

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constitution Petition No. S-100 of 2018

Mst. Fareeda d/o Muhammad Aslam ***Petitioner***

versus

Abdul Haque s/o Hazoor Bux & others ***Respondents***

Mr. Abdul Rehman Bhutto, advocate for petitioner

Mr. Amanullah Iqbal, advocate for Respondent No. 1

Date of hearing: 16.11.2018

Date of order: 16.11.2018

ORDER

KHADIM HUSSAIN TUNIO, J- Through instant petition, the petitioner prayed for relief in the following terms:-

- a)*** *This Hon'ble Court may graciously be pleased to set-aside the impugned judgments and decrees of both courts below/respondents No. 2 & 3, allow the petition of the petitioner by granting the complete prayer clause "B" of Family Suit No. 28 of 2017.*
- b)*** *To award the costs of the petition.*
- c)*** *To grant any relief(s) to the petitioner, which this Hon'ble Court deems fit and proper in the circumstances of the case."*

2. Brief facts of the present constitutional petition are that the petitioner married Respondent No. 1 in the year 2005 and from the said wedlock had two issues namely Kainat (*aged about 9 years*) and Firdous (*aged about 07 years*). After the marriage, the respondent

No. 1's parents remained annoyed with the petitioner and she was mistreated and was not properly maintained even when she remained ill several times. The petitioner's parents sought permission from Respondent No. 1, but they were misbehaved with and the petitioner was dislodged and was restricted from meeting her children. She pleaded with the elders of respondent No. 1, however her efforts were of no avail, therefore she filed a Family Suit No. 28 of 2017.

3. Respondent No. 1 filed written statements, denying all the allegations of the petitioner, where after the trial court framed the following issues:-

- “1. Whether the defendant is residing separately to the plaintiff without any reason/justification?*
- 2. Whether plaintiff is entitled for maintenance, if yes, at what rate for which period?*
- 3. Whether the plaintiff is entitled for relief claimed?*
- 4. What should the decree be?”*

Learned trial court decreed the suit of the petitioner, allowed lump sum maintenance at the rate of Rs. 15,000/- from the filing of suit till iddat period vide impugned judgment dated 12.09.2017.

4. The petitioner preferred an appeal before the learned Appellate Court, who after hearing the parties and completing codal formalities passed impugned judgment and decree by modifying the maintenance rate of Iddat period to Rs. 25,000/- with directions to pay the same

within 3 months. The petitioner was dissatisfied with the same, hence she filed the present petition.

5. Learned counsel for the petitioner argued that the impugned orders passed by the two courts below are bad in law and facts; that it is clear that the respondent No. 2 & 3 have violated the basic principles of family laws of maintenance as per the prayer of the petitioner in letter and spirit, as such act of respondents No. 2 & 3 is a result of misreading, non-reading, non-applying of their judicious mind, miscarriage of justice by not allowing the prayer of the petitioner in the family suit; that the impugned judgments/decrees of the two courts below are not maintainable being bad in law as the same are neither based on evidence nor proper appreciation of evidence and law on relevant points/subjects; that both the learned courts below have failed to exercise jurisdiction vested in them but have exercised jurisdiction not vested in them and have acted in exercise of their jurisdiction illegally and with material irregularities in as much as the trial Court did not properly appreciate the evidence and failed to consider the crucial point that the evidence of petitioner/plaintiff was in consonance with contents of the plaint.

6. On the other hand, counsel for the respondent did not support the judgment and decree passed by the appellate court and argued that the judgment and decree of the trial court may be restored.

7. I have heard the learned counsels for the respective parties and have perused the record.

8. Without divulging, *deeply*, into the merits of the case itself, at the very outset, the appellate Court failed to provide any justification at all as to why it considered reducing the time period for the maintenance and enhancing the amount from Rs.15,000/- to Rs.25,000/- in lump sum, therefore the same was unjustified on the part of the appellate Court. The judgment and decree of the trial Court was well-reasoned and I could not find any grounds as to why the same was disturbed by the appellate Court. Considering the fact that the appellate Court, without any cogent reasoning or justification, altered the judgment and decree passed the learned trial court, the same (*judgment and decree of the appellate Court*) is set-aside, which has not been challenged by the respondent nor did he file any objections against the Family Court's judgment. Learned counsel for the respondent does not support the appellate court's judgment and frankly conceded the legal position and submits that the respondent/defendant is ready to pay the maintenance to the appellant/plaintiff as granted by the trial Court *i.e.* Family Court vide its judgment and decree.

9. Now, considering the fact that the counsel for respondent has issued a *no-objection* if the judgment and decree of the trial Court is restored, I would like to add here that since no illegality or infirmity

was committed by the trial Court while passing the impugned judgment/decree, the same is restored.

10. For whatever has been discussed above, present Constitutional Petition was allowed, *vide* short order dated 16.11.2018, in the following terms:-

“... this petition is allowed in the terms that the judgment of the appellate Court to the extent of modification of maintenance amount from Rs.15,000/- per month to Rs.25,000/- in lump sum is set aside and judgment and decree passed by the family/trial Court are restored.”

These are the reasons for the same.

J U D G E