

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

**C.P No. S-223 of 2025**

[Shafqat Ali v. Mst. Rimsha]

**C.P No. S-224 of 2025**

[Shafqat Ali v. Mst. Rimsha]

**C.P No. S-227 of 2025**

[Shafqat Ali v. Mst. Rimsha]

**C.P No. S-256 of 2025**

[Mst. Rimsha v. Shafqat Ali]

Shafqat Ali (petitioner in C.P. No.S-223, 224, 227 of 2025 and respondent in C.P. No.S-256 of 2025 through Mr. Muhammad Imran Choudhary, Advocate.

Mst. Rimsha (petitioner in C.P. No.S-256/2025 and respondent in .P. No.S-223, 224, 227/2025 through Rana Rahail Mehmood, Advocate.

Province of Sindh through Mr. Muhammad Sharif Solangi, Assistant Advocate General, Sindh.

Date of Hearing : **21.01.2026**

Date of Judgment : **04.02.2026**

## **JUDGMENT**

**RIAZAT ALI SAHAR. J.** - As all petitions arise out of the same matrimonial relationship and interconnected proceedings, as such, they are being decided through this common judgment.

2. The controversy between the parties emanates from their matrimonial relationship. Shafqat Ali and Mst. Rimsha were married on 07.08.2020 according to Muslim law. Out of the said wedlock, one minor son, Muhammad Jaffar, was born. Due to matrimonial discord, the parties started living separately and the minor has remained in the custody of the mother since infancy.

3. Mst. Rimsha instituted Family Suit No.221 of 2023 before the learned Family Judge, Mirpurkhas, seeking dissolution of marriage by way of “*khula*” along with ancillary reliefs including recovery of dower, maintenance for herself and the minor, maternity/medical expenses and return or value of dowry articles. The husband Shafqat Ali contested the suit by filing written statement, denying allegations of cruelty, non-maintenance and receipt of dowry articles, while asserting that the Mst.Rimsha had left the matrimonial home without lawful justification.

4. During pre-trial proceedings held under section 10 (4) of the Family Courts Act, 1964, reconciliation efforts failed, and the marriage was dissolved by way of “*khula*”. Thereafter, evidence of both parties was recorded, issues were framed and upon conclusion of trial, the learned Family Judge vide judgment and decree dated 26.04.2024 decreed the suit partly by awarding dower, maintenance to the wife till iddat, maintenance to the minor, partial medical expenses and assessed the value of dowry articles at a reduced figure.

5. Aggrieved by the said judgment and decree both parties preferred Family Appeals, which were heard and decided together by the learned Additional District Judge-I, Mirpurkhas and vide common judgment dated 09.10.2025 and decree dated 11.10.2025, the appellate court dismissed the appeal filed by Shafqat Ali and partly allowed the appeal of Mst. Rimsha by enhancing the maintenance of the minor with annual increment, enhanced the valuation of dowry articles to a limited extent and otherwise maintained the findings of the trial court.

6. Parallel to the family litigation, Shafqat Ali filed Guardian & Wards Application No.01 of 2024 before the learned Guardian Judge-I, Mirpurkhas under section 25 of the Guardians and Wards Act, 1890, seeking appointment as guardian and permanent custody of the minor. Mst. Rimsha resisted the

application, asserting her right of “**Hizanat**”, the tender age of the minor and alleging that the welfare of the child lay with her. After recording affidavits and cross-examination, the learned Guardian Judge vide judgment dated 29.04.2024 dismissed the application for permanent custody, while allowing limited visitation to the father.

7. Shafqat Ali challenged the said order through Guardian Appeal No.09 of 2024. The learned Additional District Judge-I, Mirpurkhas, vide judgment dated 09.10.2025 and decree dated 11.10.2025, dismissed the appeal, upheld the custody of the minor with the mother and to some extent modified the visitation arrangement in order to facilitate father-child interaction, while reiterating that the welfare of the minor remained paramount.

8. Being aggrieved, both parties have approached this Court through four separate constitutional petitions. C.P. Nos.S-223 of 2025 and S-224 of 2025 have been filed by Shafqat Ali challenging the appellate judgment and decree passed in the family appeals. C.P. No.S-227 of 2025 has also been filed by the Shafqat Ali challenging the orders passed in guardianship proceedings, whereas C.P. No.S-256 of 2025 has been filed by Mst.Rimsha assailing the enhancement of visitation granted by the appellate court.

9. Learned counsel for the Shafqat Ali contended that the impugned judgments and decrees, passed by the Family Court and affirmed with modification by the appellate court suffer from misreading and non-reading of evidence. He contended that Mst.Rimsha had left the matrimonial home without lawful cause and was therefore disentitled to maintenance. He contended that the enhancement of minor’s maintenance and dowry valuation was assailed as excessive and beyond the financial capacity of the petitioner, who is stated to be earning a meager salary and living in a rented house. Learned counsel further contended that no dowry articles were given at the time of marriage and that the

alleged receipts were forged and fabricated. He contended that the appellate court exceeded its jurisdiction by enhancing relief without proper proof of income. Learned counsel further contended that in guardianship matters the father being the natural guardian was entitled to custody and that the mother's employment resulted in neglect of the minor. He further contended that the visitation schedule fixed by the appellate court was also termed impractical and financially burdensome, as such, he prayed that the impugned judgments and decrees be set aside.

**10.** In contra, learned counsel representing Mst. Rimsha contended that the impugned judgments are well-reasoned and based on proper appreciation of evidence. He contended that cruelty, ouster and non-maintenance were established, justifying the grant of maintenance and other reliefs. According to him, Shafqat Ali deliberately concealed his income, attracting adverse inference under the law. The enhancement of minor's maintenance was defended on the ground of rising inflation and the absolute obligation of a father to maintain his child. With regard to dowry articles, learned counsel contended that customary practice and oral evidence were rightly relied upon. In guardianship proceedings, he contended that the minor is of tender age and his welfare lies with the mother, who has been caring for him since birth. The limited enhancement of visitation by the appellate court was defended as reasonable and aimed at preserving the father-child bond without compromising the child's welfare. He prayed for dismissal of the constitutional petitions filed by Shafqat Ali and restoration of visitation rights as settled by the learned trial Court.

**11.** Learned A.A.G., Sindh contended that the impugned orders passed by the courts below are the result of concurrent findings of fact and do not suffer from jurisdictional defect warranting interference under Article 199 of the Constitution. He contended that constitutional jurisdiction is not meant to re-appreciate evidence or substitute factual findings. Learned A.A.G.

further contended that in matters of custody and maintenance, welfare of the minor remains the guiding principle and the courts below have acted within the bounds of law.

**12.** Heard and perused.

**13.** At the outset, learned counsel for the petitioner(s) were confronted with the query as to whether, after exhaustion of the statutory remedies provided under the Family Courts Act, 1964 and Section 47 of the Guardians and Wards Act, 1890, any further remedy was available in law and whether the constitutional jurisdiction of this Court under Article 199 of the Constitution could be invoked as a substitute for a second appeal or for re-appraisal of evidence. No satisfactory response was advanced. Upon examination of the record, it is observed that the impugned judgments and decrees have been passed by courts of competent jurisdiction after due appreciation of pleadings, evidence and applicable law. No mala fide, arbitrariness, perversity, or violation of fundamental rights has been demonstrated so as to justify interference in writ jurisdiction on factual aspects of the case.

**14.** It is settled law that appreciation and re-appraisal of evidence squarely fall within the exclusive domain of the Family Court and the Appellate Court constituted under the Family Courts Act, 1964. In the present case, the learned Family Judge recorded findings on dissolution of marriage, dower, maintenance, dowry articles and medical expenses, while the learned Additional District Judge-I, Mirpurkhas, re-examined those findings within the statutory scope of appellate jurisdiction and passed a reasoned judgment. The contention of the petitioners essentially revolves around factual disputes already adjudicated upon by the courts below, which cannot be reopened in constitutional proceedings.

**15.** The Family Courts Act, 1964 does not provide for a second appeal. The finality attached to appellate proceedings

under the said statute cannot be circumvented by invoking the extraordinary jurisdiction of this Court. The constitutional jurisdiction under Article 199 of the Constitution is not meant to function as a parallel appellate forum or to substitute the findings of the appellate court merely because another view of the evidence is possible.

**16.** In this regard, reliance may be placed on the judgment of the Honourable Supreme Court in **M. HAMAD HASSAN v. Mst. ISMA BUKHARI and 2 others [2023 SCMR 1434]** has held that:

“5. In respect to the facts before us, Respondent No.1 and her minor son filed a suit before the family court for recovery of dower, maintenance allowance and dowry articles, etc. The suit was decreed on 24.11.2018 and later upheld by the appellate court. Subsequently, the Petitioner filed a writ petition before the High Court challenging the factual determinations of the lower courts in respect of the quantum of maintenance allowance, dower amount, recovery of dowry articles amongst other grounds. Regrettably, the High Court fell in error and adjudicated upon the case on facts which falls outside the mandate of Article 199 of the Constitution. In terms of the aforementioned case law, the High Court could have interfered to prevent miscarriage of justice, which is not established in the instant case. In fact the High Court substituted and adjudicated on the facts and tendered its opinion, which amounts to having an appeal out of the Appellate Court's judgment.

6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly

done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.”

The same principle has been reiterated by the Honourable Supreme Court in **Arif Fareed v. Bibi Sara and others (2023 SCMR 413)**, emphasizing that the absence of a second appeal under the Family Courts Act reflects the legislative intent to ensure finality and expeditious disposal of family disputes and that constitutional jurisdiction cannot be employed to prolong litigation.

17. So far as the guardianship proceedings are concerned, it is observed that under Section 47 of the Guardians and Wards Act, 1890, only one appeal is provided, which remedy has admittedly been exhausted by the parties before the learned Additional District Judge-I, Mirpurkhas, therefore, ordinarily this Court would refrain from interfering with findings recorded by the subordinate courts in guardianship matters. However, this Court is equally cognizant of its constitutional responsibility to protect the fundamental rights of minors in matters involving custody and visitation. The exercise of such jurisdiction, though extraordinary, stands on a different footing where the welfare, emotional stability and well-being of a minor child are involved. The scope of this jurisdiction is not to substitute factual findings but to ensure that

no order passed by a subordinate court operates to the detriment of the minor's welfare.

Guidance in this regard may be drawn from the judgment of this Court in **Yasir Mumtaz Ali v. Mst. Huma Rafiq and 2 others (2025 CLC 953)**, which held as follows:

“12. This Court, in the exercise of its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has to exercise parental jurisdiction and is not precluded in any circumstance, from giving due consideration to the welfare and well-being of the minor and to ensure that no harm or damage comes to him/her physically or emotionally by reason of the breakdown of the family tie between the parents. The Courts are custodian of the Constitution to protect and safeguard the interest and welfare of the minor to ensure that as far as possible his/her physical safety, emotional well-being and welfare is secured and protected after a balanced and dispassionate assessment of the situation. Reliance may well be made to the cases of *Mirjam Aberras and Mst. Madiha Yunus v. Imran Ahmed* (2018 SCMR 1991).”

18. In view of the above, while maintaining the impugned judgments to the extent of custody of minor with regard to visitation arrangements, this Court, by invoking its parental jurisdiction, considers it appropriate to modify/clarify the visitation arrangement in the interest of the welfare and emotional well-being of the minor. Accordingly, the non-custodial parent shall be entitled to visitation with the minor on the **first and third Saturday of every month, from 01:00 PM to 03:00 PM.**, before the trial Court. In addition, the father may avail visitation on **the day of Eid-ul-Fitr and Eid-ul-Azha, minor's birthday** and during **school vacations as per following schedule.**

#### **Visitation Schedule for the Petitioner Shafqat Ali**

- (1) On the second day of his birthday from 02:30 PM to 06:30 PM (The child will stay with his father);
- (2) On the first (1st) and second (2nd) day of every Eid-ul-Fitr: on the first day from 11:00 AM to second day till 07:00 PM (1<sup>st</sup> and 2<sup>nd</sup> both days child will stay with his father);



- (3) On the second (2nd) and third (3rd) day of every Eid-ul-Azha: on the second day from 11:00 AM to third day till 07:00 PM (2<sup>nd</sup> and 3<sup>rd</sup> both days child will remain with his father);
- (4) During the Minor's summer vacations: the minor will stay with his father from 3<sup>rd</sup> day of his vacation at 11.00 AM. to 07:00 PM. of 6<sup>th</sup> day. (Three days of summer vacation);
- (5) During the Minor's winter vacations: the minor will stay with his father from 1<sup>st</sup> day of the vacation at 11.00 AM to 05:00 PM of 3<sup>rd</sup> day. (Three days of winter vacation);

It is further held that;

- (i) The above visitation/interim custody schedule shall be flexible and both the parties are bound down to modify the same according to the wishes of the child. If the minor desires to spend more time with her mother, then he shall not be stopped by his father and likewise, if he desires to spend more time with his father, the mother shall not cause any problems.
- (ii) For the purposes of visitation/temporary custody, the mother shall drop the minor at the house of the father. On conclusion of the visitation/temporary custody, the father shall drop the minor at the house of the mother. On every such instance, the parties shall sign a handing/taking over document.
- (iii) It is clarified that the time taken in pick-and-drop of the minor is not to be counted towards visitation times.
- (iv) The visitation schedule shall be implemented flexibly, keeping in view the wishes, comfort and routine of the minor and both parties are directed to cooperate with each other in letter and spirit. If any hurdles are caused by either party in

handing/taking over the custody of the minor, the aggrieved party may move an application to the learned Guardian Judge who shall impose necessary conditions on the other party including imposition of fine.

- (v) The Minor shall not be shifted or taken abroad without the permission and satisfaction of the learned Trial Court. If the mother or the father intends to perform religious tours with the Minor, such as Hajj and/or Umrah, the learned Trial Court shall not withhold permission unnecessarily. For such permission, the parties shall be bound to produce travel documents including Passport, Visa, tickets, etc. The learned Trial Court is also at liberty to satisfy itself on this matter by securing separate PR/Solvent Surety/Indemnity Bonds from either of the parties, when and if the need arises.
- (vi) Both the parties are advised to sort out their dispute in a mature manner and ensure workable terms between each other for the sake of the child. They will ensure, in any case, that because of their differences, no harm is caused to the minor's health or wellbeing. Any harm caused to the minor by either party and proven on record will be taken as a violation of this Court's directions exposing to the contempt proceedings.

**19.** The petitions stand disposed of in the above terms with no order as to costs.

**JUDGE**