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

PRESENT:
Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Civil Appeal No.220 of 2018
(PLA filed on 20.08.2018)

1. Sohail Ahmed,

2. Saad Ahmed minor sons of Ali Ahmed Caste Jatt, r/o Ghanair, Tehsil Dadyal, District Mirpur (minors under the guardianship of Mst. Shahida Bibi, their real mother.

….APPELLANTS

VERSUS

Ali Ahmed s/o Lal Hussain, caste Jatt, r/o Ghanair, Tehsil Dadyal, District Mirpur.

….RESPONDENT

(On appeal from the judgment and decree of the Shariat Appellate Bench of the High Court dated 24.07.2018 in Appeal No.123 of 2017)

FOR THE APPELLANTS: Mr. Imtiaz Hussain Raja, Advocates.

FOR THE RESPONDENT: Mr. Wajid Hussain Mirza, Advocate.

Date of hearing: 25.02.2019.

JUDGMENT:

Ghulam Mustafa Mughal, J.— This appeal by leave of the Court has been directed against the judgment and decree dated 27.07.2018, passed by the Shariat Appellate Bench of the High Court in Appeal No.123 of 2017.

2. The facts forming the background of the captioned appeal are that plaintiff/appellants, herein, filed a suit for recovery of maintenance allowance through their mother Shahida Bibi, against defendant/respondent, herein, in the Court Additional District Judge/Judge Family Court Dadyal on 21.07.2017. It was stated that the marriage between the mother of the plaintiffs and the defendant was solemnized on 20.06.1997 at village Ghanair, in lieu of dower amounting to Rs.500,000/-. It was further stated that out of the wedlock two minor sons namely Sohail Ahmed and Saad Ahmed i.e. plaintiffs were born. It was alleged that initially the relationship between spouses remained cordial but after some time the

defendant use to abuse and beat the mother of the plaintiffs on one or the other false pretext and finally he thrown her out of his home in October, 2009. It was further alleged that since then the mother of the plaintiffs is living at the home of her parents and is bearing the expenses of herself and minors at her own. It was claimed that the defendant is father of the plaintiffs and is duty bound to maintain them but he did not pay the maintenance allowance since October, 2009. It was prayed that the defendant may be ordered to pay maintenance allowance to the minors Sohail Ahmed and Saad Ahmed at the rate of 5000/- and 3000/- respectively from October 2009 in lump sum and 5000/- each per month for future. The suit was contested by the defendant by filing written statement, whereby, he refuted the claim of the plaintiffs. It was stated that the suit filed by the plaintiffs is based on false allegations and is not maintainable. It was also stated that the defendant is a retired Army person and his monthly pension is only 7000/- per month, hence, he cannot pay maintenance

allowance as per demand of the plaintiffs. The learned trial Court framed issues in light of the pleadings of the parties and asked them to led evidence in support of their respective stand. At the conclusion of the proceedings, the learned trial Court vide judgment and decree dated 24.12.2016, decreed the suit in the terms that the plaintiffs are entitled to the maintenance allowance at the rate of Rs.1000/- per month from the date of filing of suit. The suit to the extent of past maintenance allowance was dismissed for want of proof. Feeling aggrieved from the judgment and decree passed by the learned Family Court dated 24.12.2016, the plaintiff/appellants, herein, filed an appeal before the Shariat Appellate Bench of the High Court on 01.11.2017. The learned Shariat Appellate Bench of the High Court through the impugned judgment and decree dated 24.07.2018, partly accepted the appeal and declared the plaintiffs/appellants, herein, entitled to receive maintenance allowance at the rate of Rs.2000/- each per month from the date of its judgment.

3. Mr. Imtiaz Hussain Raja, the learned Advocate appearing for the appellants, vehemently argued that the appellants, herein, filed appeal before the learned Shariat Appellate Bench of the High Court against the judgment passed by the Family Court dated 24.12.2016 and requested for enhancement in the maintenance allowance. He submitted that through the impugned judgment, the learned Shariat Appellate Bench of the High Court has partly accepted the appeal and enhanced the maintenance allowance from Rs.1000/- to 2000/- each per month but effect is given from the date of the impugned judgment. The learned Advocate requested that the impugned judgment may be amended to the extent that the effect may be given from the date of filing application before the learned Family Court. The learned Advocate further argued that the impugned judgment passed by the learned Shariat Appellate Bench of the High Court is illegal and against the settled principles of law.

4. Conversely, Mr. Wajid Hussain Mirza, the learned Advocate appearing for the other side argued that

on appeal filed by the appellants, herein, enhancement in the maintenance allowance has been made but the effect has been given from the date of impugned judgment of the learned Shariat Appellate Bench of the High Court. The learned Advocate further argued that it was discretion of the learned Shariat Appellate Bench of the High Court to order for payment of the enhanced maintenance allowance from a particular date and no direction can be issued to the learned Shariat Appellate Bench of the High Court to accept the appeal in the manner suggested by the learned Advocate for the appellants, herein.

5. We have heard the learned counsel for the parties and gone through the record of the case. It may be stated that earlier after the judgment of the learned Family Court, the respondent, herein, has not deposited any amount in respect of maintenance allowance with the Family Court and on the direction of this Court, he has deposited an amount of Rs.30,000/- with the Additional Registrar of this Court on 06.02.2019. It is directed that

the outstanding amount of Rs.28000/- shall also be deposited in 2 monthly instalments before the concerned Family Court. So far as the contention of Mr. Imtiaz Hussain Raja, the learned Advocate for the appellants, regarding retrospective effect of the payment of enhanced maintenance allowance, is concerned, that has no substance. The learned Shariat Appellate Bench of the High Court after hearing the learned counsel for the parties and perusing the record has fixed the date of payment of the enhanced maintenance allowance. In our view, the discretion exercised by the learned Shariat Appellate Bench of the High Court is neither arbitrary nor perverse, therefore, interference is not justified. However, it is clarified that the appellants, herein, would be entitled to the maintenance allowance awarded by the learned Family Court i.e. Rs.1000/- each per month till date of impugned judgment of the Shariat Appellate Bench of the High Court dated 24.07.2018 and thereafter at the rate of Rs.2000/- each per month as fixed by the Shariat Appellate Bench of the High Court.

In view of above finding no force in this appeal, the same stands dismissed with no order as to costs.

JUDGE CHIEF JUSTICE

Mirpur
26.02.2019