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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF OCTOBER, 2021

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO.3002 OF 2015 (GM-FC)

BETWEEN:

EZAZUR REHMAN,
S/O M.G.GHOUSE,
AGED ABOUT 52 YEARS,
RESIDING AT NO.22, 6TH CROSS,
BHUVANESHWARI NAGAR,
BANGALORE – 560 032.

...PETITIONER

(BY SRI.K.N.HARIDASAN NAMBIAR, ADVOCATE)

AND:

SMT. SAIRA BANU,
D/O NOT KNOWN,
AGED ABOUT 42 YEARS,
RESIDING AT NO.214, 2ND FLOOR,
THIMMAIAH ROAD,
OPP. CHITRA BAKERY & AXIS BANK ATM,
SHIVAJINAGAR,
BANGALORE – 560 051.

...RESPONDENT

(BY SMT. RASHMI C, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER ON I.A.NO.10 PASSED BY THE LEARNED I ADDL. PRINCIPAL FAMILY COURT AT BANGALORE IN EX.NO.155/2011 ON ITS FILE DATED 22.11.2014 AS PER ANNEX-F AND BE PLEASED TO PASS SUITABLE OTHER ORDER/S DEEMED FIT UNDER THE CIRCUMSTANCES.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN B GROUP THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

This is yet another case of a hapless Muslim divorced wife battling for two decades for executing a maintenance decree; this again reminds of what the Privy Council lamented more than a century & a half ago about the difficulty a decree holder faces in the execution proceedings in THE GENERAL MANAGER OF THE RAJ DURBHANGA VS. MAHARAJAH COOMAR RAMAPUT SINGH, **MOORE'S INDIAN APPEALS (1871-72), VOL.14, PAGE 605**, it is worth mentioning:

> *"These proceedings certainly illustrate what was said by Mr.Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree…"*

The Apex Court in its recent decision affirming the judgment of this court has expressed its concern & aguish against protraction of execution proceedings and advised all the courts of the country to ensure their expeditious disposal vide **RAHUL SHAH VS. JINENDRA KUMAR GANDHI & ORS.** 2021 SCC Online SC 341.

2. The brief facts that led to the ex-husband filing of this writ petition are as under:

(i) Parties are Sunni Muslims; they had contracted marriage in March 1991; *mehr* was fixed at **Rs.5,000/-;** *walima* was organized at Madikeri; this marriage was short lived; wife complained about dowry harassment, etc; she left for native seeking shelter; the ink of *nikahnama* had not dried yet and the petitioner uttered talaq on 25.11.1991; he paid to the ex-wife the *mehr* money; he added another sum of Rs.900/- for her maintenance during the *iddat* i.e., ordinarily for three months post divorce.

(ii) The un-remarried ex-wife had filed a Civil Suit for maintenance on 24.08.2002; long thereafter it came to be registered as O.S.No.119/2005; the ex-husband filed his Written Statement resisting the suit on several grounds; he has uttered talaq; he contracted another marriage; he has begotten a child too; wife had filed dowry harassment case in CC No.3744/1992, Crl.A.No.468/1998 & Crl.R.P.No.95/2003; he was acquitted in the dowry harassment case; ex-wife should invoke the provisions of the Muslim Women (Protection of Rights on Divorce) Act, 1986; in no circumstance, he would pay anything.

(iii) The issues having been framed, the recording of evidence began only on 27.10.2010 ie., 8 years after the institution of suit; the learned I Addl. Principal Judge, Family Court at Bengaluru handed the judgment & decree after nine years, i.e., on 12.08.2011; justice delayed is justice buried, being only a meaningless text book mantra; the operative portion of the judgment reads as under:

> *"The suit in O.S.119/2005 is decreed in part. The plaintiff is entitled to monthly maintenance at the rate of Rs.3000/- from the date of the suit till the death of the plaintiff or till she gets remarried or till the death of the defendant."*

(iv) The ex-wife had put decree in enforcement by filing Execution No.155/2011 on 11.11.2011 inter alia by way of arrest & detention of the ex-husband; that was stoutly resisted; he again pleaded lack of means to pay the decreetal amount and decree being a nullity; the court below did not agree; it had sent him to civil prison on 14.12.2012; however, he was released on 15.01.2013 on paying **Rs.30,000/-.** The ex-husband had filed another application in I.A.No.10 under Order XXI Rule 37 of C.P.C., 1908 seeking determination of his financial incapacity; the said I.A. having been rejected

vide order dated 22.11.2014, the ex-husband has knocked at the doors of writ court.

3. I have heard the learned counsel for the parties and perused the petition papers; I regret to state that the assistance from the Bar was frugal; however, that would not relieve the Court of its duty to adjudge the cause; the following three questions of seminal importance arise for consideration in this case:

(i) whether a Muslim is duty bound to make provision for his ex-wife beyond iddat despite paying paltry Mehr if she remains un-remarried and is incapable of maintaining herself ?

(ii) whether a decree for maintenance like any other money decree can be resisted on the ground of lack of financial capacity of the judgment debtor ?

(iii) whether a Muslim contracting another marriage and begetting children from it can resist execution of the maintenance decree obtained by his ex-wife, on that ground per se ?

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My answer to the questions no. (i) is in the affirmative and to the question nos. (ii) and (iii) is in the negative, because of following discussion:

(I) As to Muslim divorced wife's right to maintenance beyond iddat and its quantification being independent of *mehr* amount:

Foundational Facts:

(a) Parties being Muslims by religion are essentially governed by Mohammedan law; they had contracted marriage on 16.3.1991 *mehr* was fixed at **Rs. 5000/-;** the *walima* was organized on 17.3.1991; it was not a long & happy marriage; it ended in *talaq* on 25.11.1991; wife had filed criminal cases for dowry harassment & cruelty; they culminated in acquittal; husband does not say that it was a "honourable acquittal"; hurriedly espoused another woman and begot a child too, post haste; the ex-wife not being able to maintain herself, obtained a maintenance decree but nine precious years of her life were paid as cost; it shakes anyone's conscience; in fact, husband's contention in the suit as to lack of financial capacity and jurisdiction too was rejected by the trial Judge.

(b) The ex-wife sought to enforce the decree; the ex-husband was eventually committed to civil prison for a month; he paid **Rs.30,000/-** and therefore, was enlarged; however, the decreetal sum being much more, remained unpaid; she endeavors to execute the decree for the remainder; twenty years have passed eluding her the fruits of the successful legal battle, at least on paper. Husband's application in I.A.No.10 wherein he had re-agitated inter alia the issue of financial incapacity as a ground for not obeying the decree came to be rejected; that happens to be the subject matter of challenge here; his contentions are treated hereunder.

(II) "In Islam, marriage is a civil contract", has shades of meaning and consequences:

(a) Ex-husband's contention that amongst Muslims, marriage is only a civil contract, cannot be disputed; **Mahmood, J** in the famous case of **ABDUL KADIR VS. SALIMA** (1886) 8 ALL 149, observed:

> *"...marriage among Muhammadans is not a sacrament, but purely a civil contract; and though it is solemnised generally with recitation of certain verses from the Kuran, yet the Muhammadan law*

> *does not positively prescribe any service peculiar to the occasion."*

"Marriage is a contract" has many shades of meaning; it is not a sacrament unlike a Hindu marriage, is true; whatever be the epistemology, marriage crowns the parties with status like husband, wife, in-laws, etc; if children are born, they earn the promotional status of father & mother, and of grand-parents too, if the lineage continues; when marriage is dissolved, only the spousal tie is torn and the status comes to an end; however, the blood of divorced spouses flows in the veins of their children and grandsire; added, demise of a spouse renders the other a widow/widower; succession to estate may also open.

(b) All the above shows the kinds of relationship that the marriage as a social institution brings in, regardless of religion which the parties belong to and the contractual elements; to put it succinctly, marriage amongst Muslims begins with the ***contract*** and graduates to the ***status*** as it ordinarily does in any other community; this very status gives rise to certain justiciable obligations; they are *ex contractu;* a muslim marriage is not a sacrament, does not repel certain

rights & obligations arising from its dissolution; such a marriage dissolved by divorce, *per se* does not annihilate all the duties & obligations of parties by *lock, stock & barrel*; in law, new obligations too may arise, one of them being the circumstantial duty of a person to provide sustenance to his ex-wife who is destituted by divorce.

(III) Scriptural injunction to Muslims for providing life essentials to their indigent ex-wives:

The view that a pious muslim owes a moral/religious duty to provide subsistence to his destitute ex-wife gains support from the following verses of **<u>The Holy Quran</u>**:

> *"When you divorce women, and they (are about to) fulfill the term of their (iddat), either take them back on equitable terms or set them free on equitable terms, but do not take back to injure them (or) to take undue advantage, if anyone does that, he wrongs his soul..." (Surah Al Bakhra Aiyat No.231);*
>
> *"There is no sin on you, if you divorce women while you have not touched (had sexual relation with) them nor appointed them unto their Mehr, but bestowed on them (as suitable gift) the rich according to his means and the poor according to his means, a gift reasonable amount is a duty on the doers of good" (Surah Al Bakhra Aiyat No.236).*

There is also sufficient intrinsic material in the Holy Quran & Hadith, which lays foundation to the accrual of a

corresponding right in favour a divorced wife for maintenance; generally it is conditioned by three cumulative factors *viz* (i) *mehr* amount is insignificant; (ii) she is incapable of paddling her life boat on her own; & (iii) she has remained un-remarried.

(IV) The right of indigent Muslim wife for maintenance is not confined to *iddat* nor limited to *mehr* amount:

(a) A Muslim ex-wife has a right to maintenance subject to satisfying certain conditions, is indisputable; in Islamic jurisprudence, as a general norm, *Mehr i.e., dower* is treated as consideration for marriage; it may be a *'prompt dower'* payable before the wife is called upon to enter the conjugal domicile or it may be a *'deferred dower'* payable on the dissolution of marriage vide **HAMIRA BIBI VS. ZUBAIDA BIBI** *(1916) 43 IA 294;* ordinarily, the right of an ex-wife to maintenance does not extend beyond *iddat*; I should hasten to add that Islamic jurisprudence has not treated this as a Thumb Rule ever, although there is some juristic opinion in variance; this norm has to be subject to the rider that the amount paid to the ex-wife, be it in the form of *mehr* or be it a

sum quantified on the basis of *mehr,* or otherwise, is not an **inadequate** or **illusory sum**; it is a matter of common knowledge that more often than not, *mehr* is fixed inadequately, bride-side lacking equal bargaining power *inter alia* because of economic & gender-related factors; this is not to say that the inadequacy of *mehr* would affect the validity of *nikah*, that being altogether a different matter.

(b) For how long the right to maintenance enures to a divorced muslim wife, largely is no longer *res integra*; subject to all just exceptions, the duty of a muslim to provide sustenance to his ex-wife is co-extensive with her requirement, the yardstick being the life essentials and not the luxury; the Hon'ble Supreme Court in **DANIAL LATIFI Vs. UOI,** AIR 2001 SC 3958, having construed the provisions of 1986 Act *supra* has observed that a muslim is duty bound to make a reasonable & fair provision for the future of his divorced wife, and this duty, as of necessity, extends for a period beyond *iddat*; the Allahabad High Court in a recent case between **JUBAIR AHMED vs. ISHRAT BANO**, (2019) SCC Online ALL 4065 has observed:

> *"...it is to be noticed that the right of maintenance available to wife from husband is absolute right and even divorce cannot affect this right unless the wife is disqualified on account of remarriage or her sufficient earning..."*

(c) **Frugality of deferred dower & right to maintenance beyond *iddat*:**

The payment of frugal *mehr* money *per se* cannot be a defence availing to an able bodied man for denying the claim or defying the decree, for maintenance; if an illusory compensation for the public acquisition of private property is 'no compensation' vide **KESAVANANDA** (AIR 1973 SC 1461), the reason & justice tell us that an illusory *mehr* cannot be the basis for the quantification of the amount of maintenance nor for limiting its duration to *iddat*; the analogy of "illusory compensation" is logically invocable since the payment of amount by the husband as *mehr* on *talaq*, by its very nature has compensatory elements; *'de minimis non curat lex'*: law does not take cognizance of the insignificant **[COWARD VS. BADLEY** (1859) 4 H&N 478]; after all, an illusion is a myth of reality; illusory things cannot constitute the "*building blocks of jural relations*", more particularly the immunity from duty arising from law, religion & morals.

(d) Divorce brings a trainload of difficulties to the women, is obvious; divorced women in general and divorced Muslim women in particular undergo a lot of hardship; the tears they shed are hidden in their veils; it is not that the unscrupulous men do not know all this; an American poet **Maya Angelou** (1928-2014) tellingly portrays this in a famous poem "**Equality**", a stanza wherein reads as under:

> *"Take the blinders from your vision,*
> *take the padding from your ears,*
> *and confess you've heard me crying,*
> *and admit you've seen my tears..."*

The contentions that the duty to furnish essentials to the ex-wife is coterminous with *iddat* period post *talaq* and that the quantum of maintenance amount cannot exceed the size of *mehr* money, are difficult to sustain in '***Law in a Changing Society***'; in the contemporary costly society wherein *blood is cheaper than bread*, the tokenistic amount of **Rs.5,000/-** paid by the husband to the ex-wife as *mehr* or its quantification on the basis of *mehr*, is militantly unjust and illusory; the petitioner has paid another paltry sum of **Rs.900/-** to the respondent ex-wife as maintenance during *iddat* i.e., for a period of about three months, only celebrates the inadequacy

& illusoriness; this amount will not be sufficient to buy a *cup of popcorn* a day from the street carter too.

(e) In matters of this kind, courts need to have Lord Denning's *Teleological Approach* (***BUCHANAN vs. BABCO,*** *1977(2) WLR 107)* to the interpretation of personal law, even if it bears religious overtones, or else, it ceases to be living law of the people and fails to serve its avowed purpose; an argument to the contrary would perpetuate *hegemonic masculinity* over the women that are disadvantaged by the unscrupulous *acts of men*; added, that strikes at the root of *'justice as fairness.' or the very "idea of justice";* the approach of courts should be consistent with the progression of law achieved *precedent by precedent* through judicial activism, despite some clergical resistance thereto; this branch of Muslim personal law has marched from April to May in **SHAH BANO** (1985) 2 SCC 556 and now finds June of its life in **SHAYARA BANO** (2017) 9 SCC 1; any adjudication of maintenance disputes without reference to this progression of law runs the risk of being tainted as an unfair treatment of the subject matter.

(V) Constitution and International Conventions on Human Rights & Dignity of women:

(a) The UN General Assembly adopted a comprehensive Treaty on **Womens' Human Rights** on 18.12.1979, namely, "*The United Nations Convention on the Elimination of All Forms of Discrimination Against Women*" **(CEDAW);** the object of this Convention is to abolish the *de facto* and *de jure* discrimination and inequality that are gender specific; out of 189 countries, India too happens to be a signatory to this; despite a large number of ratifications, there are grave indications that discrimination against women persists and pernicious acts to restrict their rights & freedoms in all aspects of their lives do continue; it cannot be denied that the contours of the principle of equality & dignity and non-discrimination enshrined in the constitutions, legislative instruments and Human Rights Treaty regimes in the globe only present a fractured reality and a fragile framework for the Human Rights of women; discrimination based on gender stereotype, stigma, harmful & patriarchal cultural norms, and gender based violence which particularly

affect women, have an adverse impact on their ability to gain access to justice on an equal basis qua men.

(b) The right to equality & dignity and the right not to be discriminated, represent twin pillars of the edifice of Human Rights Jurisprudence; Goal 5 of **UNITED NATIONS SUSTAINABLE DEVELOPMENT GOALS, (2015)** swears:

> *"...Ending all discrimination against women and girls is not only a basic human right, it's crucial for sustainable future; it's proven that empowering women and girls, helps economic growth and development..."*

It hardly needs to be stated that as a constitutional imperative [Article 51(c)], the International Treaties & Conventions animate our domestic law, be it legislation, precedent, custom or contract vide **VISHAKA Vs. STATE OF RAJASTHAN,** (1997) 6 SCC 241; the human values that animate our constitutional regime coupled with several International Treaties/Conventions aimed at protecting life, liberty & dignity of women, give rise to *'title facts'* from which the right to maintenance meaningful to the hapless women in general and divorced women in particular.

(c) *'Dignity is of unconditional and incomparable worth that admits of no equivalent'* said Immanuel Kant (1724-1804); destitution diminishes the dignity and worth of an individual; "**dignity of the individual**" as a universal "*human value*" finds an exalted place in several International Conventions and Treaties, few of which are referred to above; as an inalienable human value, it has a preambular placement in our Constitution; it also figures at the sub-constitutional level i.e., in Parliamentary statutes like 1986 Act, *supra*; it lurks in Shah Bano, in Shayara Bano and in their *genre*; human dignity as a **framework right** of constitutional recognition harbors a bundle of rights which supports the right of divorced women for sustenance; this age-old right in Islam is called ***nafaqah***; it means all those things such as food, clothes, shelter, etc. which are necessary to support life ("The Hedaya" by Charles Hamilton, 1957 Edn); in a sense this right is a *'daughter-right of human dignity'*, to borrow the terminology of a great Israeli Judge of yester years, Aharon Barak.

(VI) Apex Court, social context approach and Muslim Law of maintenance:

(a) In **BADSHAH VS. SOU URMILA BADSHAH GODSE**, AIR 2014 SC 689, it is observed:

> *"18. …Courts have to adopt different approaches in "social justice adjudication", which is also known as "social context adjudication" as mere "adversarial approach" may not be very appropriate. There are number of social justice legislations giving special protection and benefits to vulnerable groups in the society. Prof. Madhava Menon describes it eloquently: 'social context judging" is essentially the application of equality jurisprudence as evolved by Parliament and the Supreme Court in myriad situations presented before courts where unequal parties are pitted in adversarial proceedings and where courts are called upon to dispense equal justice. Apart from the socio-economic inequalities accentuating the disabilities of the poor in an unequal fight, the adversarial process itself operates to the disadvantage of the weaker party. In such a situation, the judge has to be not only sensitive to the inequalities of parties involved but also positively inclined to the weaker party…'*
>
> *19. Provision of maintenance would definitely fall in this category which aims at empowering the destitute and achieving social justice or equality and dignity of the individual. While dealing with cases under this provision, drift in the approach from "adversarial" litigation to social context adjudication is the need of the hour."*

(b) **DANIAL LATIFI** supra was rendered by a Constitution Bench of the Apex Court two decades ago; what

is stated at Paragraph No.5 of this decision, is profitable to reproduce:

> *"…Our society is male dominated both economically and socially and women are assigned, invariably, a dependant role, irrespective of the class of society to which she belongs. A woman on her marriage very often, though highly educated, gives up her all other avocations and entirely devotes herself to the welfare of the family, in particular she shares with her husband, her emotions, sentiments, mind and body, and her investment in the marriage is her entire life a sacramental sacrifice of her individual self and is far too enormous to be measured in terms of money. When a relationship of this nature breaks up, in what manner we could compensate her so far as emotional fracture or loss of investment is concerned, there can be no answer. It is a small solace to say that such a woman should be compensated in terms of money towards her livelihood and such a relief which partakes basic human rights to secure gender and social justice is universally recognised by persons belonging to all religions and it is difficult to perceive that Muslim law intends to provide a different kind of responsibility by passing on the same to those unconnected with the matrimonial life such as the heirs who were likely to inherit the property from her or the wakf boards. Such an approach appears to us to be a kind of distortion of the social facts. Solutions to such societal problems of universal magnitude pertaining to horizons of basic human rights, culture, <u>dignity and decency of life</u> and dictates of necessity in the pursuit of social justice should be invariably left to be decided on considerations <u>other than religion or religious faith</u> or beliefs or national, sectarian, racial or communal constraints. ..."*

(c) In the recent case i.e., **RANA NAHID @ RESHMA VS. SHAHIDUL HAQ CHISTI** in **Crl.A.No.192/2011** decided on **18.06.2020**, the court observed as under:

> "29. The right to equality, irrespective of religion, is a basic human right, recognized, reaffirmed and reiterated in the Universal Declaration of Human Rights adopted by the United Nations on December 10, 1948. Article 2 of the declaration reads:
>
> > *"Article 2 : Everyone is entitled to all the rights and freedoms set forth in the declaration, without distinction of any kind, such as race, colour, **sex**, language, **religion**, political or other opinion, national or social origin, property, birth or other status."*
>
> *30. The International Covenant for Civil and Political Rights (ICCPR) obligates the state parties to ensure equal right of women to enjoyment of all rights mentioned in each of the covenants. This right is irrespective of religion…".*
>
> *31. The Convention on the Elimination of All Forms of Discrimination against Women 1979, commonly referred to as CEDAW, recognizes amongst others, the right of women to equality irrespective of religion, as a basic human right. Article 2 of CEDAW exhorts State Parties to ensure adoption of a woman friendly legal system and woman friendly policies and practices.*
>
> *32. As a signatory to the CEDAW, India is committed to adopt a woman friendly legal system and woman friendly policies and practices. The 1986 Act for Muslim Women, being a post CEDAW law, this Court is duty bound to interpret the provisions of the said Act substantively, liberally,*

> *and purposefully, in such a manner as would benefit women of the Muslim community.*
>
> *33. Under the Indian Constitution, the right to equality is a fundamental right. All persons are equal before the law and are entitled to equal protection of the laws, be it substantive law or procedural law...*
>
> *34. The competing and conflicting principles of religious freedom of citizens and gender equality for women, has posed a major challenge to the judiciary in India..."*

(d) The **NAVTEJ SINGH JOHAR'S** case, (2018) 10 SCC 1 has recognized the **Doctrine of non-retrogression of rights**; in our realm, several human rights have been progressively realized over the years through the process of socio-economic development accelerated by legislative and judicial process; in the light of Article 38 of the Constitution, the judicial, quasi-judicial and administrative functions of the State aimed at furthering social welfare has to be consistent with the concerns which this new doctrine voices; a survey of law relating to rights of women in general and of divorced women in particular in all civilized jurisdictions, is marked by a progressive trend protective of the vulnerable; in the backdrop of all this, if the above question (i) is answered in the negative, it would only take the "*maintenance*

jurisprudence" in retrogression imperiling the interest of divorced Muslim women; a negative answer to the question virtually amounts to setting the clock back at least by a few centuries turning a Nelson's Eye to all the progress that the civilized world has made, hitherto.

(VII) As to ex-husband's plea of pecuniary incapacity as a justification for disobeying the decree for maintenance:

(a) The counsel for the ex-husband contends that his client has no financial capacity and therefore, the maintenance decree cannot be enforced against him; in support of this, he places a huge reliance on **JOLLY GEORGE VERGHESE VS. BANK OF COCHIN**, AIR 1980 SC 470; this contention of the petitioner is difficult to agree with and reasons for that are not far to seek; firstly, the subject matter of Jolly George was not the enforcement of maintenance decree; there, the bank was trying to execute a money decree that was founded on a debt; secondly, Article 21 of the Constitution of India was invoked since the bank was inarticulately treated as an instrumentality of a State; this becomes clear by the Bench's reference to Maneka Gandhi

(AIR 1978 SC 597) and Sunil Batra [(1978) 4 SCC 409]; the decree in question is not a money decree, pure & simple and the decree holder is not a 'money lender'; it is a hapless divorced woman who has secured a decree for her maintenance after years of struggle; she is relentlessly battling for its enforcement; it is a distinct case involving the jural correlatives resting on the shoulders of ex-spouses by virtue of *Talaq.*

(b) It hardly needs to be stated that a decision is an authority for the proposition which is laid down in a given fact matrix and not for all that which logically follows from what has been so laid down: Lord Halsbury in **Quinn Vs. Leathem**, (1901) A.C.495; invoking the ratio in Jolly George, virtually amounts to approximating a maintenance decree founded on personal law to a money decree structured on loan contract; thus, the substratum of the one differs from that of the other, although the procedure and the machinery adopted for their enforcement are same; therefore, they are poles asunder; a contra argument amounts to treating the un-equals as equals and that offends the rule of equality enshrined in Article 14; this apart, the maintenance

jurisprudence as developed by legislative & judicial process in this country shows that this right to sustenance is not founded on contract; courts have repelled the argument of financial incapacity while awarding maintenance when the husband has an able body; therefore, the pecuniary incapacity of the judgment debtor that ordinarily avails as a ground for resisting the execution of a money decree does not come to the rescue of the petitioner.

(VIII) As to ex-husband's plea of contracting another marriage and begetting child as a justification for disobeying the decree for maintenance:

(a) The contention of counsel for the petitioner that his client has contracted another marriage and further, begotten a child from it, hardly provides a justification for not obeying the maintenance decree that is secured by his ex-wife; a Muslim hurriedly contracting another marriage after pronouncing *talaq* upon his first wife, cannot be heard to say that he has to maintain the new spouse and the child begotten from her as a ground for not discharging the maintenance decree; he ought to have known his responsibility towards the ex-wife who does not have anything

to fall back upon; the said responsibility arose from his own act of *talaq* and prior to espousing another woman; the responsibility & duty owed by a person to his ex-wife are not destroyed by his contracting another marriage; an argument to the contrary would amount to placing premium on the irresponsibility of a husband who divorces the existing wife and soon espouses another; countenancing the contention of the kind virtually amounts to permitting a person to take the advantage of his own wrong; added this contention is repugnant to law, morality & ethics; if such a contention is countenanced, that would only encourage *talaq* which the law shuns.

In the above circumstances, this Writ Petition being devoid of merits, is liable to be dismissed and accordingly, it is, with a cost of Rs.25,000/-; the learned judge of Court below is requested to accomplish the execution on a war footing and report compliance to the Registrar General of this Court within three months.

Sd/-
JUDGE

cbc /Snb