

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-207 of 2021

[Tahir Hussainv.....Mst. Khadija Yasee & others]

Date of Hearing : 09.03.2023
Petitioner through : Mr. Arif Ali Memon, Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner impugns the concurrent findings dated 09.09.2020 passed by learned Family Judge Karachi East in Family Suit No.2007 of 2017 and Judgment dated 08.02.2021 passed by learned VIIth Additional District Judge East, Karachi through this petition.

2. The respondent No.1 filed a family suit bearing No.2007/2017 before learned Family Judge East Karachi for recovery of dowry articles and maintenance which was decreed by the learned trial Court. The petitioner impugned the said judgment of the learned trial Court before the Appellate Court by filing Family Appeal No.113/2020 which appeal of the petitioner was dismissed, hence the petitioner is before this Court against the concurrent findings.

3. The crux of arguments of learned counsel for the petitioner is that the petitioner is facing financial problems, however, ready to pay the maintenance to the minor/respondent No.2 if the amount of maintenance is reduced.

4. None present for the respondents. I have heard the arguments of learned counsel for the petitioner and examined the available record. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the

father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation. Apart from this, it is considered pertinent to initiate this deliberation by referring to the settled law that learned trial Court i.e. Family Court is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the verdict of learned trial Court i.e. learned Family Court went on to hold as under:-

“The record indicates that the attorney of the appellant/defendant produced photostate copy of salary slip of the appellant/defendant which pertains to year 2017 and showing Net Pay GBP 519.98. the attorney of the appellant/defendant admitted in his cross examination that he has not produced any document regarding the payment of maintenance to the plaintiff No.2/Baby Hafsa Tahir. The financial status of appellant/defendant seems to be sound as he studies in UK/doing job at UK. Father is a natural guardian of minor and is bound by all canon of law to maintain the minor daughters on excuse of his weak financial position, particularly when amount of maintenance fixed not at all exorbitant or excessive.”

[Emphasis supplied]

5. It is gleaned from appraisal of the foregoing that the learned trial Court having seen the financial status of the petitioner fixed the maintenance amount for the respondents which was upheld by the learned First Appellate Court. It is well settled that learned trial Court is the fact finding authority where the learned trial Court having examined the entire record made available before it fixed the amount of maintenance which does not require any interference.

6. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Family Judge which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts

below cannot be disturbed until and unless a case of non-reading or misreading of evidence is made out or gross illegality is shown to have been committed.¹

7. The minor/respondent No.2 now approximately 06 years old, must be schooling and attempting to live a reasonably acceptable living standard. UNICEF Report² suggests that a great number of minors in Pakistan are malnutritioned, hardly receiving the minimum threshold of 1,200/- calories per day. In the given circumstances, maintenance of Rs.10,000/- is barely acceptable, that's probably the reason the Appellate Court maintained findings of the Trial Court. Hence no intervention is warranted under constitutional jurisdiction either.

8. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 09.03.2023.

JUDGE

Aadil Arab.

¹ Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).

² UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.