

2001 C L C 1983

[Peshawar]

Before Nasirul Mulk and Ijaz-ul-Hassan, JJ

MUHAMMAD AZAM KHAN TAREEN---Petitioner

versus

DISTRICT JUDGE, HARIPUR and others---Respondents

Writ Petitions Nos. 13 and 14 of 2001, decided on 9th May, 2001.

(a) West Pakistan Family Courts Act (XXXV of 1964)---

---S. 5---Constitution of Pakistan (1973), Art. 199---Constitutional petition---Maintenance allowance of minor children---Financial status of father of the minors---Father of the minors was Zamindar (landlord) and owned considerable landed property---Family Court fixed a sum of Rs.5,000 per child per month as monthly allowance and the judgment was maintained by the Appellate Court---Validity---Keeping in view the financial status of the father of the minors, the amount so fixed did not appear to be exorbitant and he had been properly saddled to pay maintenance allowance of the minors at the rate of Rs.5,000 each per month---High Court refused to take any different view than that of the Courts below---Constitutional petition was dismissed in circumstances.

(b) Guardians and Wards Act (VIII of 1890)---

---S. 25---Constitution of Pakistan, 1973, Art.199---Claim for custody of minor sons by father---Father filed suit against mother for obtaining custody of his minor sons after divorcing her---Family Court and District Judge dismissed the suit and appeal respectively---Minors were residing with mother and studying in an educational institution of high repute---Petitioner had contracted second marriage and was living happily with second wife--Effect---If the mother of the minor sons had contracted second marriage, petitioner would be at liberty to approach the Court for appropriate relief.

1980 CLC 785; PLD 1988 Kar. 252; 1993 CLC 2468 and 1996 CLC 1 distinguished.

1998 SCMR 1593; 1978 SCMR 299; 2000 MLD 1967; 2000 CLC 1823 and 2000 CLC 1264 ref.

Qazi Muhammad Ghazanfar for Petitioner.

Khalid Rehman Qureshi for Respondents.

Date of hearing: 9th May, 2001.

JUDGMENT

IJAZ-UL-HASSAN, J--- Muhammad Azam Khan Tareen petitioner married Mst. Shazia Nasim respondent on 24-3-1988 and she lived in the house of the petitioner till 25-3-1995. During the period of married life the couple was blessed with two sons, namely Muhammad Hamayun Azam Khan and Muhammad Adil Khan respondents, born on 13-10-1989 and 10-6-1991 respectively. Unfortunately, the relations between the couple became strained which resulted in the divorce given by the petitioner to respondent No. 1 on 25-3-1995. On the same day Mst. Shazia is stated to have moved to her parent's house in village Datwil alongwith her minor sons.

2. Respondent No. 1 filed a suit before the Family Court at Haripur, for the recovery of Rs.2,00,000 as dower. She also filed suit against the petitioner for her maintenance at Rs.5,000 per month w.e.f. 25-3-1995 and also claimed the maintenance of minors at Rs.5,000 each per month w.e.f. 25-3-1995. Both the suits were consolidated and necessary issues arising out of the pleadings of the parties were formulated for trial. The parties produced evidence in support of their contentions. The petitioner also instituted petition before Family Judge at Haripur for the custody of the minors. Vide judgment, dated 15-12-1999, Judge, Family Court held that respondent No. 1 had been divorced on 25-3-1995 and resultantly decreed her suit for maintenance at Rs.5,000 per month only for the period of Iddat (3 months) w.e.f. 25-3-1995. The suit for payment of dower was also decreed. Regarding the maintenance of minors the Court decreed the suit and held that each child was entitled to receive Rs.5,000 per month as maintenance allowance. Feeling aggrieved, an appeal was preferred before the District Judge, Haripur which was dismissed by judgment, dated 26-10-2000.

3. Muhammad Azam petitioner, feeling aggrieved of the aforesaid judgment passed by Judge, Family Court, Haripur and affirmed in appeal by District Judge, Haripur, has approached this Court by way of filing instant Writ Petitions Nos. 13 of 2000 and 14 of 2000 with the prayer that the aforesaid judgment and decrees be set aside and petition filed by the petitioner for the custody of the minors, be accepted. This judgment is proposed to dispose of both the matters.

4. Qazi Muhammad Ghazanfar, Advocate appeared for the petitioner whereas Khalid Rehman Qureshi, Advocate represented Mst. Shazia Nasim and her minor sons. We have heard at length the arguments and submissions of learned counsel for the parties in the light of the material and the case-law cited at the bar.

5. The main grievance of learned counsel for the petitioner is that the judgments of the Courts below in respect of payment of maintenance of the minors with effect from 23-3-1995 are improper, unjust and in excess of lawful authority and jurisdiction. To elaborate the argument, the learned counsel reiterated that the evidence brought on record in support of the case the petitioner has not been properly assessed and appreciated and without determining the source of income of the petitioner, an exorbitant amount has been fixed as maintenance allowance of the minors. In this connection, he relied on 1980 CLC 785 (Lahore), PLD 1988 Kar. 252, 1993 CLC 2468 Lahore) and 1996 CLC 1 (Karachi).

6. Learned counsel for respondent No. 1 and her minor sons when questioned as to how he could defend the impugned judgment, contended that the material on record has been properly assessed and scanned and no case for interference in exercise of Constitutional jurisdiction of this Court has been made out. He relied on 1998 SCMR 1593, 1978 SCMR 299, 2000 MLD 1967 (Lahore), 2000 CLC 1823 (Lahore) and 2000 CLC 1264 (Lahore).

7. There appears to be no controversy between the parties that Muhammad Azam Khan petitioner married Mst. Shazia Nasim respondent on 24-3-1988 and two sons were born out of the wedlock. Unfortunately, the married life could not sail smoothly and they drifted apart on 25-9-1995 when Mst. Shazia Nasim was divorced. The marriage tie having broken, Mst. Shazia Nasim moved to the house of her parents alongwith the minors and started living there. At present the lady is residing in Islamabad and the minors are studying in an educational institution of high repute. The petitioner has contracted second marriage and he is living happily with his second wife. It has come on record that the petitioner is a Zamindar and he owns considerable landed property. In the circumstances we feel satisfied that he has been properly saddled to pay maintenance allowance of the minors at the rate of Rs.5,000 each per month to bear expenses of the minors. The amount so fixed does not appear to be exorbitant keeping in view the financial status of the petitioner: We find ourselves in agreement with learned counsel for the respondent, that the Courts below have given a unanimous decision regarding fixation of maintenance allowance of the minors. In view of the material on record it is not possible for us to take a view different from the one taken by the Judge, Family Court, Haripur as well as District Judge, Haripur. The writ petitions fail which are hereby dismissed. No order as to costs.

8. Before parting with the judgment we would like to make it clear that in case Mst. Shazia Nasim enters into a second marriage, it shall be open "to the petitioner to approach the Court concerned for appropriate relief and his prayer shall be considered by the Court in the light of the changed circumstances.

Q.M.H./M.A.K./280/P

Petition dismissed.