JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4369/2016
Dr. Shahzad Mithani
Versus
The Additional District Judge-III (West) and others

Date of Hearing:	17.10.2019
Petitioner by:	Raja Saif-ur-Rehman and Mr. Asim Riaz, Advocates
Respondents by:	Mr. Anees Jillani, Advocate for respondent No.3.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Dr. Shahzad Mithani, impugns the judgment dated 08.06.2016 passed by the learned Family Court only to the extent whereby the condition for the payment of past maintenance in accordance with the earlier order dated 25.02.2014 was imposed on him. Vide the said judgment dated 08.06.2016, the learned Judge Family Court allowed the petitioner's application under Section 9(6) of the West Pakistan Family Courts Act, 1964 for the setting aside of the *ex parte* judgment and decree dated 19.12.2012 subject to the imposition of the above-said condition. The petitioner challenged the said *ex parte* judgment and decree dated 19.12.2012 in an appeal under Section 14 of the West Pakistan Family Courts Act, 1964 which was dismissed vide impugned judgment and decree dated 22.09.2016.

2. Learned counsel for the petitioner submitted that the learned Trial Court could not have imposed an onerous condition on the petitioner for the setting aside of the *ex parte* judgment and decree dated 19.12.2012; that once the petitioner had established that his address given in the suit for maintenance was incorrect, the learned Trial Court should have allowed the petitioner's application for setting aside the said *ex parte* judgment and decree without imposing any condition; that even otherwise, the condition imposed on the petitioner is vague and ambiguous; that respondents No.3 to 5 had not prayed for a

specific amount to be paid as maintenance by the petitioner; and that the quantum of maintenance under the agreement between the petitioner and respondent No.3 is very high and beyond the petitioner's financial needs. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as *PLD 2006 S.C. 533.*

3. On the other hand, learned counsel for respondents No.3 to 5 submitted that the petitioner has avoided his legal and moral obligation to pay maintenance for his children by embroiling them in unnecessary and wasteful litigation; that Annexure-A is the agreement executed between the petitioner and respondent No.3 under which the former obligated himself to pay maintenance for his children in the amount mentioned in the said agreement; and that the petitioner has not paid any interim maintenance to his children. Learned counsel for respondents No.3 to 5 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. The record shows that vide the said *ex parte* judgment and decree dated 19.12.2012, the suit for maintenance filed by respondents No.3 to 5 against the petitioner before the learned Family Court, was decreed *"as prayed for"*. On 24.09.2013, the petitioner filed an application for the setting-aside of the said *ex parte* judgment and decree. The petitioner's plea in the said application was that the petitioner's address given in the suit was different from the one in his national identity card. The said application was taken up for hearing on 25.02.2014, whereon the following interim order was passed by the learned Family Court:-

> ***"As per record the respondents obtained ex-parte judgment and decree dated 19.12.2012 against the petitioner. The suit of the respondents was ex-parte decreed as prayed for. There is difference between the address mentioned in the plaint and CNIC of petitioner. It is a factual controversy which cannot be resolved without recording the evidence. The operation of judgment and decree in question is hereby partly stopped to the extent of past maintenance of decree holder. However, the petitioner will pay***

maintenance to the decree holders in future till the conclusion of application in hand, at the same rate which was decreed in ex-parte judgment & decree in question."

6. Vide judgment dated 08.06.2016, the petitioner's application for setting aside the said *ex parte* judgment and decree was allowed subject to the payment of past maintenance as ordered by the learned Family Court on 25.02.2014. The maintenance that the petitioner was supposed to pay under the said judgment dated 08.06.2016 was from 25.02.2014 onwards. The rate at which the interim maintenance was to be paid was the one fixed in the *ex parte* judgment and decree dated 19.12.2012. Vide the said *ex parte* judgment and decree, respondents No.3 to 5's suit for maintenance had been decreed *"as prayed for"*. Respondents No.3 to 5's prayer in the suit was for maintenance to be paid in terms of *"Annexure-A"*. The said judgment dated 08.06.2016 passed by the learned Family Court to the extent of imposing the condition for the payment of interim maintenance was assailed by the petitioner in an appeal under Section 14 of the West Pakistan Family Courts Act, 1962 before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 22.09.2016, the said appeal was dismissed. The concurrent orders/judgments passed by the learned Courts below have been assailed by the petitioner in the instant writ petition.

7. It is an admitted position that Annexure-A was an agreement executed between the petitioner and respondent No.3 under which the quantum of maintenance under different heads payable by the petitioner for his children was agreed. It appears that the petitioner had reneged on his obligations under the said agreement causing respondents No.3 to 5 to institute a suit for recovery of maintenance, etc. against him.

8. The petitioner has annexed a copy of Annexure-A along with the writ petition, and did not deny the execution of the same. In this view of the matter, the learned Trial Court did not commit any jurisdictional irregularity by imposing the condition of the payment of the interim maintenance from 25.02.2014 onwards in accordance with Annexure-A for setting aside the *ex parte* judgment and decree dated 19.12.2012. The petitioner by

challenging the interim maintenance order has demonstrated his intention not to pay maintenance for his children in accordance with the agreement that he had entered into. It is my view that the learned Trial Court showed leniency to the petitioner by requiring him to pay interim maintenance from 25.02.2014 onwards and not from the date of the institution of the suit.

9. In view of the above, the instant petition, being bereft of any merits, is dismissed with costs throughout.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2019

(JUDGE)

Qamar Khan*

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