

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

C.P No.S-147 of 2023

Petitioner : Zulfiqar Ali Soomro
Through Mr. J. K Jarwar, Advocate

Respondent : Mst. Shehnaz Kousar through
Mr. Saddam Hussain Leghari, Advocate

ORDER

Date of hearing : 26TH February, 2024

Decision of decision : 26TH February, 2024

>>>>>>>> <<<<<<<<<<

ARBAB ALI HAKRO, J: Through this writ petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has approached this Court to set aside the impugned judgment and decree dated 09.06.2023, passed by Additional District Judge/MCAC Kandiaro, in Family Appeal No.84/2022(re-Zulfiqar Ali vs. Mst.Shehnaz Kousar), whereby appeal preferred by the petitioner was dismissed by maintaining the judgment and decree dated 13.10.2022, passed by Senior Civil / Family Judge, Mehrabpur, in Family Suit No.68/2021, whereby suit filed by the respondent regarding maintenance of minor was decreed.

2. The succinct facts leading to the filing of the instant petition are that the respondent's marriage to the petitioner took place on 01.3.2012, after which she resided in the petitioner's house. A child named Shahbaz Ali, also known as Ahsan, was born from this union. However, over time, the petitioner's attitude towards his wife (the respondent) changed, and he began to mistreat her, making her life miserable. Ultimately, he ousted her and their minor child, taking all the property she had received from her parents in the form of dowry articles, including gold ornaments. The respondent obtained a khulla (divorce) through a competent court of law. However, to pressure the

respondent not to claim maintenance for the minor, the petitioner filed a G & W application No.08/2014 before the Family Judge in Kandiaro, which failed. The minor is a school-going child, and the petitioner, being the father, is obligated to cover all his expenses. However, he failed to properly maintain the minor, compelling the respondent to file a suit regarding the minor's maintenance.

3. The trial Court decreed the suit for maintenance of minor @ Rs.10,000/- per month till the age of majority from the date of filing of the suit. However, the petitioner preferred a Family Appeal against the judgment and decree passed by the trial Court but failed, hence this petition.

4. At the very outset, The learned counsel for the petitioner submits that both lower courts committed gross negligence by hastily passing the impugned judgments and decrees without applying a judicious mind. The counsel argues that these courts failed to appreciate the valuable rights of the petitioner. As mentioned in his written statement, the petitioner has a large family of six to seven members to maintain and could not provide for the minor as per the respondent's wishes. Counsel believes there are reasonable grounds to suspect a significant miscarriage of justice. Therefore, the counsel prayed that the impugned judgments and decrees be set aside and that the petition may be allowed.

5. Conversely, the learned counsel representing the respondent contended that both lower Courts have rightly passed the impugned judgments and decrees following the guidelines issued by the Apex Courts. The petitioner is a doctor by profession and has earned a substantial income. Therefore, the maintenance fixed at Rs. 10,000/- for the welfare of the minor is not an excessive amount relative to his income. Furthermore, the learned lower Courts did not commit any illegality, gross irregularity, or infirmity while passing the impugned

judgments and decrees, which appear to be elaborate and well-reasoned.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. Upon examining the records, it is evident that the Respondent and the Petitioner were once married and had a child from their union. However, their marital relationship was subsequently dissolved. Since the dissolution, the minor child has been in the custody of the respondent (the mother), who has been caring for him. The respondent filed Family Suit No.68 of 2021 before the Family Judge in Mehrabpur for the maintenance of the minor, Shahbaz Ali @ Ahsan. This suit was decreed vide judgment dated 13.10.2022. The petitioner challenged this decision by filing Family Appeal No.84 of 2022 before the Appellate Court, but this appeal was dismissed. The petitioner has now filed the present petition, arguing that the trial Court failed to consider the evidence showing that he has a large family to maintain, as he has remarried and has other children. Despite this, the trial Court awarded a maintenance of Rs.10,000/- to the minor. This judgment and decree were challenged before the Appellate Court but were upheld.

8. Article 199 of the Constitution aims to promote justice, safeguard rights, and rectify any injustices. It grants the High Court the authority to correct any wrongful or excessive exercise of jurisdiction by lower Courts and to address any procedural illegality or irregularity that may have adversely affected a case. However, under Article 199, the Court does not have the jurisdiction to re-examine or reconsider the facts of a case that has already been decided by lower Courts. It cannot re-examine the evidence or disturb the findings of facts. It can only review a case if it believes that there has been a misreading or non-reading of evidence, a misapplication of law, or an

excess or abuse of jurisdiction. The scope of judicial review under Article 199 of the Constitution is limited to instances of misreading or non-reading of evidence or when the finding is based on no evidence, resulting in a miscarriage of justice. Furthermore, findings of facts cannot be disturbed through a reappraisal of evidence in constitutional jurisdiction, nor can this jurisdiction be used as a substitute for a revision or appeal. This principle is exemplified in the case law reported as Shajar Islam vs Muhammad Siddique (PLD 2007 Supreme Court 45).

9. The records indicate that the minor, who is about 7 to 8 years old and attending school, is the petitioner's child. As such, the petitioner, being the father, cannot absolve himself from the responsibility of maintaining his child. In addition to the basic needs, there are other expenses associated with raising a child and the respondent, being a homemaker, cannot solely bear these expenses or provide for the child in a manner that is consistent with societal norms. It has also been established that the petitioner is a professional doctor with a substantial income, making him well-equipped to pay the maintenance awarded by the lower Courts. Therefore, the maintenance awarded to the minor by the lower courts is sensible and reasonable. The learned counsel has failed to identify any irregularity, misreading, or non-reading of evidence in the impugned judgments and decrees passed by the lower courts. This further strengthens the validity of the maintenance awarded to the minor.

10. It is important to note that for this Court to interfere, there must be tangible, material, and concrete evidence of misreading or non-reading of evidence. This means that the evidence in question must be substantial and significant enough to warrant interference by this Court. However, upon careful examination of the case, no material illegality, infirmity, or irregularity has been found. These terms refer to any substantial legal errors, weaknesses, or procedural

inconsistencies that could potentially affect the outcome of the case. In the absence of such issues, the Court sees no reason to interfere with the decisions made by the lower courts.

11. Consequently, this petition, which lacks merit, is hereby **dismissed**.

12. Above are the reasons for the short order of even date announced in Court.

JUDGE

Faisal Mumtaz/PS