

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

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.11 of 2020
(Filed on 07.01.2020)

Tahir Tariq

.....PETITIONER

VERSUS

Humble bin Tahir & others

....RESPONDENTS

[On appeal from the judgment of the Shariat
Appellate Bench of the High Court dated
09.01.2019 in Family Appeal No.22/2018]

FOR THE PETITIONER: Mr. Muzaffar Ali Zaffar,
Advocate.

FOR THE RESPONDENTS: Syed Gohar Abbas,
Advocate.

Date of hearing: 20.05.2020

JUDGMENT

Raja Saeed Akram Khan, ACJ– The captioned petition for leave to appeal is the outcome of the judgment of the Shariat Appellate Bench of the High Court dated 09.10.2019, whereby the appeal filed by the petitioner, herein, has been dismissed.

2. The precise facts of the case are that the plaintiff-respondents filed a suit for recovery of maintenance allowance before the Judge Family Court, Mirpur, on 22.12.2015. After necessary proceedings, the learned trial Court vide judgment and decree dated 09.02.2018 declared the plaintiff-respondents No.1 and 2 entitled for Rs.7,000/- each per month from 24.03.2015 till attaining the age of puberty, whereas, plaintiff-respondent No.3 was declared entitled for Rs.3,000/- per month. Dissatisfied, the petitioner filed an appeal before the Shariat Appellate Bench of the High Court which has been dismissed through the impugned judgment, hence, this petition for leave to appeal.

3. Mr. Muzaffar Ali Zaffar, Advocate, the learned counsel for the petitioner stated that the Courts below have wrongly passed the impugned judgments. The plaintiff-respondent No.3 wilfully deserted. The petitioner tried his level best for re-union of the spouses but failed. He submitted that the petitioner is jobless person. The trial Court has

passed the decree which is not executable. He added that no doubt the petitioner is duty bound to maintain his wife and children but the same is conditional with the performance of marital obligations. The Court should grant maintenance allowance keeping in view the financial position of the husband and his economic resource but the learned trial Court has ignored this important aspect of the matter. He referred to the case reported as *Umar Hayyat vs. Asia Bibi & others* [2019 SCR 427] and submitted that important legal propositions are involved, hence, grant of leave is justified.

4. Syed Gohar Abbasi, Advocate, the learned counsel for the respondents stated that the petitioner himself admitted that the maintenance allowance fixed by the trial Court is in accordance with law. He further submitted that the plaintiff-respondent No.3 was forced to leave the house of the petitioner, hence, the trial Court has rightly declared her entitled for maintenance allowance. The amount fixed is within the capacity of the

petitioner. No misreading or non-reading of evidence has been pointed out, therefore, this petition is liable to be dismissed.

After hearing the learned counsel for the parties at some length, in my opinion, the propositions raised, specially, with reference to the amount of maintenance allowance fixed by the trial Court; require detailed deliberation, hence, for having an authoritative judgment leave to appeal is granted. The petitioner shall deposit security of Rs.1000/- 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,
20.05.2020