CJDA 38

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 8786 of 2021
(Samia Zaman v. Asad Zaman and another)

JUDGMENT

Date of hearing: 15.11.2023

Petitioner by: Mr. Muhammad Naveed Sheikh, Advocate.

Respondents by: Respondent No. 1 *ex parte*.

Faisal Zaman Khan, J. Through this petition, judgment dated 19.01.2021 passed by respondent no.2 has been assailed, by virtue of which an appeal filed by respondent no.1 has been accepted.

2. The facts giving rise to the present petition are that marriage was solemnized between one Mst. Rukhsana Kauser and respondent no.1 on 20.02.2000. Out of the wedlock, petitioner was born. Due to altercation between the spouses, a suit for recovery of maintenance allowance was filed by the petitioner against respondent no.1. Mst. Rukhsana Kausar also filed suits for recovery of maintenance allowance and dowry articles against the said respondent. Through a consolidated judgment and decrees dated 24.03.2016 these suits were decreed and while decreeing the suit of the petitioner, she was held entitled to maintenance allowance at the rate of Rs.5,000/- per month from the date of her birth till her legal entitlement with 15% annual increase. Feeling aggrieved, respondent No.1 by way of filing an appeal assailed the judgment and decree passed in favour of the petitioner, whereas Mst. Rukhsana Kausar filed a separate appeal against judgment and decrees passed in her favour. Vide consolidated judgment and decrees dated 20.09.2016 the appeal filed by the petitioner was

dismissed whereas, while accepting the appeal filed by Mst. Rukhsana Kausar, the decrees passed in her favour were modified. Feeling dissatisfied of dismissal of his appeal, respondent no.1 filed Writ Petition No.6400/2017 which was dismissed through order dated 05.11.2018, subsequent to which execution proceedings were initiated by the petitioner, during the course of which a question arose, as to from which date annual increase of 15% has to be made applicable. *Vide* order dated 16.10.2020 the executing court held that since the petitioner has been held entitled to maintenance allowance from her date of her birth, therefore, the annual increase of 15% shall be made applicable from that date and not from the date of decree. Feeling aggrieved, respondent no.1 preferred an appeal, which was accepted through the impugned judgment and 15% annual increase was made applicable from the date of decree, hence this petition.

3. Learned counsel for the petitioner submits that when the petitioner was held entitled to arrears of maintenance allowance, the annual increase of 15% had to be made applicable from that very date and not from the date of decree, thus, respondent no.2 has erred in law in holding that the annual increase shall be made applicable from the date of decree.

4. Despite service through publication, none entered appearance on behalf of respondent no.1, therefore, *vide* order dated 22.06.2020, he was proceeded against *ex parte*.

5. Argument heard. Record perused.

6. The sole point which requires determination by this Court is as to from which date, 15% annual increase as contemplated in judgment and decree dated 24.03.2016 passed by the Family Court shall be made applicable, i.e. from the date of decree or from the date when the petitioner is held entitled to arrears of maintenance allowance.

7. A **JUDGMENT** has been defined in **Section 2(9)** of the Code of Civil Procedure 1908 **(CPC)**:

> ***"Judgment" means the statement given by the judge of the grounds of a decree or order."***

Similarly a **DECREE** has been defined in **Section 2(2) CPC**:

> ***"Decree" means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint the determination of any question within section 144 and an order under rule 60, 98, 99, 101 or 103 of Order XXI] but shall not include-----***
>
> ***(a) any adjudication from which an appeal lies as an appeal from an order, or***
>
> ***(b) any order of dismissal for default.***
>
> ***Explanation. - A decree is preliminary when further proceedings have to be taken before the suit can be completely dispose of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.***

Apart from the above, an **ORDER** has also been defined in **Section 2(14) CPC** which for convenience is reproduced asunder:

> ***"Order" means the formal expression of any decision of a Civil Court which is not a decree:***

8. **Order XX Rule 4 CPC** explains what the ingredients of a judgment, which for convenience of reference is reproduced below:

> ***4. Judgments of Small Cause Courts---(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.***

> ***Judgments of other Courts.---(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.***

9. In **Order XLI Rule 31 CPC** expression Judgment passed by an Appellate Court has been explained amplifying the necessary ingredients of a judgment, which for convenience is reproduced asunder:

> ***"R.31. Contents, date and signature of Judgment.— The judgment of the Appellate Court shall be in writing and shall state---***
>
> ***(a) the points for determination;***
>
> ***(b) the decision thereon;***
>
> ***(c) the reasons for the decision; and,***
>
> ***(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;***
>
> ***and shall at the time it is pronounced be signed and dated by the Judge or by the Judges concurring therein.***

10. The cumulative reading of the above provisions would show that a judgment/order passed by a Court or forum **"SHALL"** contain the following:

> ***a. concise statement of case;***
>
> ***b. the points for determination;***
>
> ***c. Finding on each point pressed/argued by the parties; and***
>
> ***d. the reasons for the decision.***

11. While giving guide lines for a JUDGMENT passed by the courts/forums Honourable Supreme Court of Pakistan in judgment reported as *Messrs MFMY Industries Ltd. and others v. Federation of*

Pakistan through Ministry of Commerce and others **(2015 SCMR 1550)** has held as follows:

> ***"5. Termination of a lis undoubtedly is through a verdict of a court which is a decision disposing of a matter in dispute before it (the Court) and in legal parlance, it is called a "JUDGMENT". It is invariably known that a judge finally speaks through his judgment. According to Black's Law Dictionary, a judgment has been defined to mean "A court's final determination of the rights and obligations of the parties in a case" and per Henry Campbell Black, A treatise on the Law of Judgment "An action is instituted for the enforcement of a right or the redress of an injury. Hence a judgment, as the culmination of the action declares the existence of the right, recognizes the commission of the injury, or negatives the allegation of one or the other. But as no right can exist without a correlative duty, nor any invasion of it without a corresponding obligation to make amends, the judgment necessarily affirms, or else denies, that such a duty or such a liability rests upon the person against whom the aid of the law is invoked". These definitions are adequately self-explanatory. In our procedural law (civil), judgment as defined in Section 2(9) of Code of Civil Procedure means "the statement given by the judgment of the grounds of a decree or order". It should be emphasized here that a judgment should supply adequate reasons for the conclusion reached and arrived at and should be reflective of application of proper judicial mind by the Judge and it should not be a mechanical and not speaking judgment in nature.***
>
> ***It may be reiterated that without a judgment, there is no concept of justice and/or fruitful outcome of litigation which without any fear of contradiction means that the State lacks an effective justice system. In such a situation, I would, rather, go to the extent of saying that if the Judge/the Court does not pronounce a judgment for resolving the legal and factual issues involved in a dispute before it at all, the very purpose of the judicial branch of the State will be frustrated and eroded. If there is no judgment in terms of law, the entire judicial setup shall be rendered farce and illusionary, which obviously shall in turn disturb the equilibrium between the pillars of the State upon***

> ***which it rests, resulting into serious impairment of the functioning of the State."***

12. In another judgment, reported as *Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others* **(1986 SCMR 1736)** the Apex Court has observed as follows:

> ***" 'Judgment' has been defined in section 2, clause (9) of the Civil Procedure Code as judgment' means the statement given by the Judge of the grounds of a decree or order and Order has been defined in clause 14 of the same section as formal expression of any decision of a civil Court which is not a decree'. Further, Order XX, Rule 4, sub-rule (2) prescribes that judgment of Courts other than the Court of a small causes' shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision'. Rule 5 of the same Order provides in suits in which issues have been framed the Court shall state its finding or decision with reasons. Therefore, upon each separate issue, unless the finding upon any one or more of the issues sufficient for the decision of the suit."***

13. The afore-noted view has also been followed in recent judgments reported as *Mst. Sarwar Bano through Attorney v. Province of Sindh through Member Board of Revenue, Hyderabad and 5 others* [**PLD 2015 Sindh 445**], *Ali Noor (Pvt.) Ltd. through Authorized person v. Trading Corporation of Pakistan (Pvt.) Ltd. through Chief Executive/Director* [**PLD 2015 Sindh 451**] and *Ghous Bakhsh v. Syed Ali Nawaz Shah and 8 others* [**PLD 2014 Sindh 306**].

14. With regard to applicability of an order/judgment/decree, it has been held in judgments reported as *Zari Taraqiati Bank Limited through President and others v. Sarfraz Khan Jadoon and others* [**2023 PLC (CS) 724**], *Muhammad Farooq through legal heirs and others v. Muhammad Hussain and others* [**2013 SCMR 225**], *Muhammad Younis and others v. Essa Jan and others* [**2009 SCMR 1169**] and *Mst. Attiyya Bibi Khan and others v. Federation of Pakistan through Secretary of*

Education (Ministry of Education), Civil Secretariat, Islamabad and others [**2001 SCMR 1161**] that the applicability of the order/judgment/decree will be prospective unless through a clear and categoric direction, it is made applicable retrospectively.

15. Placing the above exposition in juxtaposition with the facts of the present case, it has surfaced that although a judgment and decree qua recovery of past and future maintenance allowance has been passed in favour of the petitioner yet no such direction has been issued therein, wherefrom it can be culled out that 15% annual increase has been made applicable from the date when the arrears of maintenance allowance have been granted to the petitioner. Had this been the intention of the family court, it would have given a categoric and unequivocal finding in this regard (backed by reasons), therefore, keeping in view the interpretation that applicability of order/judgment/decree will be prospective in nature and finding *qua* an issue has to be categoric, hence it is held that the finding of the family court with regard to applicability of annual increase of 15% was from the date of decree and not from the date when the arrears were granted.

16. It shall not be out of place to mention here that when a decree of recovery of maintenance allowance is passed by a family court, under section 17-A (2) of the Family Courts Act 1964 (**Act**), a family court has to fix the amount of maintenance allowance, which can either be the amount asked for in a suit or a higher amount keeping in view the facts and circumstances of the case. Apart from this it will also prescribe an appropriate annual increase in the quantum of the maintenance allowance determined. It has also been narrated in section 17-A (3) of the Act that where no annual increase is suggested, it shall automatically stand increased at the rate of 10% each year.

17. The above provisions of the Act further fortify the view taken by this Court that although a family court while decreeing a suit

qua recovery of maintenance allowance apart from determining the quantum of maintenance allowance will also suggest the annual increase however if the annual increase has to be made applicable retrospectively (as the relevant provision does not lay any embargo in this regard), keeping in view the evidence of the parties, it has to give a categoric finding in this regard justifying the applicability of the increase from a particular date otherwise if the increase is not suggested from a particular date or no increase is suggested, the same shall be deemed to be applicable from the date of decree.

18. For what has been discussed above, since the learned counsel for the petitioner has not been able to highlight any jurisdictional defect or procedural impropriety in the impugned judgment, therefore, no ground for interference is made out, as a sequel to which, this petition fails and the same is **dismissed**.

(Faisal Zaman Khan)
Judge

Approved for Reporting.

JUDGE

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