

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Constitutional Petition No.S-205 of 2025**  
**(Barkat Ali Arijo v/s Mst. Saeeda Arijo and another)**

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DATE ORDER WITH SIGNATURE OF HON'BLE JUDGE

Petitioner : Barkat Ali Arijo  
Through Mr. Muhammad Murad Tunio, Advocate.  
Respondent : Mst. Saeeda Arijo and another  
Through Mr. Ali Madad Habibullah Arijo, Advocate

Date of hearing: 29-08-2025

Date of Decision: 29-08-2025

**J U D G M E N T**

**NISAR AHMED BHANBHRO, J.** Through this Constitution Petition, the Petitioner has challenged the Judgment and Decree dated 01.11.2024 passed by the Court of Learned Family Judge Larkana (Trial Court) in family Suit No 573 of 2023 tilted “Mst Saeeda and another Versus Barkat Ali Arijo”, Judgment and Decree dated 18.04.2025 passed by the Court of Learned 7<sup>th</sup> Additional Judge Larkana (Appellate Court) in Family Appeal No 55 of 2024 tilted “Mst Saeeda and another Versus Barkat Ali Arijo”, whereby the suit filed by the Respondents No 1 and 2 for grant of maintenance was decreed for a past and future maintenance from period of six years from date of filing of the suit at the rate of Rs 15000 for wife and Rs 35000 per month for daughter with an increase of 10 % per annum.

2. Chronicle of the case of the Petitioner is that the Respondents No.1 and 02 filed a suit for grant of maintenance for respondent No.1 as wife and respondent No.2 as daughter before Learned Trial Court. Petitioner despite of service chose to remain absent. Learned Trial Court proceeded the case ex – parties. The Respondents No 1 and 2 filed affidavit in evidence. Learned Trial Court vide judgment and decree dated 01-11-2024 decreed the suit of the plaintiffs/respondent No.1 and 02 in the following manner:

*“It is ordered that the defendant is liable to pay future maintenance to plaintiff No.1, wedded wife, at the rate of Rs.15000/- per month and Rs.35000/- per month to plaintiff No.2, the daughter, with 10% annual increment from the date of filing till the legal entitlement of plaintiff No.1 and 02. Moreover, plaintiff further claiming the house rent. In this regard, plaintiffs failed to produce any description of house and rent*

*expenses in support of their version, therefore, other reliefs claimed were declined”.*

3. Aggrieved of the Judgment and Decree passed by Learned Trial Court, Respondents No.1 and 2 filed an Appeal No.55/2024 titled “Mst Saeeda and another Versus Barkat Ali Arijo”, before the Learned District Judge Larkana, seeking enhancement of the maintenance allowance, the appeal was assigned to the Learned Appellate Court for disposal in accordance with law. Petitioner joined proceedings in appeal and contested the matter through his pleader. Learned Appellate Court after hearing the parties, maintained the judgment and decree passed by Learned Trial Court, however modified the decree and decreed the suit for payment of maintenance allowance for past 06 years from the date of institution of the suit, with future maintenance allowance.

4. Mr. Muhammad Murad Tunio, learned counsel for the petitioner contended that learned trial court passed an ex-parte judgment and decree. The petitioner was not in knowledge of the proceedings instituted before learned trial court. However, in appellate proceedings, he appeared and contested the matter. He argued that the right of hearing was not given to the petitioner, therefore, impugned judgment and decree dated 01-11-2024 passed by the learned Trial Court was not in consonance with the dictates of justice, least the same militated the fundamental rights of the petitioner as to fair trial, enshrined under article 10 – A of the Constitution. He contended that the huge amount of the maintenance was imposed upon petitioner, which caused financial constraints. He argued that no material worth was placed on record before Trial Court regarding financial status of the Petitioner. He contended that the impugned judgment and decree of both the Courts below were untenable under the law and liable to be set aside. He prayed for allowing the petition.

5. Mr. Ali Madad Arijo filed Vakalatnama on behalf of respondents No.1 and 2. He contended that learned trial court passed judgment and decree after granting ample opportunity to the Petitioner to appear and defend the suit but he despite of service Petitioner opted to remain absent. He contended that Respondents No 1 & 2 placed on record the financial status of Petitioner, he was employed in Port Qasim Authority and getting Rs. 285,000 Rupees per month salary. He further contended that the petitioner appeared before Learned Appellate Court, contested the appeal but did never challenge the judgment and decree passed by Learned Trial Court. He contended that Learned Appellate Court maintained the judgment and decree passed by Learned Trial Court, however modified the judgment to the extent of grant of past maintenance, the period for which the Respondents No 1 and 2 were entitled to receive maintenance. He argued that the judgment and decree passed by Learned Trial Court went unchallenged thus attained finality. He contended that the petitioner was given a fair chance of hearing before the appellate court.

He contended that the petitioner has deserted Respondents and other children from first wife since last more than 27 years. He argued that Petitioner being father was burdened to maintain his wife and children. He argued that the execution application filed by the Respondents was granted by the Executing Court vide order dated 14.06.2025 and instant lis was hampering the execution proceedings. Lastly, he submitted that there was no illegality or infirmity in the impugned judgment calling for interference under writ jurisdiction of this Court, therefore, sought dismissal of the petition.

6. Heard Arguments; perused material on record.

7. It is the case of Petitioner that amount of maintenance decreed in favor of respondents No.1 and 2 was huge and was not payable by him. The Petitioners were not entitled for past maintenance. Scanning of the record made available before the Court revealed the Respondent No 1 is the wife of the Petitioner and Respondent No 2 is his daughter. They were deserted by the petitioner when he contracted second marriage. Though learned counsel for the petitioner claimed that the petitioner divorced the respondent No.1 but no such proof, either before this Court or the Courts below was furnished, therefore, in absence of any evidence of divorce on record it cannot be held that respondent No.1 was not the legally wedded wife of petitioner. The plea of divorce agitated by the Petitioner appeared to be afterthought and attempt to avoid the payment of the maintenance allowance granted by the Courts below.

8. Respondent No 1 is the First wife of Petitioner. During the subsistence of First marriage Petitioner contracted second marriage. Under Islamic Sharia, man can contract more than one marriage, but Legislation through promulgation of THE MUSLIM FAMILY LAWS ORDINANCE, 1961 ORDINANCE NO. VIII OF 1961 (Ordinance) has placed certain restrictions on solemnization of another marriage, that includes the permission of arbitration council. The man interested to contract another marriage is required to submit an application for permission for another marriage, before arbitration council stating reasons for proposed marriage. The application will mention the fact of permission or consent sought from earlier wife or wives. The arbitration Council after hearing the representatives of the husband and wife may decide the fate of application by granting or refusing the permission for another marriage. Permission of arbitration council for solemnizing another marriage was necessary, its absence entailed penal consequences of recovery of dower amount and in the eventuality of complaint, if filed, it may invite punishment of imprisonment of one year or fine of rupees Five Thousand. Section 6 of “the Ordinance”. lays down procedure to contract another marriage, which reads as under:

**6. Polygamy:** (1) *No man, during the subsistence of an existing marriage, shall, except with the previous permission in writing of the Arbitration*

*Council, contract another marriage, nor shall any such marriage contracted without such permission be registered under this Ordinance.*

*(2) An application for permission under sub-section (1) shall be submitted to the Chairman in the prescribed manner, together with the prescribed fee, and shall state reasons for the proposed marriage, and whether the consent of the existing wife or wives has been obtained thereto.*

*(3) On receipt of the application under sub-section (2), the Chairman shall ask the applicant and his existing wife or wives each to nominate a representative, and the Arbitration Council so constituted may, if satisfied that the proposed marriage is necessary and just, grant, subject to such conditions, if any, as may be deemed fit, the permission applied for.*

*(4) In deciding the application the Arbitration Council shall record its reasons for the decision, and any party may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision, to the Collector\ concerned and his decision shall be final and shall not be called in question in any Court.*

*(5) Any man who contracts another marriage without the permission of the Arbitration Council shall*□

*(a) pay immediately the entire amount of the dower, whether prompt or deferred, due to the existing wife or wives, which amount, if not so paid, shall be recoverable as arrears of land revenue; and*

*(b) on conviction upon complaint be punishable with simple imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both.*

9. The above provision of law, if applied in its stricto sensu would definitely make Polygamy an impossible task. The ground enforcement of this provision of law since its promulgation remained almost zero, even complaints were hardly filed seeking punishment of man for polygamy, perhaps for the apprehension that it might result in breach of marriage contract. In the present proceedings even the Respondent No 1 has not taken such plea of another marriage by the Petitioner without permission of arbitration council, nor any complaint was preferred before Family Court or Arbitration Council for prosecution.

10. Under Islamic law, husband has legal, moral as well as social duty to provide maintenance to the wife for respectable living. A husband cannot neglect maintenance of wife during subsistence of the marriage. If a wife brings case for maintenance and it is found that husband was negligent in maintaining wife, not only the future maintenance but the past maintenance could also be recovered as a debt. Marriage in Islam is purely contract

of consent, unlike other religions, this contract impliedly includes the performance of certain obligations by both the sides, maintenance of wife and children being major component of the contract solely rests upon husband to be performed. There could be certain exceptions exempting husband from maintaining wife that includes disobedience of the wife, but assertion of disobedience needed strong evidence, mere bald allegations would not suffice to absolve husband from the obligation to provide adequate maintenance.

11. The MUSLIM FAMILY LAWS ORDINANCE, 1961 ORDINANCE NO. VIII OF 1961 holds that in case of more than one wives, the Husband shall maintain them equitably. Section 9 of the ordinance provides that on failure of the husband to provide maintenance equitably, the wife may apply to the Arbitration Council for maintenance allowance. The arbitration council shall determine the amount of maintenance payable by the husband. If the husband fails to pay determined amount, it may be recovered as the arrears of the land revenue. Section 9 reads as under:

**9. Maintenance.** (1) *If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain them equitably, the wife, or all or any of the wives, may in addition to seeking, any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.*

(2) *A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, 3[to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.*

(3) *Any amount payable under sub-section (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue.*

12. The Family Courts Act 1964 also provides a platform to the wife to sue her spouse for providing maintenance for herself and children. Section 17A of the Family Courts Act, 1964, empowers the Family Court to grant interim maintenance to the wife and children, during the pendency of proceedings subject to the final adjudication. Section 17A is reproduced below for the ease of reference:

**17A. Suit for Maintenance** (1) *In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, for interim monthly maintenance for the wife or a child and if the defendant fails to pay the maintenance by fourteen days of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit*

*for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.*

*(2) In a decree for maintenance, the Family Court may:*

*(a) Fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstance; and (b) prescribe the annual increase in maintenance.*

*(3) If the Family Court does not prescribe the annual increase in maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten per cent each year.*

13. The law has not provided the quantum of maintenance allowance which may be payable as maintenance to wife and children. However, the word “equitable” embodied in Section 9 of the Muslim Family Laws Ordinance 1961 demonstrated the intent and wisdom of the legislature that the wives shall have the equal rights for the maintenance. In case a man is having two families and fails to maintain either of the family equitably and a case for maintenance is brought, the Court will decide the question of maintenance, should inquire into the financial status of the husband. If he belongs to a salaried class, then the amount of salary has to be divided keeping in view the number of dependent children from each wife and expenses incurred on education, ages of children and degree of financial dependence upon the parents.

14. In the present case, the petitioner failed to demonstrate that during the period of last 27 years; after contracting second marriage, he provided a single penny towards maintenance of the respondent No.1 and 02 or he attended the marriage ceremony of respondent No.2 and afforded the expenses of her marriage rituals. It was admitted by the counsel for the petitioner that Petitioner was drawing salary of Rs.285,000/- per month from the Post Qasim Authority. Under the Sharia and doctrine of equity articulated in section 9 of the Ordinance referred supra, Petitioner was burdened to pay substantial amount of the salary to the Respondent No 1 and her children for their adequate living but he did not. Both the courts below took a very lenient view while granting the maintenance allowance to Respondents. Instead of imposing the maintenance allowance right from the day when Petitioner left maintaining Respondents, the learned trial court, imposed maintenance allowance from the date of filing of the suit, whereas the learned appellate court granted maintenance allowance since last 06 years from the date of filing of the suit that too very meager amount of about 1/7<sup>th</sup> share of the monthly salary. The courts below should have granted adequate amount of the maintenance which may not have been less than 1/4<sup>th</sup> of the salary. Since the Respondents have not questioned the judgments and decree of the Courts below, thus attained finality and became a closed and past transaction.

15. The Courts below have recorded concurrent findings of fact. Under the family laws, the right of appeal has been accorded as the forum for final adjudication of the matters. Though this court under its constitutional jurisdiction, by exercising supervisory powers can modify, alter or set aside the judgment and decree passed by the Courts below when it surfaced that there was serious misreading or nonreading of the evidence on record or Courts below acted beyond the powers vested in it. In absence of such illegality, this Court does not interfere into the concurrent findings of the fact. The appraisal of the evidence and assessment of the material on record evidenced that Petitioner was capable of paying the maintenance allowance imposed by the Courts below, therefore, no interference was required at this stage to upset the well-reasoned findings. Learned Counsel for the Petitioner when confronted frankly conceded to the fact that after the second marriage, the petitioner had not paid any maintenance to the respondents. This conduct on the part of petitioner disentitled him to bring the challenge against the judgment and decree as the Courts below had already taken a very lenient view in his favor. Instant petition from the face of it appeared to be frivolous, aiming to add further in the agony and distress of the respondents No.1 and 02.

16. This court cannot grant latitude to the absconding attitude of Petitioner towards his family to perpetuate in any form and allow him to agonize the Respondents any more. It has been informed that the Executing Court has allowed the execution application, The Executing Court shall satisfy the decree within a period of 06 months' time from today and recover all the decretal amount of maintenance from petitioner, if he fails to deposit the maintenance allowance, the Executing court shall recover the same by attaching the salary of petitioner.

17. For what has been discussed herein above the courts below have rightly exercised their jurisdiction in favor of the respondent No.1 and 2. No illegality, perversity or infirmity has been pointed out in the concurrent findings. The petition being misconceived is dismissed with no order as to the Cost.

The petition stands dismissed in above terms.

**JUDGE**

Asghar/P.A

Approved for reporting

Larkana

29.08.2025