

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH**  
*(Judicial Department)*

**W.P.No.183-D/2015**

**Mst. Zakiya Bibi and another**

**Versus**

**Murtaza Shah and two others**

**JUDGMENT**

Date of hearing                      31.01.2018

Appellant-petitioner (s) by Miss Samina Kanwal Advocate

Respondent(s) by Miss Farhana Jabeen Advocate

**MUHAMMAD YOUNIS THAHEEM, J.-** Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have called in question the judgment dated 26.02.2015 rendered by learned District Judge, D.I.Khan, whereby the appeal of respondent No.1 was accepted, the order dated 18.12.2014 of learned Judge Family Court, D.I.Khan was set aside and the execution petition pending in the Family/Executing Court was dismissed.

2.            The brief facts giving rise to the instant petition are that the petitioners brought a suit against respondent No.1 for dissolution of marriage, recovery of maintenance, dower, gold ornaments and dowry articles which was decreed in their favour vide judgment and decree dated 07.11.2006. The decree was put to execution. Respondent

No.1 raised objection regarding maintainability of the execution petition. After hearing arguments, the learned executing Court of Civil Judge-I/Judge Family Court-II, D.I.Khan held the execution petition maintainable vide order dated 18.12.2014.

3. Dissatisfied with the order dated 18.12.2014, respondent No.1 filed an appeal. The learned District Judge, D.I.Khan, vide judgment dated 26.02.2015, accepted the appeal of respondent No.1, set aside the order dated 18.12.2014 of learned Judge Family Court, D.I.Khan and dismissed the execution petition pending in the Family Court, D.I.Khan being barred by time. Hence the instant petition.

4. Arguments heard and record perused.

5. Under Article 2-A of the Constitution of Islamic Republic of Pakistan, the Quran and Sunnah is the basic law of the land and Section 9 of the Muslim Family Court Ordinance, 1961, is a special law. In the said Ordinance, no specific period of limitation has been prescribed for past maintenance, particularly the dispute relating to the payment of maintenance to the wife by her husband is governed according to Injunctions of Islam.

6. In the instant case, respondent No.1 did not pay any maintenance allowance as per decree till the filing of execution petition. So on denial to pay maintenance has filed execution petition. It has been held time and again that provisions of Limitation Act are not applicable in strict sense. In this respect, reliance is placed on the judgment of this Court in *W.P.No.2175-P/2016 decided on 24.4.2017 titled Sher Zaman. Vs. Mst. Mahzari.* Further wisdom is derived from the judgment of Honourable apex Court in case titled *Syed Muhammad. Vs. Mst. Zeenat and others (PLD 2001 SC 128).*

7. So far as the findings of learned appellate Court, whereby it was held that resort be made to the residuary Article 181 of Limitation Act which provides a period of three years for filing execution petition, is concerned, it is observed that Article 181 of the Limitation Act is residuary in nature which deals with the situation when someone had to move an application and not execution petition for which no period of limitation is provided in the family laws and even in the Limitation Act. Therefore, the learned appellate Court while appreciating Article 181 of the Limitation Act has erred in law by applying it to the execution matter. The decree holder in para-3 of the execution petition averred that

judgment debtor had not paid decretal amount of maintenance, so, respondent No.1 could not be given benefit of his wrong or his refusal to pay the decretal amount in any garb.

8. Thus, the learned District Judge failed to consider the above legal aspect and fell into error by dismissing the execution petition, thereby causing grave miscarriage of justice.

9. For the reasons mentioned above, this petition is allowed, the judgment dated 26.02.2015 of learned District Judge, D.I.Khan is set aside and the order dated 18.12.2014 passed by the learned Judge Family Court/Executing Court, D.I.Khan is restored and the learned executing Court is directed to proceed with the execution petition in accordance with law.

Announced.

Dt:31.01.2018.

Habib/\*

**JUDGE**

(SB)

*Hon'ble Mr. Justice Muhammad Younis Thaheem*