

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. S- 737 of 2019

Hakim Ali

Versus

District Judge Dadu and others

Date of hearing
and Order : 15.08.2022

None present for petitioner and respondent No.3
Mr. Rafiq Ahmed Dahri, Asstt: A.G.

ORDER

ADNAN-UL-KARIM MEMON, J:- Through instant Constitutional Petition, the petitioner has called in question the judgment dated 10.08.2019 passed by learned District Judge / MCAC, Dadu in Family Appeal No. 05 of 2018, whereby the learned Judge while dismissing the appeal maintained the Judgment of family court with some modification in the Judgment passed by the Family / Civil Judge, Dadu on 31.01.2018 in Family Suit No. 222 of 2016. The applicant has now approached this Court under constitutional jurisdiction of this Court under Article 199 of the Constitution of Pakistan, inter-alia on the ground that the findings of both the courts below are against the law and facts and the same have been given without considering the evidence brought on record in favor of the petitioner; that huge amount of maintenance awarded by the courts below in favor of the private respondent, which is beyond the reach of the petitioner; as his financial position is not sound to meet the condition imposed upon him; thus the impugned judgments are liable to be reversed.

2. None present for the petitioner as well as contesting respondent No.3; and, no intimation is received. The record reflects that last time on 25.2.2020 counsel for the petitioner appeared and since then neither he nor his counsel turned up or even attempted to have the matter fixed before this Court, which prima-facie shows that perhaps he has lost interest in the proceedings; therefore, I have gone through the record as available before me and find that there are concurrent finding of facts and law available against the petitioner.

3. As per record respondent No.3 had successfully proven her claim before the trial court and accepted by the appellate court in terms of the decision rendered by the learned Division Benches of this Court and learned Lahore High Court viz. Anwar Ali and 9 others V/S Chief Engineer, Irrigation, Sukkur Zone, Sukkur, and

2 others, 1986 CLC 745, Muhammad Farooq M. Memon Advocate V/S Government of Sind through its Chief Secretary Karachi, 1986 CLC 1408 and Civil Aviation Authority V/S Messrs Providence Aviation (Pvt) Ltd., 2000 CLC 1722, Mst. Iqra V/S Abuzar, PLJ 2012 SC (AJ&K) 169, Mst. Mussarat and 2 others V/S Muhammad Naeem and another, PLD 2010 Karachi 10 and Saima Khan V/S Khan Arshad Anwar alias Babar and another, 1998 CLC 942.

4. Regarding maintenance, it is well-settled that when a woman surrenders herself into the custody of her husband, it is incumbent upon him to support her with food, clothing, and lodging whether she is a Muslim or not; according to Islamic injunctions, it is the obligation of husband to maintain his wife till she disobeys him without any good cause and that being so, a husband is obliged to pay even the arrears of maintenance if not paid by him during the subsistence of the marriage; maintenance, the definition whereof in Islam is '*Nafqa*', to the wife is not an ex-gratia grant, but the husband is obliged to maintain her; the obligation of the husband to maintain his wife has been derived from Islamic teachings; in all circumstances, maintenance is to be considered as a debt upon the husband in conformity with tenet; and, the wife is entitled to claim maintenance from the date of accrual of the cause of action and not necessarily from the date of first seeking redress.

5. Once the trial court had concluded that respondent No.3 was entitled to maintenance; and, a reasonable amount has been granted to her by the appellate court, keeping in view the average/standard cost of living, and such amount been granted, which decision does not require further interference by this Court in terms of Article 199 of the Constitution as no illegality has been pointed out in the memo of petition. An excerpt of the Appellate judgment is reproduced as under:-

“ In view of the discussion on point No.1, I am of the view that the learned trial court has not committed illegality in deciding the fate of the matter, and the learned trial court after scrutinizing the record minutely had rightly passed the judgment and decree and same did not require any interference, excepting modification whereby the maintenance amount of each child is enhanced from Rs.3000/ each to Rs.5000/- each per month, hence Family appeal stands disposed of accordingly and impugned judgment is maintained with above modification, with no order as to costs.

6. As a consequence of the above reasoning, this petition is found to be not maintainable and is accordingly dismissed.

JUDGE