IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 83 of 2024

(Saith Ali Bhatt v. Mst. Erram Naz & another)

Date of hearing : **26.08.2024**

Date of decision : **26.08.2024**

Mr. Saeed Ahmed Bhatt, Advocate for petitioner.

J U D G M E N T

Zulfiqar Ahmad Khan, J. **–** Through this petition, the petitioner has impugned the concurrent findings of the Courts below viz. judgment and decree dated 12.01.2023, passed by learned Family Judge, Sukkur in Family Suit No.361/2021, and judgment and decree dated 01.04.2023, passed by learned Additional District Judge-IV (Hudood), Sukkur in Family Appeal No.18/2023.

2. Concise facts of the case are that respondent No.1 filed a Suit for recovery of dowry articles and maintenance, which was partly decreed vide trial Court's judgment, whereby it has been held that respondent No.1 is entitled for the past maintenance from the petitioner since May 2021 at the rate of Rs.3,500/- per month till her date of divorce i.e. 21.09.2022, and Rs.6,000/- per month as *iddat* maintenance viz. Rs.18,000/- for three months of *iddat*. Respondent No.1 is also entitled for the maintenance of minor at the rate of Rs.2,500/- per month since her date of birth till today and Rs.3,500/- per month for the future maintenance of minor with 10% annual increment till she attains the age of legal entitlement or she joins with the petitioner. Respondent No.1 is entitled for the dowry articles as per list or Rs.70,000/- in case of damage or otherwise except her 20 pairs of clothes, chappals, makeup articles and gold ornaments. The petitioner impugned the said judgment before the appellate Court, which appeal

was dismissed; hence, the petitioner is before this Court against the concurrent findings.

3. The case of the petitioner is based upon the contentions that the Suit of respondent No.1 has been decreed beyond pleadings as she had prayed for her maintenance only and delivery expenses, but the learned trial Court has illegally and arbitrarily allowed maintenance of newly born / minor child without demand of respondent No.1 in her plaint. Moreover, excessive maintenance has been fixed by the learned trial Court for respondent No.1 and the minor, which is not affordable; therefore, impugned judgments and decrees require interference by this Court.

4. Heard the arguments and perused 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 the 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 authority 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 the learned trial Court i.e. Family Court went on to hold as under:

> **"***08. Impugned judgment reveals that issues are decided separately, issue of maintainability of suit and maintenance of the minor baby Rida born on 23-11-2020 are not in question, so far maintenance of respondent lady is concern, her version is not challenged during cross-examination on aforesaid issue. However, finding on issue no 4 is also reasonable keeping in view of financial status of the parties' trial court has already curtail the expensive items for want of suffice prove. However, the learned Trial Court has already partly decreed the suit, which has been challenged by the defendant-appellant. It is significant to observe that based on evidence Plaintiff (Respondent in instant appeal) has succeeded to prove her entitlement for recovery of dowry articles except golden and other items specially mentioned in the decree. At this stage it is helpful to observe here that the learned counsel of appellant has failed to substantiate his contention and no legal infirmity, alleged misreading, non-reading* ***or*** *illegality in the impugned decision has been pointed out by the learned counsel.*
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> *09. Admittedly onus to prove in terms of articles 117 & 118 QSO, 1984 lies on the person who claims but section 17 Family Courts' Act, 1964 excludes application of provisions of Qanun-e-Shahadat Order & CPC, 1908 to proceedings in a Family court in stricto sensu. Reliance in this regard is respectfully placed on case of Farzana Rasool versus Dr. Muhammad Bashir (2011 SCMR 1361) case of Shakarullah versus Bibi Shakeela and another (2022 CLC 574 Balochistan) and case of Mst. Saba Akhtar and others versus Imran Ashraf and others (2021 CLC 1165 [High Court AJ & K]). Admittedly per commandments contained in Holy Quran and law of the land a husband is bound to maintain his will during the existence of a marriage and in case of divorce till Iddat period. Moreover, a father is also bound to provide adequate maintenance to his child irrespective the custody of a minor child.***"**

5. It is gleaned from appraisal of the foregoing that the learned trial Court having seen the living status of the petitioner fixed the maintenance amount for the respondent which was upheld by the learned 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 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 Supreme 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.

7. UNICEF Report titled “Cost of the Diet Analysis Report in Pakistan-2018” suggests that a great number of minors in Pakistan are malnutritioned, hardly receiving the minimum threshold of 1200 calories per day. In the given circumstances, maintenance of minor at the rate of Rs.2,500/- per month since her date of birth till today and Rs.3,500/- per

month for the future maintenance of minor with 10% annual increment till she attains the age of legal entitlement or she joins with the petitioner is barely acceptable, that is probably the reason the appellate Court maintained findings of the trial Court. Hence, no intervention is warranted under the constitutional jurisdiction either.

8. In view of the above discussion, the petition at hand is **dismissed in *limine***. Above are the reasons of my short order dated 26.08.2024.

J U D G E

Abdul Basit