

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Shariat Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

1. Civil Appeal No.252 of 2018
(Filed on 12.11.2018)

1. Dr. Shamim Yousaf D/o Mohammad Yousaf,
2. Sajeel,
3. Maseel, sons of Professor Shahid Amin, R/o
Doctors Colony DHQ, Hospital Mirpur No.2, 3
through their mother appellant No.1.

.....APPELLANTS

VERSUS

Professor Shahid Amin S/o Professor Tariq Amin
Qasmi, through Engineering University MUST Mirpur
AJK.

.....RESPONDENT

[On appeal from the judgment & decree of Shariat Appellate
Bench of the High Court dated 16.10.2018 in Family Appeals
No.15 & 16/2017]

FOR THE APPELLANTS: Mr. Muhammad Riaz
Alam, Advocate.

FOR THE RESPONDENT: Mr. Masood A. Sheikh,
Advocate.

2. Civil Appeal No.276 of 2018
(Filed on 11.12.2018)

Professor Shahid Amin S/o Tariq Amin Qasmi, R/o House No.436, Sector F/3, Part-I, Tehsil & District Mirpur, presently Engineering University College (MUST) Mirpur.

.....APPELLANT

VERSUS

1. Dr. Shamim Yousaf D/o Sardar Muhammad Yousaf,
2. Sajeel,
3. Maseel Sons of Prof. Shahid Amin, No.2 & 3 minor through real mother, Dr. Shamim Yousaf, all residnets of Doctors Colony, District Head Quarter (DHQ) Hospital, Mirpur.

...RESPONDENTS

[On appeal from the judgment & decree of Shariat Appellate Bench of the High Court dated 16.10.2018 in Family Appeals No.15 & 16/2017]

FOR THE APPELLANT: Mr. Masood A. Sheikh,
Advocate.

FOR THE RESPONDENTS: Mr. Muhammad Riaz
Alam, Advoate.

Date of hearing: 18.02.2019.

JUDGMENT:

Raja Saeed Akram Khan, J.- Through the titled appeals, the validity of the judgment and decree of the learned Shariat Appellate Bench of the High Court (hereinafter to be referred as High Court), has been challenged, through which the appeal filed by the appellants, Dr. Shamim Yousaf and others has been partly accepted, whereas the counter appeal filed by the appellant, Prof. Shahid Amin has been dismissed.

2. Necessary facts for disposal of the instant appeals are that the plaintiffs/appellants, Dr. Shamim Yousaf and others filed a suit for past and present monthly maintenance allowance, against the defendant, Dr. Shahid Amin, before the Judge Family Court, Mirpur on 04.04.2013. It was alleged that plaintiff/appellant No.1, is wife of defendant, Dr. Shahid Amin, whereas, plaintiffs No.2 and 3 (minors) are sons of the said defendant. It was further alleged that the plaintiffs are not residing with the defendant since 2007. The defendant neither paid any

maintenance allowance to plaintiff No.1 during the period she remained populated with him nor he paid the monthly expenditure of minors regarding school fee, clothing and pocket, which amount is not less than Rs.20,000/- per month. It was further averred that the defendant is a professor by profession and earning handsome money, hence can easily pay the aforesaid amount. On filing of the suit, the defendant was summoned, who contested the suit of appellants/plaintiffs by filing written statement, wherein the claim of the plaintiffs was refuted in toto.

Earlier, the defendant, Dr. Shahim Amin, had also filed a suit against plaintiff No.1 for restitution of conjugal rights before the same Court. The learned Judge Family Court consolidated both the suits and framed issues in the light of the pleading of the parties. During pendency of the suits, the defendant divorced plaintiff No.1, hence the suit of the defendant was set aside having become infructuous. At the conclusion of the proceedings, the learned trial

Court vide its judgment dated 26.08.2014, decreed the suit filed by the plaintiffs to the extent of minors whereas the same was dismissed to the extent of plaintiff No.1. The trial Court held that the minors are entitled for maintenance allowance at the rate of Rs.4000/- per month each from the date of filing the suit till the decision of the case, whereas in future they were declared entitled for the maintenance at the rate of Rs.5000/- per month each. Feeling dissatisfied from the judgment and decree of the trial Court both the parties approached the High Court by filing separate appeals. After necessary proceedings, the learned High Court vide impugned judgment dated 16.10.2018, dismissed the appeal filed by the defendant/appellant, Prof. Shahid Amin, whereas the counter appeal filed by Dr. Shaimim Yousaf and others was accepted partly, in the following terms:

“So cross appeal filed by the respondent is not maintainable for the reasons indicated above which is hereby dismissed, however, appeal for maintenance allowance filed by Dr. Shamim Yousaf is partly accepted and judgment and decree

passed by Family Court is modified in the manner that Appellant No.1 Dr. Shamim Yousaf is held entitled for maintenance allowance to Rs.16000/- for whole period of *iddat*. Maintenance allowance of minors is also enhanced amounting to Rs.8000/ per month each from institution of suit till their majority along with 10% annual increase. However, past maintenance fixed by the Family Court is hereby upheld."

This judgment of the learned High Court is subject of both the appeals.

3. After arguing the case at some length, the counsel for both the parties agreed on the point that the total amount of maintenance allowance awarded by the Family Court for the minors at the rate of Rs.4000/- per month each from the date of filing the suit till the decision of the case and the future maintenance allowance at the rate of Rs.5000/- per month each, comes to Rs.11,96,000/-out of which the defendant/appellant, Prof. Shahid Amin has already paid Rs.1,00,000/-. If the appellant, Prof. Shahid Amin pays 50% of the remaining amount of maintenance allowance in the Court and the remaining amount is

paid in four equal installments while fixing a time period, they have no objection on the disposal of the appeals accordingly. However, Mr. Muhammad Riaz Alam, Advocate, counsel for the appellant, Dr. Shamim Yousaf and others, submitted that as he is not pressing the appeal to the extent of monthly maintenance allowance for appellant No.1, Dr. Shamim Yousaf, therefore, the judgment of the learned High Court to the extent of maintenance allowance of *Iddat* period shall be kept intact. The counsel for the other side has no objection.

4. Keeping in view the submissions made by the learned counsel for the parties, a query was made to Prof. Shahid Ameen, who was present in the Court, whether he is ready to pay the half of the outstanding amount of maintenance (*awarded by the trial Court for the minors*) in the Court, he submitted that a short time be granted to him for arranging the same. However, he assured the Court that he will pay the same in the Court within two days.

5. In view of the above, while partly accepting the appeal filed by Prof. Shahid Amin, the impugned judgment and decree passed by the learned High Court to the extent of the maintenance allowance for the minors is set aside and the judgment and decree of the Family Court is restored. As the total amount of maintenance allowance in the light of the decree of the trial Court comes to Rs.11,96,000/- out of which the appellant, Prof. Shahid Amin has already deposited Rs.100,000/-, therefore, he is directed to pay half of the remaining decretal amount along with the maintenance allowance fixed by the learned High Court for the appellant, Dr. Shamim Yousaf, for the period of *iddat* i.e. Rs.16000/-, (total amounting to Rs.614,000/-) within three days positively, with the Additional Registrar of the Court, whereas the remaining amount i.e. Rs.5,98,000/- shall be deposited in four equal instalments within a period of six months. The running maintenance allowance for the

minors shall also be paid. The appeal filed by Dr. Shamim Yousaf and others is dismissed.

The appeals are disposed of in the terms indicated hereinabove, with no order as to costs.

JUDGE

JUDGE

Mirpur.
18.02.2019.