JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO.2031 OF 2019.

MST. AMBAR ABID, ETC
Vs.
MUHAMMAD WAQAR, ETC

Petitioners by : Ms. Samina Khan, Advocate.

Respondent No.1 by : Ms. Aneela Ateeq, Advocate.

Date of Hearing : 30.03.2022.

SAMAN RAFAT IMTIAZ, J.:- Through the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitutional Petition"**), the Petitioners have assailed the Judgment dated 08.04.2019 **("Impugned Judgment")** passed by the learned Additional District Judge (West) Islamabad ("**Appellate Court**"), whereby the appeal filed by the Respondent No.1 was allowed and the order passed by the learned Executing Court on 14.03.2019 was set aside.

2. Brief facts as per the Memo of Petition are that the Petitioners filed a Suit for Recovery of Maintenance, etc, which was decreed by the learned Trial Court on 02.07.2015 in the following terms:-

> *"Consequently, the father is directed to pay the maintenance from 16.02.2014 (actual date 16.06.2014) till to date past maintenance as directed in order dated 16.02.2014 as well as future maintenance to minors i.e. plaintiff No.2 @ Rs.25,000/- per month, whereas the interim maintenance allowance of plaintiffs No.3 & 4 @ Rs.20,000/- each per month* ***with 20% per annum increase****, which shall be paid on or before 15th of each month* ***keeping in view the inflation rate****, the decree sheet be prepared."* [Emphasis added].

3. Against the Judgment and Decree dated 02.07.2015 of the learned Trial Court, the Respondent No.1 filed an appeal before the Court of learned Additional District Judge, which was dismissed to the extent of maintenance of the minors i.e., Petitioners No. 2 to 4 vide order dated 28.07.2015. Thereafter Respondent No.1 filed W.P No.2324/2016 before this court, which was also dismissed vide judgment dated 07.03.2017. Respondent No.1 challenged the said judgment of this Court before the Honourable

Supreme Court through CPLA No.1597/2016, which too was dismissed vide order dated 18.09.2017. The Respondent No.1 filed a review petition against the order of the Honourable Supreme Court however, the same was also dismissed.

4. It has been further stated in the Memo of Petition that after the decision of the Honourable Supreme Court, the parties appeared before the Executing Court for execution of the Decree dated 02.07.2015, where the Respondent No.1 filed objection petition in order to delay the execution of the Decree. The Executing Court while deciding the objection petition passed an Order dated 01-11-2017. The Respondent No.1 filed an application on 06.12.2018 for correction of calculation given in order dated 01.11.2017 along with his own calculation of maintenance outstanding against him, which was decided on 10.12.2018. The Respondent No.1 assailed the said order in a Revision Petition, which was dismissed vide judgment dated 12.02.2019. The Respondent No.1 did not challenge the judgment dated 12.02.2019.

5. However, the Respondent No.1 filed another application for calculation of maintenance of minors, which was dismissed vide order dated 14.03.2019. Thereafter the Respondent No.1 filed an appeal on 20.03.2019 before the Court of learned Additional District Judge, wherein he assailed two different orders dated 10.12.2018 and 14.03.2019, which was allowed vide Impugned Judgment dated 08.04.2019 and order of learned Executing Court dated 14.03.2019 was set aside.

6. Learned counsel for the Petitioners *inter alia* contended that the learned Appellate Court failed to appreciate the fact that the appeal is badly time barred; that appeal of Respondent No.1 was hit by Section 11 of CPC; that the Appellate Court has no power to revisit/recall its earlier Judgment dated 12.02.2019.

7. Learned counsel for the Respondent No. 1 argued that there is no provision in the West Pakistan Family Courts Act, 1964 for increment in maintenance and that the Appellants can apply for enhancement, if required. He relied upon the cases of *Khalid Bashir vs. Mst. Shamas un Nisa and others, 2015 MLD II [Lahore], Awal Ameer vs. Additional District Judge and others, 2013 MLD 1342 [Lahore], M. Umar Fraz vs. Additional District*

Judge and others, PLD 2012 Lahore 170, Muhammad Anwar vs. Nadia Nasreen and others, PLD 2012 Lahore 110, Rana Muhammad Ashraf vs. Tanveer Kausar and others, 2011 CLC 1999 [Lahore] and Masood Pervez Sajid vs. Mst. Nawasih Fatima and 2 others, 2005 MLD 579 [Lahore].

8. I have heard the arguments and perused the record.

9. With regard to the argument raised by the learned counsel for the Respondent No. 1 that there is no statutory backing of the grant of annual increment in respect of maintenance, suffice it to say that the Decree dated 02.07.2015, whereby annual increment in the maintenance allowance of the Petitioners No. 2 to 4 has been granted, has been upheld by the Honorable Supreme Court as such the said argument is without merit.

10. Perusal of the order dated 14.03.2019 passed by learned Executing Court shows that in essence it held that the 20% increase in maintenance allowance would have to be calculated each year on the amount of maintenance in the preceding year and that it could not be a fixed amount calculated on the initial maintenance amount to be applied evenly every year thereafter. The rationale given for such conclusion was that the amount has not been frozen by express or implied words. On the other hand, the rationale provided by the learned Appellate Court by way of the Impugned Judgment is that the Decree dated 02.07.2015 does not specify that the 20% annual increase is on compound basis. Since the Decree is silent in such regard the learned Appellate Court created an analogy with the provision of Section 34 CPC, which provides for simple interest unless the Decree expressly says otherwise.

11. I have given my anxious consideration to both the propositions and find myself in agreement with the learned Executing Court simply because the language used in the Decree regarding annual increment is common to a host of commercial agreements such as rental agreements and employment agreements, etc. The understanding in such commercial transactions is that the annual percentage of increase is to be calculated on the initial amount of rent or salary (as the case may be) that was fixed in the agreement only for purposes of the second year's rent or salary whereas in each subsequent year it is to be calculated on the prevailing amount in the preceding year. Indeed this is not just the understanding but also the standard practice.

12. The analogy created by the learned Appellate Court with Section 34, CPC is erroneous. Firstly, Section 34, CPC pertains to "interest" whereas the annual increment granted on maintenance allowance does not constitute interest. Interest under Section 34, CPC is granted in case of a money decree as a sort of opportunity cost incurred by the decree holder on account of failure of the judgment debtor to pay the adjudged principal sum. Such interest may be granted for three different time periods described under sub-section (1) of Section 34, CPC i.e. (a) from the date of institution of suit till date of the decree; (b) any period prior to the institution of suit; and (c) further interest on the aggregate sum so adjudged from the date of decree till payment or any earlier date. Pursuant to sub-section (2) of Section 34, CPC unless further interest on such aggregate sum is provided for expressly in the decree, it is deemed to have been refused by Court.

13. On the other hand, the object of annual increment on rent, salary or maintenance in family matters is to fix a rate necessary to offset the effect of inflation. It may be seen from the reproduction of the relevant portion of the Decree herein above that the learned Family Court has specifically stated that it is keeping in view the inflation rate. In cases of maintenance, the onus is placed upon the father to support the material needs of a child. Such needs do not remain stagnant over time and are subject to not just inflation but also vary according to the changing needs and requirements of a child at different stages of his/her life. Therefore, there is no reason why the annual increment would remain static by pegging it to the initial sum as may be adjudged by the Family Court in cases of family disputes.

14. Had the intention been to keep the amount of annual increment static in monetary terms, there would be no reason to provide it in the form of a percentage. It would be far easier to calculate a percentage of the initial amount and to fix such monetary amount as the annual increment to be added each year. However, the whole point of giving a percentage for the increment is that the base on which such amount is to be calculated is expected to change every year.

15. Keeping the aforementioned distinction in mind between interest granted under Section 34 CPC and maintenance allowance it is very obvious that the former does not serve as an analogy for the latter.

16. In view of the foregoing, the instant petition is **allowed** and the Impugned Judgment is hereby set aside, as such the Respondent No. 1 shall be liable to pay maintenance for the Petitioners Nos. 2 to 4 after the end of the first year in the amount as per the Decree plus 20% and in all subsequent years in an amount equivalent to the sum of the amount paid in each preceding year plus 20% thereof.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 14th of June, 2022.

JUDGE

R.Anjam.