, and March 23, 2023, respectively, passed by the Additional District Judge, Mirwah, in Family Appeal No. 34/2022.

3. Learned counsel for the petitioner submits that the impugned judgment and decree issued by the Learned Additional District Judge, Mirwah, are contrary to law, facts, and equity, and are therefore unsustainable and liable to be set aside. That the learned Appellate Court failed to consider the Petitioner's crucial plea that the Respondent was/is not entitled to maintenance, as she is a divorced woman. The Petitioner asserts that he divorced the Respondent on April 18, 2019, as evidenced in paragraph 9 of the written statement filed before the Family Court, Mirwah, and reiterated in his appeal before the Additional District Judge in Appeal No. 34/2022. This fundamental argument was disregarded by both lower courts. That the judgment and decree passed by the Learned Additional District Judge, Mirwah, are contrary to established principles of law and justice and are therefore liable to be set aside.

4. We have heard the learned counsel for the petitioner on the maintainability of the petition and perused the record with his assistance.

5. A Family Court judgment dated April 26, 2022, ordered the Judgment Debtor to pay maintenance to his wife (Mst. Sabhai) and their children. This judgment was upheld by the Additional Sessions Judge in Family Appeal No. 34/2022. The Decree Holder filed an Execution Application to enforce a maintenance judgment. The Judgment Debtor filed objections, claiming the judgment was under challenge before this Court. However, the Judgment Debtor does not object to the child's maintenance.

6. The trial court calculated the arrears of maintenance due for Mst. Sabhai: Rs. 380,000 (Rs. 10,000 per month from June 2020 to August 2023), with ongoing maintenance at Rs. 10,000 per month until the legal end of the marriage. For Aliza and Tahira: Rs. 266,000 (Rs. 7,000 per month each for 38 months), with

ongoing maintenance at Rs. 7,000 per month each until they reach legal entitlement. For Areesha: Rs. 228,000 (Rs. 6,000 per month for 38 months), with ongoing maintenance at Rs. 6,000 per month until she reaches legal entitlement. For Gul Muhammad: The Judgment Debtor is ordered to reimburse Gul Muhammad's university education expenses, including fees and books until he completes his education. The Judgment Debtor was ordered to deposit the total arrears within 30 days to the trial court's Nazir and to continue making monthly maintenance payments as per the decree. Failure to comply will result in recovery of the arrears as land revenue.

7. This court found no legal errors in the challenged judgments. The petitioner, despite having two wives, failed to maintain the respondent, claiming divorce. This forced her into unnecessary and prolonged legal battles. This court condemned this frivolous litigation, which burdens the judicial system. The petitioner's defense was deemed baseless, and his continued appeals were likely due to the lack of cost penalties and the courts' failure to enforce initial compliance. This court reiterated that challenging a judgment does not exempt one from immediate compliance.

8. This petition is dismissed with costs.

JUDGE

