

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C. P. No. S – 89 of 2019

Date of hearing	Order with signature of Judge
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Hearing of case (priority)

1. For hearing of main case
2. For hearing of CMA No.1753/2019 (Stay)

27-11-2020

Mr. Saeed Ahmed Bhatt, Advocate for the petitioner.
Mr. Farzand Ali G. Maitlo, Advocate for respondent No.1.

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This petition has impugned the order of the learned Family Judge, Khairpur dated 21-02-2019 directing the defendant / judgment debtor therein, who is petitioner in these proceedings, to deposit the sum of Rs.87,500/- on account of past maintenance as claimed by the decree holder. The background of the matter is that a family suit was filed on part of respondent No.1 being the wife against the present petitioner being the husband, wherein the parties had compromised and the same was recorded on 06-04-2016, whereby it was agreed as follows:

“..... the plaintiff is ready to live with defendant and defendant is ready to keep plaintiff in separate house and he will properly maintain her son. The defendant further stated he will pay maintenance to minor for past 02 months @ Rs.5000/- and future maintenance shall be his responsibility and agreed to pay maintenance @ Rs.2500/- per month for minor in future.”

The respondent No.1 thereafter filed the execution proceedings and as a result thereof the impugned order was passed.

2. Learned counsel for the petitioner contends that said order was not available as the respondent No.1 as well as the son were maintained by

the petitioner, and as such double maintenance is not liable to be paid. Learned counsel further contends that the objections as filed in the matter were ignored by the learned trial Court, wherein it was specified that the petitioner was maintaining the wife and son 3/4 months before filing of the execution application. Learned counsel, in this regard, has relied upon the case of Tauqeer Ahmed Qureshi v. Additional District Judge, Lahore and 2 others (PLD 2009 Supreme Court 760).

3. Learned counsel for the respondent, however, contends that interim order passed by this Court has not been complied with by the petitioner, and that although further maintenance is being paid, this petition is not liable to be considered on account of the default.

4. Learned counsel for the petitioner contends that future payments have been made regularly, and final order in this matter may be passed.

5. Having heard the learned counsels and gone through the record, indeed, it is an option available to this Court to dismiss the petition on account of the default as shown on part of the petitioner, however, as the matter is being disposed of, such an indulgence is not being made in the interest of justice.

6. It is observed that the learned trial Court in the matter has, without bringing any material required as to the allegation of non-payment of past maintenance and counter-allegation / defence of having paid the same, preferred to pass the order, and in absence of any material available, such an order or rather the relevant portion of the impugned order is not liable to sustain.

7. In the circumstances, the impugned order dated 21-02-2019 is set aside only to the extent of the post maintenance as specified and the matter is remanded to the learned trial Court with directions that the

petitioner is required to pay the past maintenance of four (04) months only from the date of 18-02-2019 (when the objections were filed) at the present time, which in case if already paid, shall not be payable. However, as to the balance period, the learned executing / family Court is to call upon the parties to bring forward material as required under the law to come to acquire a conclusion thereon i.e. pass an order after hearing (which legally includes taking of evidence) if so required. Being a family matter it is reasonably expected that this matter be concluded expeditiously.

This petition stands **disposed of** in the above terms along with the listed application.

J U D G E

Abdul Basit