

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

C.P. No.S — 892 of 2019.

Date of hearing: 30.11.2020.  
Date of short order: 30.11.2020.  
Date of reasons: 30.11.2020.

Petitioner: Through Mr. Riaz Ali Panhwar Advocate.

Respondents: Through M/s Ishrat Ali Lohar & Ashok Kumar  
Advocates.

**J U D G M E N T**

**MUHAMMAD SHAFI SIDDIQUI, J.-** Respondent No.1 filed a suit for the recovery of dower, dowry and maintenance which was defended by the petitioner by filing written statement. After the contest/trial the suit was decreed in terms of issue No.5 in the following terms:-

- (i) The Defendant is directed to pay Rs.10,00,000 (Rupees Ten lacs) to the Plaintiff as haqmahar (Dower) to the plaintiff.
- (ii) The Defendant is directed to pay Rs.20,000 per month as maintenance to the Plaintiff for 3 months Iddat period after divorce, totaling to Rs.60,000 as maintenance to the Plaintiff and also reduce the divorce deed into writing and send it to the Plaintiff and comply with the provisions mandated u/s 7 of the Muslim Family Laws Ordinance 1961.
- (iii) The Defendant is directed to deposit the maintenance for the minor before the Nazir of this Court on or before 14<sup>th</sup> of each English Calendar Month for minor, namely Baby Mumtenha at the rate of Rs.20,000/- (Rupees Twenty Thousand) per month since her date of birth that is 06-11-2014 till the disposal of the Suit and further at the rate of Rs.40,000 (Rupees Forty Thousand) per month from the disposal of this Suit till her legal entitlement with 10% annual increment every three years on or before every 15<sup>th</sup> of each English Calendar month.

2. Being aggrieved of the judgment and decree an appeal was preferred which was substantially dismissed except with the partial modification in respect of future maintenance fixed by the trial Court for minor. The minor baby Mumtehna was held entitled for maintenance at the rate of Rs.20,000/- per

month w.e.f. 16.11.2014 till the date of the decree and at the rate of Rs.30,000/- per month for future maintenance with 5% enhancement per annum instead of 40000/- and the decree was ordered to be drawn accordingly. In substance there are concurrent findings of two courts below.

3. The petitioner's counsel has argued this appeal on two counts. The argument No.1 was that the petitioner has never divorced respondent No.1 under the law and since she is a disobedient wife, therefore, she is not entitled for any maintenance. Learned counsel next argued that he is not in a position to pay the outstanding amount as the maintenance charges are not reciprocal to the amount earned by him.

4. In so far as answer to question No.1 is concerned, the petitioner himself in para-9 specifically admitted that he has divorced his wife on "cell phone". This was argued to be un-Islamic and unlawful. This could hardly be considered to be a lawful argument of the petitioner and thus inconceivable that he never divorced his wife. The admission of the petitioner in terms of para-9 of the written statement is sufficient to reach to an irresistible conclusion that petitioner divorced his wife and consequently she was held entitled for maintenance till '*Iddat*' period as held in terms of issue No.5 by the trial Court. In case the petitioner's incorrect statement is believed, he would still be liable to make payment of the maintenance amount till date. No Court declared her as disobedient wife. Be that as it may, since it is not the case of the respondent that she was never divorced, therefore, we conclude that the findings reached by the trial Court as well as appellate Court to the extent of the respondent No.1's claim for maintenance is lawful and justified. The petitioner has not raised any objection in so far as the Haq Mahar /dower amount is concerned. The next argument of the learned counsel was that he is not in a position to make payment of such outstanding amount and that it is not reciprocal to his earning.

5. This Court is not the Court of appeal. The petition was filed in terms of Article 199 of the Constitution of Islamic Republic of Pakistan and the jurisdiction of this Court is only to the extent if the jurisdiction was not exercised

by the trial Court and appellate Court lawfully. This is not a Court for reappraisal of evidence or appreciation of facts. In response to para-15 of the plaint where an amount of Rs.50000/- was claimed as maintenance of the ward from the defendant/petitioner as a big Zamindar who claimed to have been earning heavy income, was "not denied" at all. All that was suggested in written statement in terms of para-15 that the minor daughter is of very tender age and, as such, the minor does not require Rs.50,000/- per month towards her maintenance. It is not specifically pleaded that this claim of maintenance is not reciprocal to his earning.

6. In reply to the prayer clause, petitioner stated that she solemnized marriage to accumulate wealth from the petitioner. In this para-2 the fact of his inability to pay the amount was not denied and all that was stated in reply to prayer clause was that this demand was more than the amount required for minor Mumtehna. Thus there could hardly be an issue required to be framed insofar as the ability to pay the maintenance amount being claimed and/or granted by the trial Court and/or appellate Court is concerned.

7. There is no jurisdictional error which could led this Court to assume jurisdiction under Article 199. The order dated 09.11.2020 in terms whereof 1.5 million as interim measure was ordered to be deposited, as against the present amount of approximately 2.7 million, was violated and a deliberate attempt was made to overcome the directions of this Court. The petitioner consequently filed this review application instead of depositing the partial amount out of the decretal amount. There is nothing in the order dated 09.11.2020, which could be reviewed in terms of Section 114 CPC and consequently the application was dismissed by a short order followed by dismissal of the main petition with costs of Rs.25000/-.

JUDGE

A.