

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-915 of 2021

[Muhammad Tahirv..... IX Additional District & Sessions Judge,
district East, Karachi & others]

Date of Hearing : 09.03.2023
Petitioner through : Mr. Ahmed Nawaz, Advocate.
Respondents through : *Nemo*

ORDER

Zulfiqar Ahmad Khan, J:- Through this petition, the petitioner has impugned the Judgment dated 20.10.2021 & Decree dated 23.10.2021 passed in Family Appeal No.195 of 2021 by learned respondent No.1.

2. Brief facts of the case are that the respondent No.3 filed a suit No.2233 of 2016 for recovery of maintenance and dowry articles as well as khula which was decreed by the learned respondent No.2 vide Judgment & Decree dated 31.08.2021 and petitioner was directed to pay maintenance of Rs.12000/- for plaintiff No.2, Rs.10,000 for plaintiff No.3, Rs.8000 for plaintiff No.4 and Rs.6000 for plaintiff No.5 (collectively minors). The petitioner impugned the Judgment & Decree of the learned respondent No.2 before the First Appellate Court by filing Family Appeal No.195 of 2021 and that the learned respondent No.1/First Appellate Court vide impugned Judgment & Decree modified the Judgment & Decree of the learned Family Judge and petitioner was directed to pay Rs.5000/- to the each minors as past maintenance, whereas, the future maintenance as awarded by the learned trial Court remained intact, hence the petitioner is before this Court challenging the Judgment & Decree of the First Appellate Court.

3. Learned counsel for the petitioner argued that petitioner is doing a private job and earning Rs.60,000/- per month as salary but the maintenance fixed by the learned First Appellate as well as learned Family Judge and every exorbitant. He next contended that it is considered deliberation of the Supreme Court that the maintenance is to be fixed by the Court looking into the financial status of the father but the courts below had failed to consider this settled principle and passed the impugned Judgment & Decree which be set aside.

4. None present for the respondents. I have heard learned counsel for the petitioner at length and have also scanned the available record. 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:-

“Perusal of the impugned judgment and decree reflect that learned trial Court has failed to mention a single sentence with regard to the financial status of the appellant. On the other hand, evidence of the respondent No.2 is also silent with regard to the income and financial capability of the appellant. Therefore, I am of the view that learned trial Court enhanced interim maintenance through the preliminary decree and final decree without proper appreciation of available material and evidence on record. Admittedly, respondent No.2 has failed to produce any documentary evidence with regard to the monthly income of the respondent..... It is settled principle of law that being sound mind able-bodied, appellant/father is bound and under obligation to maintain his children in order to meet the expenses with regard to the food, clothing, education and livelihood etc. Admittedly, firstly interim maintenance amount of Rs.5,000/- per month for each minor was allowed by learned trial Court, in the presence of appellant and there is no objection available on record with regard to the said rate of maintenance till the disposal of main suit. But, looking the future expenditure and grown-up age of minors the quantum of future maintenance do not require any interference.”

[Emphasis supplied]

4. It is gleaned from appraisal of the foregoing that the learned First Appellate Court/respondent No.1 having seen the financial status modified the Judgment & Decree of the learned Family Court to the extent that the petitioner would pay past maintenance of Rs.5000/- to the each minor, however, the learned First Appellate Court having observed the rate of inflation upheld the future maintenance granted by the learned trial Court.

5. 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.

9. In view of the rationale and deliberation delineated above, the petition at hand is dismissed upholding the Judgment dated 20.10.2021 and Decree dated 23.10.2021 passed in Family Appeal No195/2021.

Karachi
Dated: 09.03.2023.

JUDGE

Aadil Arab.