

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-980 of 2022

[Faraz Asifv..... The Hon'ble Court of 7th Additional District & Sessions Judge South at Karachi & others]

Date of Hearing : 23.02.2023
Petitioner through : Mr. Muhammad Altaf, Advocate.
Ms. Sania Zubair, Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner impugns the concurrent findings dated 23.05.2022 passed by learned Family Judge Karachi South in Family Suit No.703 of 2021 and Judgment dated 17.10.2022 passed by learned VIIth Additional District Judge South, Karachi through this petition.

2. The respondent No.2 filed a family suit bearing No.703/2021 before learned Family Judge South Karachi for recovery of 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.133/2022 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 learned trial Court fixed very exorbitant maintenance which is not affordable, therefore, impugned judgments require interference by this Court.

4. Heard the arguments and perused 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:-

“7. After hearing the learned counsel for both sides; I have carefully perused the record. It appears that the appellant is real father of respondent No.2/minor namely Irhaa Khan, who is about 02 years of age. Being a father; it is the duty of the appellant/defendant to maintain his child which includes, food, shelter, clothing, education and other things which are necessary for the life. It is the case of the appellant/defendant that the learned trial Court has fixed an exorbitant amount of maintenance for the respondent No.2/minor, who is only 02 years old. This contention is without forced for the reasons that the quantum of maintenance is to be fixed after considering the financial status and resources of father to pay such maintenance. In the present case, the appellant is working in Bahrain as Senior Civil Engineer and according to him his salary is 1430/- BHD. The attorney of the appellant/defendant during cross-examination that the income of the appellant is about Rs.300,000/- and in the same breath he also admitted that he did not know the actual income/salary of the appellant. On the other hand it is the contention of the respondent No.1 that the appellant is a Senior Engineer and earning more than 3000/- BHD which comes to Rs.600,000/- to Rs.800,000/-. It is also admitted by the appellant’s

attorney that the appellant had not paid maintenance of the minor since January, 2021. In such circumstances; the amount of maintenance i.e. Rs.40,000/- per month for respondent No.2/minor fixed by the learned trial Court is reasonable and requires no interference.

[Emphasis supplied]

4. It is gleaned from appraisal of the foregoing that the petitioner is earning a handsome amount of Rs.300,000/- as admitted by the attorney of the petitioner during the course of cross-examination. It is further apparent from the record that the petitioner failed to the amount of maintenance for the respondent No.3/minor since January, 2021.

5. UN Convention on the Rights of the Child, 1989 provides that the primary responsibility of maintaining the children rests with the parents as well as at the same time expects the Government to respect such a role and to support parents enabling them to take care of their children properly. With regard to financial assistance, the international underlining principle is that in matrimonial disputes, maintenance has to be in the amount that could help the wife to get back to the same position of comfort and lifestyle as she was provided at the time of the marriage. The right to maintenance is also held to be not a privilege, rather part and parcel of the basic human rights. Courts have held that aim of providing maintenance are two fold firstly to avoid vagrancy arising from husband - wife relationship and secondly to ensure that the spouses and the minor are not disabled due to lack of finances. Courts have even reached to the conclusion that delay in providing maintenance is not only against established human right, but also against an individual's dignity and such provisions have to be put in place forthwith to provide a speedy

remedy for the most vulnerable actors i.e. mother and child to sustain supply of food, clothing, shelter and education in order to skip vagrancy and destitution. The parameters which a Court must consider to calculate just amount of maintenance have to include the statuses of parties; proper needs of the wife and those of the dependent children; the resources of fund available to father; whether he has independent source of income and if so how much. While deciding the amount of maintenance it would be encouraging to set out a comprehensive format through an affidavit of disclosure of assets and liabilities to be filed by the father (as well as by mother, if she prefers to do so) in all matrimonial disputes of such nature. A formant of affidavit of such disclosure is annexed with this Order, which might help courts to determine fair, just and appropriate amount of maintenance and escalation (which in no cases be less than KIBOR or general bank interest rates prevalent at that time), as in all such matrimonial matters, as it has been observed that no scientific method has ever been used for the calculation of maintenance granted by way of interim measures as well as through final order(s) and it is also noted that persons even having reasonable means either neglect or refuse to maintain their wives and children. It is anticipated that this format might be first step in that direction.

6. Coming back to the facts of the case at hand, the trial Court after considering all aspects of the case, and keeping well-being of the minor in sight, set the maintenance at Rs.40,000/- per month with an increase of 10% per annum which sum was maintained by the Appellate Court. With inflation hitting the roof, these sums could hardly buy 1200

calories¹ which are needed for sustenance of a child every day. I do not see any compelling reasons to interfere in this conclusion.

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed.

8. Let a copy of this Order be circulated amongst all Family Courts and Judges deciding Family matters throughout the Province by MIT-II.

Karachi
Dated: 23.02.2023.

Aadil Arab.

JUDGE

¹ UNICEF Report Titled "Cost of the Diet Analysis Report in Pakistan-2018.

AFFIDAVIT OF ASSETS AND LIABILITIES OF FATHER

[Wife/Mothers if willing to do so, may also fill and submit this Affidavit]

I, _____ s/d/w/o _____ having Date of Birth as _____ and CNIC No. _____, resident of _____, do hereby solemnly affirm and state on oath as under:-

A. Personal Information

1. Qualifications (Educational and Professional):

2. Whether the Applicant is staying in the matrimonial house / parental home or separate residence. Please provide the current residential address of matrimonial home or place of residence and details of ownership of residence, if owned by other family member:-

3. Date of marriage: _____ 4. Date of separation: _____

5: Date of Divorce or Khula (Please mention) : _____

6. Details of the Spouse (Ex): Name: _____

Date of Birth/Age: _____ Last known address: _____

B. Details of Children of the parties

1. Number of children from the instant marriage: _____

2. Name(s), sex and age(s) of the children:

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

3. Details of the parent who has the custody of the children:

4. Monthly Expenditure for maintenance of the children.

a. Towards food, clothing and medical expenses _____

b. Towards expenses for education including tuitions _____

c. Other expenses, if any, _____

d. Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any _____

5. Whether any financial support is being provided by a third party for the educational expenses of the children? _____

6. Whether any request for assistance from Bait-ul-Mal has been made? _____ if no, is such assistance needed from Bait-ul-Mal? _____

C. Assets (movable and immovable) owned

1. Self-acquired property, if any: _____

2. Properties jointly owned by the parties after marriage: _____

3. Share in any ancestral property:

4. Other joint properties: _____

5. Status of possession of immovable property and details of rent etc.

6. Details of loans taken or given: _____

7. Brief description of jewelry and ornaments of parties acquired during /after marriage _____

8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.

D. Details of Income

1. Name of employer: _____
 2. Designation: _____ 3. Monthly income: _____
 4. If engaged in Government Service, furnish latest Salary Certificates or current Pay Slips or proof of deposit in bank account, if being remitted directly by employer.
 5. If engaged in the private sector, furnish a certificate provided by the employer stating the designation and gross monthly income of such person.

6. If any perquisites, benefits, medical, house rent allowance, travel allowance, dearness allowance or any other service benefit is being provided by the employer during the course of current employment. Give details: _____

7. Whether assessed to income tax?_____ If yes, submit copies of the Income Tax Returns for the periods given below :
 (i) One year prior to marriage (ii) One year prior to separation
 (iii) At the time when application for maintenance is filed.

8. Income from other sources, such as rent, interest, shares, dividends, mutual funds, stocks, debentures, agriculture, or business:

9. Furnish copies of Bank Statement of all accounts for the last 3 years.
 10. Furnish Copies of annual income tax returns alongwith wealth tax returns for the last 3 years.

E. Self-employed persons / Professionals / Business Persons / Entrepreneur

1. Brief description of nature of business/profession/vocation/self-employed/work activity: _____

2. Whether the business/profession/ self-employment is carried on as an individual, sole proprietorship concern, partnership concern, company or association of persons, joint family business or any other form? Give particulars of Applicant's share in the partnership/business/ professional association/self- employment. In case of partnership, specify the share in the profit/losses of the partnership: _____

3. Net Income from the business/profession/ partnership/self-employment:

4. Business/partnership/self-employment liabilities, if any, in case of such activity:_____

5. In case of business of company, provide brief details of last audited balance sheet to indicate profit and loss of the company in which such party is in business in the company: _____

6. In case of a partnership firm, provide details of the filings of the last Income Tax Return of partnership: _____

7. In case of self-employed individual, provide the filings of the last Income Tax Return from any such professional/business/vocational activity of the last 3 years with wealth statements: _____

F. Details of Liabilities of the Deponent

1. Loans, liabilities, mortgage, or charge outstanding against the Deponent, if any. _____

2. Details of any monthly installment being paid. _____

3. Date and purpose of taking loan or incurring any such liability: _____

4. Actual amount borrowed, if any, and the amount paid upto date of filing this Affidavit: _____

5. Any other information which would be relevant to describe current liabilities of the Deponent: _____

G. Details of Dependent family members

1. Details of Dependent family members, if any. _____

a. Relationship with dependents: _____

b. Age and sex of dependents: _____

2. Disclose all source/s of income of the dependents, including interest income, assets, pension and any other relevant details: _____

3. The approximate monthly expenses incurred on account of the dependents: _____

H. Details of Children from any previous marriages

1. Number of children from previous marriage: _____

2. Name(s), sex and age(s) of the children:

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

Name _____ M/F _____ DoB _____

3. Details of the parent who has the custody of the children: _____

4. Number of old wives still maintained: _____

5. Monthly Expenditure for maintenance of the children.

a. Towards food, clothing and medical expenses _____

b. Towards expenses for education including tuitions _____

c. Other expenses, if any, _____

d. Details of any loan, mortgage, charge incurred or instalment plan (being paid or payable), if any _____

6. Whether any financial support is being provided by a third party for the expenses of these children? _____

8. Details of transfer deeds or transactions of alienation of properties previously owned by the applicant, executed during the subsistence of the marriage. Also provide brief reasons for such sale or transaction, if any.

I. Information provided by the Deponent with respect to the income, assets and liabilities of the other Spouse (If re-married)

1. Educational and professional qualifications of the other spouse: _____

2. Whether spouse is earning? If so, give particulars of the occupation and income of the spouse: _____
3. If not, whether he/she is staying in his/her own accommodation, or in a rented accommodation or in accommodation provided by employer/business/partnership? _____

4. Particulars of assets and liabilities of spouse as known to the deponent, alongwith any supporting documents: _____

J. Details of Applicant or the other Spouse, in case parties are Non-Resident Pakistanis, Overseas/Dual Citizens, Foreign Nationals or Persons living abroad/outside Pakistan.

1. Details of Citizenship, Nationality and current place of residence, if the Applicant or other spouse is residing abroad, temporarily or permanently: _____

2. Details of current employment and latest income in foreign currency of such applicant/spouse, duly supported by relevant documentation of employment and income from such foreign employer or overseas institution by way of employment letter or testimonial from foreign employer or overseas institution or latest relevant bank statement: _____

3. Details of household and other expenditure of such applicant/spouse in foreign jurisdiction: _____
4. Details of tax liability of applicant/other spouse in foreign jurisdiction: _____

5. Details of income of applicant/other spouse from other sources in Pakistan/foreign jurisdiction: _____

6. Details of expenses incurred or contribution made on account of spousal maintenance, child support or any other educational expenses, medical treatment of spouse or children: _____

7. Any other relevant detail of expenses or liabilities, not covered under any of the above headings and any other liabilities to any other dependents family members in Pakistan or abroad: _____

Declaration

I declare that I have made a full and accurate disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than as stated in this affidavit to the best of my knowledge, information and belief:

DEPONENT

I also undertake to inform this Court immediately with respect to any material change in my employment, assets, income, expenses or any other information included in this affidavit.

I understand that any false statement in this affidavit, apart from being contempt of Court, may also constitute an offence under Section 199 read with Sections 191 and 193 of the Pakistan Penal Code, 1860 punishable with imprisonment upto seven years and fine, and Section 209 of the said Code punishable with imprisonment upto two years and fine.

Verified that the contents of the above affidavit are true to my personal knowledge, information and belief and no part of it is false and nothing material has been concealed therefrom, whereas the contents of the above affidavit relating to the assets, income and expenditure of my spouse are based on information believed to be true on the basis of record. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.

DEPONENT

Solemnly affirmed before me at _____ on this ____ day of _____, 20_____ by the Deponent above-named who is identified by _____ who is personally known to me.

Commissioner for Taking Affidavits