

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

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.71 of 2020
Civil Misc. No.40 of 2020
(Filed on 27.02.2020)

Khawaja Babar

.....PETITIONER

VERSUS

Iram Arshad

....RESPONDENT

[On appeal from the judgment of the Shariat
Appellate Bench of the High Court dated
23.01.2020 in Family Appeal No.90/2019]

(Application for interim relief)

FOR THE PETITIONER: Miss Nabeela Ayub,
Advocate.

FOR THE RESPONDENT: Ch. Ashiq Hussain,
Advocate.

Date of hearing: 18.05.2020

JUDGMENT

Raja Saeed Akram Khan, ACJ—The captioned petition for leave to appeal has arisen out of the judgment of the Shariat Appellate Bench of the

High Court dated 23.01.2020, whereby the appeal filed by the petitioner, herein, has been dismissed.

2. The precise facts of the case are that the respondent, herein, filed a suit for recovery of maintenance allowance before the Family Court, Mirpur. The learned trial Court through ex-parte judgment and decree dated 16.05.2018 fixed Rs.10,000/- per month as maintenance allowance. The petitioner filed an application before the trial Court for setting aside the aforesaid ex-parte judgment and decree. The learned trial Court after having objections from other side dismissed the application through order dated 23.05.2019. An appeal before the Shariat Appellate Bench of the High Court failed, hence, this petition for leave to appeal.

3. Miss Nabeela Ayub, Advocate, the learned counsel for the petitioner contended that the respondent has fraudulently obtained ex-parte decree in her favour by concealing the facts. She forcefully submitted that in the suit the wrong address of the petitioner was deliberately

mentioned which amounts to fraud. No notice was served upon the petitioner. The petitioner got knowledge of the decree at the time of attachment of his property and immediately filed the application for setting aside the same . The learned trial Court has wrongly dismissed the application on the ground of limitation, whereas, according to settled principle of law the point of limitation is mixed question of law and facts which requires proof. In support of her contentions she referred to the cases reported as *Syed Mehar Ali Shah vs. Syeda Nudrat Bibi* [2018 SCR 9] and *Muhammad Iqbal Khan & another vs. Parveen Shakir* [2013 SCR 85]. She further added that the learned Shariat Appellate Bench has also wrongly observed that special power of attorney does not authorise the petitioner to file appeal before the High Court, whereas, according to the contents of the power of attorney the petitioner is authorized so. The Courts below have failed to appreciate the legal propositions in true perspective. As important legal propositions are involved, hence, grant of leave is justified.

4. Controverting the arguments of learned counsel for the petitioner, Ch. Ashiq Hussain, Advocate, the learned counsel for respondent No.1 submitted that no fraud has been committed. The application filed by the petitioner was time barred which has rightly been dismissed by both the Courts below. In fact, the petitioner was fully aware of filing of the suit. No ground exists for grant of leave, hence, this petition is liable to be dismissed.

After hearing the learned counsel for the parties at some length, it appears that some important questions of public importance, requiring detailed deliberation are involved. Leave to appeal is, therefore, granted. The petitioner shall furnish security of Rs.1,000/- within a period of one month otherwise the leave granting order shall automatically stand rescinded. The office shall proceed further according to rules.

ACTING CHIEF JUSTICE

Mirpur,
18.05.2020