

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

**C.P. No.S-438 of 2020.**

Dehraj @ Wanio	-----	Petitioner
VERSUS		
Sht. Surma & others	-----	Respondents

**Date of hearing & decision: 05 .10.2020.**

Mir Sajjad Ahmed, Advocate for the petitioner.

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**ORDER**

**ADNAN-UL-KARIM MEMON, J -.** The petitioner has impugned the judgment dated 29.1.2020 passed by learned Family Judge Sanghar, in Family Suit No.206/2019 whereby the learned Family Court disposed of the suit of the respondent No.1 for maintenance. The petitioner challenged the Judgment by filing Family Appeal No. 08/2020 before learned IInd Additional District Judge (MCAC) Sanghar, which was dismissed vide order dated 10.09.2020, hence the instant petition.

2. Precise facts of the case are that petitioner and respondent No.1 married in 2004. Out of said wedlock, three children were born. Their matrimonial life could not be flourished, compelling the respondent No.1 to institute Family Suit No.206 of 2019 before the learned Family Court Sanghar for maintenance. The parties led evidence before the learned Trial Court on the following issue/point: --

Whether the Plaintiff and her minor children are entitled to maintenance, if yes, since when & what rate?

On the above issue, respondent No.1 Sht. Surma examined herself as Exh.P-1 and so also her father namely Kheemo as witness at Exh. P-2. Petitioner Dehraj examined himself at Exh.D-1 and his uncle namely Maloo Mal at Exh.D-2.

3. The learned Family Court gave finding on the aforesaid issue and allowed Family Suit vide judgment and decree dated 29.01.2020. An excerpt of the judgment is as under:

**ISSUE NO.II:**

In view of reasons discussed in Issues Nos. I & II; Plaintiff No.1 is entitled to her past maintenance from December 2012 till today @ rate of Rs.1,000/- per month and for future at the rate of Rs.2,000/- per month with an increase of 10% per annum till she rejoins the defendant. The Plaintiff Nos.02 to 04 namely Chanda Tulsi and Teerath are entitled to their past maintenance from December 2012 till today @ the rate of Rs.1,000/-each per month and for the future at the rate of Rs.2,000/- each per month with an increase of 10% per annum till they rejoin the

defendant or attain the age of legal entitlement. The matter stands disposed of accordingly with no order as to cost. Let such decree be prepared accordingly.

4. Petitioner being aggrieved by and dissatisfied with the findings of learned Family Court preferred Family Appeal No.8 of 2020 before Additional District Judge (MCAC), Sanghar, which was dismissed on the point of limitation vide order dated 10.9.2020. An excerpt of the same is as under:-

“Heard learned counsel for appellant/defendant and perused the record, it transpired that the learned trial court passed the impugned Judgment and Decree dated 29.01.2020 and its period/limitation to file the appeal within 30 days, which were completed on 27.02.2020 and the ground taken by the learned counsel that the appellant could not file the instant appeal due to COVID-19 and lockdown. In this respect, it appears that the lockdown due to COVID-19 started from 20<sup>th</sup> March 2020 in all over Sindh and the same was ended on 3<sup>rd</sup> August 2020, hence the ground of COVID-19 is not attracted to the instant case, as such, the appellant appears to be careless, negligent and deliberately delayed filing of appeal even after obtaining a copy of impugned Judgment and Decree, as such the said Judgment and Decree were issued and delivered on 12.02.2020 for which the appellant/defendant failed to assigned cogent reason for approaching Court for redressal. It also came to know that the appellant/defendant filed the instant appeal after filing of execution application by Decree Holder, hence no cogent reason having been given for condonation of delay.

I fortified the law reported in PLJ 2000 Kar. 123 and 2000 CLC 831, where the defaulting party could not make out the good cause for condonation of delay, such a party could not be allowed.

Lapse of the prescribed period of limitation. Doors of justice are closed after the lapse of a prescribed period of limitation and no plea of justice, hardship, or ignorance could be agitated unless delay so caused was fully justified legally and each day must be accounted for by legal and valid reason. In this respect, I fortified the law reported in PLJ 2000 Cr.C (Services) 517. Case delay of each day is to be explained by furnishing sufficient cause for seeking condonation of delay U/S 5 of Limitation Act. Consequently, the instant application is dismissed being barred by law under the Limitation Act.”

5. Mir Sajjad Ahmed learned counsel for the petitioner, contended that the Petitioner being a father of children can be held responsible for payment of maintenance according to his financial position; that the Petitioner is denied relief based on technicalities; that even in absence of any evidence, learned Family Court was obliged to consider all the relevant factors while fixing the quantum of maintenance; that the impugned Judgment and Decree lacks application of judicious mind by learned Family Judge. Learned counsel added that even otherwise the Petitioner has a meager source of income to satisfy the Decree of Appellate Court, which is harsh and arbitrary. It is contended that Appeal has been dismissed by learned Additional District Judge arbitrarily based on extraneous factors; that learned Appellate Court has failed to discuss the age factor of the minor; that learned Family Court erroneously relied upon the photocopies of documents produced by Respondent No.1 which were never produced in evidence; that the impugned Judgments and Decrees of learned Family and Appellate Court are not sustainable under the law. Therefore, prayed for setting aside the same.

6. I have heard learned counsel for the petitioner on the point of maintainability of the instant petition.

7. Prima-facie the issue involved is 'maintenance allowance for Respondent No.1 and minor children by the Petitioner.

8. 'Maintenance' means and includes food, clothing, and lodging which is the responsibility of the father to pay to his children and wife. In this regard, it is noted that Section 17(A) of the West Pakistan Family Courts Act, 1964 specifically provides in sub-section to fix maintenance. The Honorable Supreme Court of Pakistan has considered the aforesaid issue in the case of Humayun Hassan v. Arslan Humayun and another (PLD 2013 SC 557) and held as under:-

"Again in interpreting the word "maintenance" some reasonable standard must be adopted. Whilst it is not confined merely to food, clothing, and lodging, it cannot, by any stretch of the imagination, be extended to incorporate within its education at higher levels ad infinitum. What is necessary to decide in this connection is to find out as to what amount of education has to be attained by the child concerned, having regard to the status and other circumstances of his family, to enable it to earn a complete livelihood by honest and decent means. Thus it may not be sufficient to say that the child of a tradesman can maintain itself by working as coolly or by thieving. What is required is that the child must be maintained until it is in a position to earn its livelihood, in an honest ad decent manner in keeping with its family status."

9. Learned counsel for the Petitioner has not been able to point out any illegality, infirmity or jurisdictional defect in the impugned judgments and decrees passed by both the Family and Appellate Court.

10. In the light of foregoing, I have formed a view that it is the responsibility of the Petitioner (father) to take care of his minor children as well as his estranged wife. The mere statement of Petitioner that he is not earning much does not discharge him from the said responsibility.

11. Under the law, the object of determining maintenance is to ensure in all respect that the minor(s) is / are maintained by the father in a dignified manner with reasonable comfort, and the mother is not left to bear the financial burden of the minor(s).

12. From the foregoing legal as well as factual aspect of the case, I hereby conclude that the decision of learned Family as well as Appellate Court is fair, and just hence, the same is maintained.

13. Consequently, this Petition is dismissed with no order as to costs.

**JUDGE**