

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

**C.P. No. S- 730 of 2019**

Mst. Shakeela ----- Petitioner

VERSUS

Muhammad Arif Abbasi & another----- Respondents

**Date of hearing** : **28.09.2020**

**Date of decision** : **5.10.2020**

Ms. Samina Ajmaree, Advocate for Petitioner  
None present for Respondent

**ORDER**

**ADNAN-UL-KARIM MEMON, J:** - In the instant Petition, Petitioner has impugned Judgment and Decree dated 08.5.2019 passed in Family Suit No.287 of 2018 by learned V-Civil and Family Judge, Hyderabad.

2. Brief facts of the case are that the Petitioner and Respondent No.1 married on 23.7.2016. That out of the said wedlock one son namely Ameer Hamza was born. However, the relationship between the parties (couple) remained strained resulting in Talaq-e-Raji (Revocable Divorce) pronounced by Respondent No.1 on 29.12.2017. That after dissolution of marriage, Respondent No.1 failed to maintain the Petitioner and his child. Therefore, on 28.2.2018, the Petitioner instituted a suit for 'maintenance and return of dowry articles valuing Rs.500,000/- mentioned in the list submitted before Family Court, Hyderabad. In the said Suit, Petitioner specifically prayed for past maintenance of 01 year @ Rs.5,000/- per month with effect from February 2017 till the date of filing of suit and maintenance for minor at Rs.10,000/- per month with effect from 26.05.2017 (date of birth of the child) till the child attains the age of majority with 10% increase per annum. The Respondent No.1 filed written statement denying almost all the claims of Petitioner. The learned Family Judge allowed the Family Suit and held the Petitioner entitled to Rs.2,000/- (Rupees two thousand) per month as maintenance for self from the date of filing of the suit and onwards; Petitioner was also held entitled to Rs.2000/- (Rupees two thousand) per month as maintenance of minor (Ameer Hamza) from the date of filing of the Suit i.e. 27.02.2016 till his legal entitlement with an increment @ 10% per annum; Petitioner was further entitled to recovery of her dowry articles as per list

(annexed with the plaint), except jewelry/ornaments and compensation of Rs.40,000/- thereof.

3. The Petitioner feeling aggrieved by and dissatisfied with the above-specified findings of learned Family Judge preferred this Constitutional Petition on the premise that Petitioner has spent life in hardships due to non-payment of maintenance allowance, leaving her and minor son at the mercy of Almighty Allah; that the Respondent No.1 is bound to pay medical and delivery expenses, payment of past and future maintenance; that Family Court failed to examine the evidence available on record, hence, the impugned judgment is based upon misreading and non-reading of evidence. It is further asserted that learned Family Court while confining the issue to maintenance only has ignored the Petitioner's claim of gold ornaments, dowry articles, and compensation duly made in the plaint.

4. The learned Trial Court out of pleadings of the parties framed the following issues:

1. Whether the plaintiff is entitled to her maintenance from the defendant. If yes, since when and at what rate?
2. Whether the plaintiff is entitled to maintenance of minor from the defendant. If so, since when and at what rate?
3. Whether the plaintiff is entitled to recovery of her dowry articles or for compensation thereof in the alternative, if so of which articles and at what rate?
4. Whether the plaintiff is entitled to her delivery expenses. If so, at what rate?
5. What should the decree be?

5. After recording evidence of the parties, learned Trial Court decided the suit vide Judgment dated 08.5.2019. An excerpt of the order is reproduced as under:-

"18. Issue No.5: The Decree should be that (a) Plaintiff is entitled to Rs.2,000/- (Rupees two thousand) per month as her maintenance from the filing of the suit and onwards; (b) Plaintiff is also entitled to Rs.2000/- (Rupees two Thousand) as maintenance of minor from date of filing of the suit i.e. 27.02.2016 till his legal entitlement with an increment @ 10% per annum; (c) Plaintiff is entitled to recovery of her dowry articles as per list (annexed with the plaint) on as is where basis, except jewelry/ornaments or to compensation of Rs.40,000/- thereof."

6. Ms. Samina Ajmaree, learned counsel for the Petitioner has argued that under the law Respondent No.1 was / is bound to provide maintenance to the Petitioner and his minor son. That the amount awarded by learned Family Court is a meager amount keeping in view the current rate of inflation, thus not sustainable and liable to be enhanced; that learned Family Court

has not assigned valid reasons while discussing the evidence in respect of claim of the Petitioner; that the judgment and decree of learned Trial Court may be modified by giving direction to Respondent No.1 to pay an amount of Rs.500,000 (rupees five lacs) to the Petitioner; besides other claims prayed for in the plaint may also be granted. She lastly prayed for allowing the instant Petition. In support of her contentions, learned counsel for the petitioner relied upon the case of Mst. Shazia Begum Vs. Additional District Judge, Islamabad and others (PLD 2014 SC 335) and a statement dated 28.9.2020 along with certified copies of Deposition of Petitioner, Witness of the Petitioner (Mst. Noor Jehan) and Respondent No.1 namely Arif Abbasi; learned counsel further argued that Respondent No.1 has admitted non-payment of delivery expenses to the Petitioner.

7. I have noticed that Respondent has been served through publication but, he has chosen to remain absent.

8. I have heard learned Counsel for the Petitioner and perused the material available on record.

9. The issue involved is about maintenance allowance to the petitioner and her minor child, delivery expenses, recovery of dowry articles and gold ornaments, or in alternative compensation thereof.

10. There is no cavil with the proposition that maintenance issue(s) about Muslim relatives, shall be governed and regulated by the principles/ injunctions of Islam i.e. as per personal law of the parties. To elaborate further on the subject, maintenance means and includes food, clothing, and lodging.

11. 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.”

12. In my view, under the law Respondent (father) is responsible to provide decent maintenance to his minor child according to his financial

capacity. 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.

13. I am not convinced with the maintenance fixed by learned Family Judge, Hyderabad as mentioned in para No.2 supra. That no plausible reason has been put forward by learned Family Court while awarding meager and unrealistic maintenance to the Petitioner and her son.

14. In the light of foregoing, I hereby modify the Judgment and Decree of learned Family Judge by enhancing the maintenance of Petitioner to Rs.5000/- (Rupees five thousand) per month for the same period as held by the learned Trial Court. The rate and duration of future maintenance of minor granted by the learned Trial Court is also enhanced to Rs.8,000/- per month with 20% increase per annum for the same period.

15. In so far as the claim of dowry articles as well as medical / delivery expenses of the Petitioner are concerned the same stand decreed as per the list provided by the Petitioner in the suit proceedings. That in case, the Respondent No.1 fails to return any article / item mentioned in the list, he shall be liable to compensate the same by paying the value / price of such an article / item to the Petitioner.

16. This Petition stands allowed in the above terms.

JUDGE