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IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 2/FCA OF 2020
DATE OF INSTITUTION : 22.12.2020
DATE OF DECISION : 11.01.2021

SHAH MEHNAZ WIFE OF HABIB HASSAN, R/O MANI KHEL TEHSIL
KALAYA DISTRICT ORAKZAI AND FOUR OTHERS

.....(APPELLANTS)

-VERSUS-

HABIB HASSAN, RESIDENT OF MANI KHEL, KALAYA TEHSIL
ORAKZAI


..... (RESPONDENT)

Present: Noor Karim Advocate for appellants.
: Nemo for respondent

JUDGEMENT
11.01.2021

In the suit before the Judge Family Court, appellant/plaintiff no. 1 being wife of the respondent/defendant claimed maintenance at the rate of Rs. 15,000/- per month since June, 2020 whereas at the rate of Rs. 10,000/- per month were claimed for minor plaintiffs no. 2 to 5 till the disposal of case and for the future at the same rate besides Rs. 500,000/- were claimed being allegedly spent on the plaintiffs by the father of plaintiff no. 1 when respondent/defendant was in jail. The third claim of the plaintiff no. 1 was with regard to recovery of two tola golden ornaments.

(2). The trial court summoned the respondent/defendant but despite personal service, he absented himself, and accordingly was proceeded ex-parte. After recording ex-parte evidence and hearing arguments, the learned Judge Family Court partially decreed the claim of maintenance of the appellants/plaintiffs at the rate of Rs. 3000/- per


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month per person with ten percent annual increase, whereas the claim of two tola golden ornaments was decreed as prayed for but however the plea for the recovery of Rs. 500,000/- was turned down vide impugned judgement and decree dated 26.11.2020, hence the appeal in hand.

(3). Upon the institution of appeal, notice was issued to the respondent/defendant but he absented himself despite being personally served. Hence, was placed ex-parte.

(4). Ex-parte arguments heard and record perused.

(5). From the arguments and record available on file, it reveals that as for as the quantum of maintenance is concerned, in this regard it has to be noted that for minors/plaintiffs no. 2 to 5 Rs. 10,000/- were claimed as maintenance for the four minors i.e., at the rate of Rs. 2500/- per month whereas the trial court decreed Rs. 3000/- per month per person with ten percent annual increase for the minors which is more than the claim of the plaintiffs. Moreover, neither plaintiff no. 1 nor rest of the plaintiffs provided any proof regarding their actual expenditure to justify the requested maintenance. Therefore, the trial court has rightly granted the decretal maintenance to the plaintiffs while considering their needs as well as the financial status of the respondent/defendant.


(6). As for as the claim of Rs. 500,000/- is concerned, it was alleged that the said amount is spent on the plaintiffs by the father of plaintiff no.1 during the period of 5 years between 2013-2018 when the respondent/defendant was in jail. In the evidence there is nothing mentioned as to when respondent/defendant was imprisoned but during the arguments the learned counsel for the appellant/plaintiffs


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submitted that he was imprisoned in 2013 and was released in 2018. The question would arise as to why the appellant/plaintiff no.1 remained silent on the amount in between 2018 to 2020, no plausible explanation was furnished to this query of the court. Also, not an iota of evidence is available on the question of spending of Rs. 500,000/- on the plaintiffs. Thus, the said claim of the appellant/plaintiff no.1 was rightly turned down by the trial court.

(7). In the light of above, no misreading or non-reading of evidence or any other legal infirmity on the part of trial court was pointed out. Therefore, the impugned judgment and decree of the trial court is upheld and the appeal in hand resultantly stand dismissed being meritless. No order as to cost. File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.

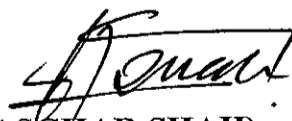
Announced
11.01.2021


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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.01.2021


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