

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

## Constitutional Petition No.S-541 of 2022

[Sajjad Hussain Vs. Dr. Amber Kareem]

Petitioner: Through Mr. Jahanzeb Leghari, advocate.

Respondent: Nemo.

Date of hearing & order: 07.11.2022.

### **ORDER**

***ADNAN-UL-KARIM MEMON, J.*** - Through instant constitutional petition the petitioner challenges the legality of Judgment and decree dated 25.5.2022 and 28.5.2022 passed by learned Appellate Court in consolidated Family Appeal Nos. 20 and 23 of 2021.

2. I have heard Mr. Jahanzeb Leghari learned counsel for the petitioner and also gone through the record as well as the impugned decisions of both the courts below.

3. Brief facts of the case are that respondent filed Family Suit for Recovery of Dower, Dowry Articles, and Maintenance against the petitioner stating in the plaint that she married to petitioner on 30.06.2018 against 7 tola gold as dower, and the same is still unpaid despite repeated demands. At the time of marriage, her parents gave dowry articles viz. gold, furniture, utensils, electronic items, crockery, stitched, unstitched clothes, and other misc items as per list of dowry articles, worth of Rs. 250,000/=, which were taken by the plaintiff at the house of the defendant and same are still lying there. After marriage Rukhsati took place and out of wedlock, one baby namely Eman was born subsequently the petitioner started misbehaving and tortured her on petty matters besides he also failed to maintain the plaintiff properly, and in February 2019 defendant ousted her from his house when she was in advance stage of pregnancy, therefore, she went to her parent's house where she gave birth to minor Eman on 15.04.2019; that her parents many times approached him to resolve the matter but he did not reconcile; that petitioner by profession is a civil engineer and earns about Rs.200,000/- per month and also having agricultural land and earn more than 10 million per year. Whereas the plaintiff was a qualified doctor at PPHI and was taking a salary of Rs.80,000/- but due to a pre-condition of the petitioner she resigned from her job, therefore, she is facing hardship to maintain herself as well as the minor, hence she filed the above suit.

5. After the admission of the suit petitioner filed a written statement denying all the averments made in the plaint; therefore, the learned Family Court framed six issues.

6. During proceedings respondent moved an application under Section 17-A of the Family Court Act 1964 for interim maintenance of minor upon which learned Family Court fixed interim maintenance at the rate of Rs.5000/= per month with direction to deposit the same with the Nazir of the court.

7. Learned Family Court recorded the evidence of the parties and their witnesses. The respondent/plaintiff on the above examined herself as well as her father namely Kareemdad and closed her side for evidence through her counsel and the matter was put up for the petitioner/defendant's evidence. The defendant examined himself and produced several documents and in support of his evidence also examined his cousin Pw-2 Khuda Bux and his uncle Pw-3 Najam Din and their after closed his side.

8. That learned trial court after hearing the parties decreed the family suit as under:-

“27. In view of above facts and reasons in issue No. 1 plaintiff is not entitled for dower amount. Secondly, Issue No 2 Plaintiff is granted maintenance that could not be less than Rs.5000/-per month from filling suit (14-12-2019) till decree of suit. Defendant is also directed to maintain the plaintiff Rs.5000/- per month in future with 10% increase per annum tills her legal entitlement. In case parties agree and Defendant readily provide the Plaintiff a separate accommodation and permission to resume job then directions to the extent of future maintenance would stand withheld. In Issue No-3 The Plaintiff is also entitle for maintenance of the Minor Eman at the rate of Rs. 5000/- per month from the date of filing this suit (14-12-2019) till the date of decree and also for future at the rate of Rs.8000/- with 10% annual increment till the legal entitlement of the minor. Issue No-4 is accordingly. Fifthly Plaintiff is granted dowry articles crockery and clothes or in alternative Rs.25000/-. Defendant is directed to return dowry articles to Plaintiff or in alternative value of Rs 25,000/-. Defendant is directed to pay the same within a month from the date of decree in the suit.”

9. Respondent claimed her maintenance of Rs.50,000/- per month from February 2019 and maintenance of minor at the rate of Rs.50,000/. And expenses of delivery, and her past as well as future maintenance, on the premise that she was ousted from the house. The record reflects that the petitioner / defendant contracted second marriage. The learned trial court observed that it was the duty of the petitioner / defendant to maintain the respondent / Plaintiff till she was in his Nikah and the father of minor but he failed to do so. There is nothing on record to show that the petitioner/ defendant maintained the respondent / Plaintiff as well as the minor. It is further observed that the father of petitioner / defendant is landlord. Finally,

the respondent was held to be entitled to maintenance of the Minor Eman at the rate of Rs. 5000/- per month from the date of filing suit (14-12-2019) till the date of decree and also for future maintenance at the rate of Rs.8000/- with 10% annual increment till legal entitlement of the minor. Further, she was also held to be entitled to recovery of dowry articles crockery, and some clothes.

9. Being aggrieved with the above Judgment of Family Court dated 18.11.2021 the petitioner filed Family Appeal No. 20 of 2021 whereas the respondent also filed Family Appeal No. 23 of 2021. The learned appellate court after hearing the appeals passed consolidated Judgment dated 25.5.2022 allowing the appeal of respondent and dismissing the appeal of petitioner with further modification in the Judgment of Family Court increasing maintenance of respondent from Rs. 5000/- to Rs. 15,000/- per month with 10% annual increase and maintenance of minor from Rs. 8000/- to Rs. 17,000/- per month with 10% annual increase. An excerpt whereof is reproduced as under:-

“It has been pointed out by Mrs, Tasleem Pasha, learned counsel for appellant/plaintiff dr. Amber that, the appellant/defendant has contracted a second marriage, he is a Civil Engineer by profession and he owns agricultural land. All these facts have been admitted by the appellant/defendant in his evidence. Besides this, it is also an admitted position of the case in hand that marriage, between the parties still exists and it is well settled law that husband/father are duty bound to maintain his wife and children as per his financial status as well as per current situation of higher prices of all necessities but learned trial Court while passing impugned judgment and decree did not consider these aspect of the case and extended appellant/plaintiff to only Rs.5000/- per month in future with 10% increase per annum till her legal entitlement and for minor Rs.8000/- with 10% annual increment till her legal entitlement which is meager amount for both, therefore, looking to the financial status of appellant/defendant Sajjad and current high prices of all necessities, I increase maintenance amount of appellant/plaintiff from Rs.5000/- per month to Rs.15000/- per month with 10% annual increase and maintenance amount of minor namely, Eman from Rs.8000/- per month to Rs.17,000/- per month with 10% annual increase. maintenance for the Present point is accordingly replied.

Point No. 2: In view of the discussion and finding on point No.1, the appeal of appellant/plaintiff Dr.Ambar is allowed, and the family appeal of appellant/defendant Sajjad is dismissed with no order as to costs.“

10. Mr. Jahanzeb Leghari learned counsel for petitioner has submitted that the impugned judgments of both the lower courts are against the law, equity, and norms of justice; that the impugned judgments of both the courts below are suffering from patent illegalities and irregularities, not maintainable and liable to be set aside; that learned lower courts failed to consider the material aspect of the case while passing the impugned judgments that it has come on record that the petitioner is jobless and has no source of income; that the courts

below failed to consider that respondent / plaintiff has claimed that the petitioner is civil engineer and is in service and also owner of agricultural land but she has not produced any evidence in this regard; that even his witness who is her father namely Karim Dad in his cross-examination has admitted that the petitioner is jobless; that while modifying/enhancing/increasing the maintenance amount, learned appellate court relied upon the arguments of advocate for respondent No.1, who misguided the court; that learned lower courts failed to consider that respondent in her deposition has deposed that she left the house of petitioner herself; that it is a well-settled that the maintenance of wife could be awarded subject to matrimonial obligation/conjugal rights but in the present matter, the respondent herself left the house of petitioner with her own choice and being disobedient wife she is not entitled to recover/receive any maintenance amount from her husband but the courts below have illegally awarded such relief, hence liable to be set aside to the extent of maintenance of wife/respondent; that both the courts below treated the version of respondent No.1/plaintiff as gospel truth and outrightly rejected the version of petitioner which has caused grave miscarriage of justice; that, the impugned judgments of lower courts are based upon misreading and non-reading of evidence; therefore, the same are liable to be set aside; that the courts below have not read the evidence properly and brushed aside the factual position of the case which has been placed on record through evidence which has caused colossal loss to the petitioner; that the evidence brought by respondent No.1 / plaintiff documentary and through her witnesses have not supported her so much so several contradictions in the depositions; that the impugned judgments suffer from patent illegalities, based on conjectures, surmises, assumptions, suppositions, and presumptions which have no basis in the eye of law, hence liable to be set aside; that both the courts below have not assigned any cogent, convincing, plausible reasons, grounds, lawful justification, explanation while passing the impugned Order; that the impugned judgments, on the whole are of no judicial value in the eyes of law and cases have not been considered judicially by both the lower courts, as such same are liable to be set aside.

11. After arguing the matter at some length, the petitioner who is present in court states that he would be satisfied and would not press the instant petition if the amount so granted by the appellate court is reduced due to his unemployment. 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 Muslim or not; according to Islamic injunctions it is the obligation of husband to maintain his wife until 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 subsistence of 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; 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 cause of action and not necessarily from the date of first seeking redress.

12. So far as the maintenance allowance of minor is concerned, under the law, a father is bound to maintain his children until they attain the age of majority. The intent and purpose of maintenance allowance to a minor child is to enable her/him to continue living at least in the same state of affairs as the child used to live before the separation/divorce between the parents and it would be quite unjust and against the norms of propriety if due to separation amongst the parents the child has to be relegated to a lower level of living standard or he/she has declined the level or standard of education which was achieved by him / her before such happening i.e. separation of parents which admittedly has already taken place between the parties.

13. Learned counsel for the petitioner has failed to give any appealable reason qualifying interference in the judgment impugned before me. In my view the appellate Court has rightly declined the prayer of petitioner; hence, no other exception is called for. As a consequence, this petition is also dismissed with no order as to the costs.

JUDGE