

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 134 of 2024

(Jameel Ahmed Maitlo v. Mst. Mumtaz Khatoon)

Date of hearing : **10.03.2025**

Date of decision : **10.03.2025**

Mr. Waqar Ali Phulpoto, Advocate for petitioner.

ORDER

Zulfiqar Ahmad Khan, J. – Through this petition, the petitioner challenges the judgment dated 22.06.2024, passed by learned Additional District Judge-II, Khairpur in Family Appeal No.01 of 2024, whereby the appeal has been dismissed by maintaining the order dated 06.12.2023, passed by learned Civil / Family Judge, Khairpur in Family Execution No.04 of 2023, in which the execution application was allowed after decreeing the Family Suit No.175 of 2021 by judgment and decree dated 09.06.2022.

2. The case of the petitioner is that the respondent filed a suit for maintenance stating that she married the petitioner 15 years ago, and from this wedlock they have three children: Arslan, Baby Aqsa and Baby Kubra. By passage of time, the petitioner became abusive, failed to provide maintenance and eventually forced the respondent to leave his house, taking her dowry and leaving her to take shelter in the house of her parents. The petitioner took custody of his son, Arslan, but has neglected his responsibilities towards his wife (the respondent) and daughters, despite being a government teacher with a stable income. Since then, the respondent is maintaining herself and her daughters by earning income from sewing clothes and working in polio team. The respondent sought maintenance for herself (Rs.15,000/-) and for her two minor daughters (Rs.8,000/- each) as the petitioner is legally bound to provide support but has refused to do so.

3. The petitioner filed his written statement denying the allegations against him and stated that he did not oust the respondent but she herself left his house about six months ago. He claimed maintaining his wife (the respondent) and daughters properly. He also affirmed that he has contracted second marriage, but claimed it to be with the respondent's permission.

4. The trial Court, after recording of evidence and hearing the parties, decreed the suit by judgment dated 09.06.2022 in the following terms:

“11. The upshot of the above discussion is that; the suit of the plaintiff is decreed accordingly with no order as to costs. The plaintiff Mst. Mumtaz Khatoon being legally wedded wife of defendant is entitled for her maintenance from the defendant at the rate of Rs.8000/- (Eight thousand) per month from the date of institution of this suit till she is in the matrimonial bond with defendant with 10% future increase per annum. Minor baby Aqsa and baby Qubra being legitimate children of defendant are entitled to their maintenance from defendant, therefore defendant is liable to maintain his minor daughters baby Aqsa and baby Qubra at the rate of Rs.8000/- (Eight thousand) per month for each daughter from the date of filing of this suit till minor baby Aqsa and baby Qubra get married, with 10% future increase per annum. Let the decreed be prepared.”

5. Subsequently, the execution application filed by the respondent was allowed vide order dated 06.12.2023, which was then challenged by the petitioner in appeal, but that appeal was dismissed by judgment dated 22.06.2024. Hence, this petition has been filed.

6. Heard learned Counsel for the petitioner and perused the material available on record.

7. At the very outset, it has been revealed that the petitioner is attempting to excuse himself off his legal obligations, which is evident from his new claim before this Court (Ground No.8 of the petition) that he

divorced the respondent in 2016, for which he has presented a Divorce Registration Certificate and a Form for Issuance of CNIC by NADRA indicating his marital status as “divorced” (Pages-51 and 53 of the petition). The divorce registration certificate is showing that he divorced the respondent on 18.10.2016, but astonishingly this certificate was applied and issued on 24.04.2024. Similarly, the form for issuance of CNIC bears the date of issuance as 02.05.2024. This means that these documents have been obtained after the judgments / orders of the Courts below have been passed and admittedly were not part of the initial evidence.

8. The petitioner has failed to present any evidence of this divorce before the trial Court or the appellate Court. In contrast, he has admitted in his written statement that the respondent as per her own will left his house six months ago. He filed the written statement on 23.11.2021, and now he is claiming that he had divorced the respondent in 2016, which is seemingly unjust. The submission of divorce document and a CNIC form indicating his marital status as divorced, to me, is only a recent attempt to avoid his obligations, as the trial Court’s judgment was passed in year 2022. Had the divorce occurred in 2016, this information would have been presented during the trial proceedings, or at the very least, raised in the defense by the petitioner during the execution phase, or in the last, before the appellate Court, but nothing has been done.

9. As per established Islamic law and the principles enunciated by the Hon’ble Supreme Court of Pakistan, a husband is bound to maintain his wife throughout the period she remains in a matrimonial bond, and the children (daughters) till their marriage. As such, the petitioner remains legally obligated to provide maintenance for the respondent and the children, as per the trial Court’s judgment.

10. It is quite clear that the trial Court, after considering the petitioner's living conditions, fixed the maintenance amount for his wife (the respondent) and two daughters, which decision, after allowing of the execution application, has been upheld by the appellate Court. It is well settled that the trial Court is the primary fact-finding authority, and having thoroughly examined the entire record presented to it, the trial Court fixed the maintenance amount, which does not warrant any interference.

11. In light of the above, the petition at hand is **dismissed**. The petitioner has submitted two documents i.e. divorce registration certificate and form for issuance of CNIC from NADRA, which have been obtained after the decisions of the Courts below where no such plea was taken, which appear to be submitted with the intention to mislead this Court and deprive the respondent of her rightful maintenance. Therefore, a cost of Rs.5,000/- is imposed on the petitioner, to be paid in the High Court's Library Fund.

These are the reasons of my short order dated 10.03.2025.

J U D G E

Abdul Basit