ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.269 of 2017
Zafarullah Khan
Versus.
Shahida Parveen and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	29.11.2017	**Ch. Manzoor Ahmed Kamboh, Advocate for the petitioner.** **Mr. Sajid Abbas Khan, Advocate for respondents No.1 and 2.**

Since writ petitions No. 269/2017 and 414/2017 entail common questions of law and fact, I propose to decide them through this common judgment. The petitioner in writ petition No.269/2017 shall be referred to as "the petitioner", whereas the petitioners in writ petition No.414/2017 shall be referred as "respondents No.1 and 2".

2. Through writ petition No.269/2017, the petitioner, Zafarullah Khan, impugns the judgment and decree dated 03.12.2016, passed by the Court of the learned Additional District Judge, Islamabad, whereby the petitioner's appeal against the ex-parte judgment and decree dated 14.03.2016, passed by the learned Family Court, Islamabad, was partially accepted. Vide the said judgment and decree dated 14.03.2016, the learned civil Court partially decreed respondent No.1 and 2's suit for recovery of maintenance allowance.

3. Through writ petition No.414/2017, the petitioners in the said petition, Shahida Parveen and Isma Mubarak, challenge the

appellate judgment and decree dated 03.12.2016, whereby the judgment and decree dated 14.03.2016, passed by the learned Family Court, was modified.

4. The record shows that on 04.07.2008, the petitioner and respondent No.1 got married. On 30.04.2009, the couple was blessed with a daughter, Isma Mubarak/respondent No.2. Subsequently, the relations between the couple turned sour. On 28.08.2013, respondents No.1 and 2 instituted a suit for recovery of maintenance allowance at the rate of Rs.20,000/- per month for each of the said respondents. The petitioner contested the suit by filing a written statement. During the pendency of the said suit, the petitioner pronounced divorce on respondent No.1.

5. On 20.02.2016, the petitioner was proceeded against ex-parte. Thereafter, respondent No.1 gave evidence as PW-1 and tendered Ex.P/2 to Ex.P/14, and Mark-A to Mark-D during her evidence. Since there was nothing in rebuttal from the petitioner, the learned Family Court vide judgment and decree dated 14.03.2016, decreed the suit for maintenance allowance for respondent No.1 at the rate of Rs.20,000/- per month from the date of the institution of this suit till the subsistence of the marriage. As regards respondent No.2, she was held entitled to maintenance at the rate of Rs.20,000/- per month from the date of her birth till her marriage.

6. The said judgment and decree was assailed by the petitioner in an appeal before the Court of the learned Additional District

Judge, Islamabad. Vide judgment and decree dated 03.12.2016, the said appeal was partly accepted by modifying the judgment and decree of the learned Family Court to the extent of the maintenance for the plaintiffs/respondents No.1 and 2 to be fixed at the rate of Rs.5,000/- per month for respondent No.1, and Rs.12,000/- per month for respondent No.2 from the date of the institution of the suit with an annual increase of 10%.

7. The said judgment and decree dated 03.12.2016 has been assailed by the petitioner in writ petition No.269/2017, and by respondents No.1 and 2 in writ petition No.414/2017.

8. Learned counsel for the petitioner after narrating the events leading to the filing of the instant petitions submitted that the judgments of the learned Family Court as well as the learned appellate Court suffer from misreading of the evidence on the record; that although the petitioner is working in the Middle East, his earning is not enough, to pay the maintenance as decreed by the learned appellate Court; that respondent No.1 is not entitled to any maintenance since she was a disobedient and a rebellious wife; that the learned Courts did not appreciate that the petitioner had given six *tolas* of gold ornaments to respondent No.1; that the petitioner should not have been burdened with previous maintenance for respondents No.1 and 2; that the learned Family Court should not have proceeded ex-parte against the petitioner; and that sufficient opportunity was not given to the petitioner to cross-

examine respondent No.1. Learned counsel for the petitioner prayed for writ petition No.269/2017, to be allowed, and for writ petition No.414/2017, to be dismissed.

9. On the other hand, learned counsel for respondents No.1 and 2 submitted that the order whereby the learned Family Court proceeded ex-parte against the petitioner was strictly in accordance with the law, since last and final opportunity had been given to the petitioner to cross-examine respondent No.1; that ever since the birth of respondent No.2, the petitioner has made no contribution towards her maintenance; that respondent No.2 is studying in O.P.F., Girls College, Islamabad for which the monthly fee is Rs.4,000/- per month; that the petitioner cannot expect respondent No.1 to maintain respondent No.2; that it was the petitioner obligation to adequately maintain his own daughter i.e. respondent No.2; that since the petitioner had avoided to maintain his own daughter, he was not entitled to any equitable relief from this Court. Learned counsel for respondents No.1 and 2 prayed for writ petition No.269/2017 to be dismissed, and for writ petition No.414/2017 to be allowed. In making his submissions, learned counsel for respondents No.1 and 2 placed reliance on the judgments reported as *2015 MLD 698, 2015 MLD 11, and 2014 YLR 781*.

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

11. The facts leading to the filing of the instant petition have been set out in sufficient

detail in paragraphs 2 to 7 above, and need not be recapitulated.

12. It is well settled that a father is duty bound to maintain his children wherever they may be residing. A father is under an obligation to maintain his son until he attains the age of majority (i.e. 18 years), and his daughter until she gets married. The petitioner, as respondent No.1's husband was also under a legal and religious obligation to maintain respondent No.1 until the expiry of the *iddat* period.

13. In the case at hand, the petitioner pronounced divorce on respondent No.1 during the pendency of the suit before the learned Family Court. The petitioner contested the suit before the learned Family Court by filing a written statement, but vide order dated 20.02.2016, the petitioner was proceeded against ex-parte. On 05.03.2016, respondent No.1's evidence was recorded, and on 14.03.2016, ex-parte judgment and decree was passed.

14. The learned appellate Court interfered with quantum of maintenance that was allowed by the learned Family Court to respondent No.1 merely on the ground that Rs.20,000/- per month for each of respondents No.1 and 2 was "too much exhaustive and unjustified". When there was no evidence on the petitioner's side on the record, it is not understandable as to why the learned appellate Court drew the said conclusion. Admittedly, the petitioner is working in the Middle East. There is nothing on the record to show that the petitioner had contributed towards his daughter's

maintenance ever since she was born. The petitioner cannot expect his daughter to be hands to mouth and for her mother to fulfill the petitioner's religious and legal obligation of maintaining his own daughter.

15. Given the inflation at this day and age, and given the fact that respondent No.2 is the petitioner's only daughter from his marriage with respondent No.1, I am inclined to partially allow writ petition No.414/2017 by setting aside the judgment and decree dated 03.12.2016, passed by the learned appellate Court to the extent of the interference made with the quantum and period of maintenance fixed by the learned Family Court for respondent No.2 only. Therefore, the said judgment and decree dated 03.12.2016, passed by the learned appellate Court, is set-aside only to the extent of reducing the monthly maintenance for respondent No.2 from Rs.20,000/- to Rs.12,000/- per month. Additionally, since there is no evidence on the record that the petitioner had paid his daughter maintenance since her birth, the judgment and decree of the learned Family Court to the extent of fixing the quantum and period of maintenance for respondent No.2 (Isma Mubarak) is restored. As regards, writ petition No.269/2017, the same is dismissed. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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