

HIGH COURT OF AZAD JAMMU & KASHMIR`
(Shariat Appellate Bench)

Family Appeal No.67 of 2021.
Date of Institution. 27.10.2021.
Date of Decision. 11.10.2023.

Allah Ditta S/o Muhammad Hussain caste Jaat R/o Balo Baniyan Tehsil Saray Alamgir District Gujrat through special attorney Muhammad Hussain S/o Fazal Kareem (Father).

...Appellant.

VERSUS

1. Nusrat Noreen wife of Allah Ditta.
2. Haleema Sadia D/o Allah Ditta caste Rajput R/o Chani Fateh Muhammad Tehsil & District Bhimber AK.

... Respondents.

APPEAL AGAINST THE JUDGMENT & DECREE PASSED BY
LEARNED ADDITIONAL DISTRICT JUDGE/JUDGE FAMILY
COURT BHIMBER DATED 30.09.2021.

Before:- *Justice Syed Shahid Bahar, J.*

PRESENT:

Raja Aziz Ahmed Khan, Advocate, for the appellant.
Ch. Yasir Mehmood, Advocate, for the respondents.

JUDGMENT:

The above titled appeal has been filed to set aside the impugned judgment and decree passed by learned Additional District Judge/Judge Family Court Bhimber dated 30.09.2021 through which the suit filed by Nusrat Noreen, respondent herein, for recovery of maintenance allowance was decreed in her favour.

2. Facts giving rise to the instant appeal are that Nusrat Noreen, plaintiff, filed a suit for recovery of maintenance allowance in the Court of Additional District & Sessions Judge/Judge Family Court Bhimber on 01.02.2021 stating therein that marriage between the

appellant and respondent was solemnized on 28.09.2015. The spouses remained populated at their house, however, a week prior of filing the suit before the Court below on 01.02.2021, the plaintiff and her minor daughter Haleema Sadia was forcibly compelled to leave her marital abode by her father-in-law and brothers-in-law and till the time of their desertion, the plaintiff alongwith her minor daughter is living at the house of her parents and they were not provided any maintenance allowance by the defendant whereas the defendant has the capacity of maintaining her wife and daughter. It was requested to issue a decree for maintenance allowance in favour of the plaintiff against the defendant. The defendants were summoned in accordance with law who filed written statement stating therein that the plaintiff left her marital abode at her own will by taking the ornaments with her and now she is not ready to live at the house of her husband, therefore, she has no cause of action. It was further stated that the defendant has been paying maintenance allowance even during the period of desertion. It was also stated that he tried his best to cohabite the plaintiff but she refused to live with her. On 26.04.2021, 1st effort for reconciliation between the parties was made which was not effected, so, on 18.05.2021, in the light of pleadings of the parties as many as 03 issues were made. The parties were directed to lead evidence in support of their rival versions, which was done accordingly. Thereafter, on 17.09.2021 2nd effort for reconciliation was made which was also not effected. The Court below, after due process of law, decreed the suit in favour of the plaintiffs No.1 and 2 and held them entitled for

maintenance allowance from institution of the suit till its decision and for future at the rate of Rs.7,000/- per head alongwith 10% annual increasement, hence, the instant appeal for setting aside the impugned judgment and decree dated 30.09.2021.

3. Raja Aziz Ahmed Khan, learned counsel for the appellant, argued that the Court below passed the impugned judgment and decree dated 30.09.2021 against the facts, law, pleadings and circumstances of the case. He argued that the appellant/defendant has refuted the claim of the respondents/plaintiffs by producing sufficient evidence but the Court below has not considered the same in a right direction and has committed patent illegality while decreeing the suit in favour of the respondents/plaintiffs. She argued that the Court below has not appreciated the evidence produced on record in its true perspective and arrived at a wrong conclusion.

4. On the other hand, Ch. Yasir Mehmood, learned counsel for the respondents, while arguing the case negated the version of the appellant and fully supported the impugned judgment and decree of the Court below. It was argued that the Court below has passed the impugned judgment and decree in the light of evidence and record and has reached a just conclusion, which needs no interference by this Court. He argued that the appellant has failed to point out any misreading and non-reading of evidence, so, he requested to dismiss the appeal in hand.

5. I have heard the arguments advanced on behalf of learned counsel' for the parties and gone through the record appended with the appeal. The matter in hand relates to monthly maintenance of the plaintiff, Nusrat Noreen and her minor daughter. The plaintiff/respondent is still living at the house of her parents alongwith her minor daughter and no divorce between the spouses was effected so far. The appellant is in abroad in order to earn his livelihoods whereas he is in possession of sufficient agricultural land who can easily provide the decretal amount of maintenance. The Court below has decreed the suit in favour of the plaintiff and minor at the rate of Rs.7,000/- per head alongwith 10 % annual increasement in the said amount. It reveals from record that the defendant (husband) is abroad in order to earn his livelihood whereas the plaintiff/wife claims that she was forced at the hands of her father and brothers in law without any maintenance during her population at the house of her husband. It was also the claim that she was not provided any maintenance allowance even after her desertion up-till-now. The parties have led pro and contra evidence, a perusal of which reveals that the plaintiffs/respondents herein have sufficiently proved the fact of non-payment of monthly maintenance allowance coupled with the fact of desertion by her father and brothers in law. The evidence produced in this regard is sufficient to hold that the plaintiffs are entitled to the prayed maintenance allowance as decreed by the Court below. The evidence produced by the plaintiffs is sufficient to believe that claim brought before the Court has been attended by the Court below in the light of record/evidence, which tells

in favour of the plaintiffs, respondents herein. It reveals from perusal of the record and evidence that the judgment and decree passed by the Court below has been passed in legal manner and no misreading or non-reading of evidence is found. **Seemingly it transpires from evidence available on record that respondent Nusrat Noreen has been deserted by the appellant. Demand of maintenance is legitimate on the part of the wife, particularly when she is deserted, tortured or for that matter put in compelling circumstances to herself take refuge under threat, coercion and inhuman treatment.**

(Under lining is mine). The Court below has appreciated the evidence in its true perspective and reached at a just conclusion. So, this Court needs no interference in the impugned judgment and decree, thus, the appeal in hand stands dismissed accordingly. File shall be kept in archive.

Muzaffarabad,
Oct 11, 2023. (RA)

JUDGE

Note:- Judgment is written and duly signed. The office is directed to transmit the instant file alongwith the judgment to Circuit Bench Mirpur for announcement of the same in accordance with law.

Muzaffarabad,
Oct 11, 2023. (RA)

JUDGE