

IN THE HIGH COURT OF SINDH AT KARACHI

**Constitutional Petition No.1390/2019**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Petitioner: Zarrar Iqbal Malik through  
Mr. Muhammad Mansoor Mir,  
Advocate.

**Versus**

Respondent No.1: Mst. Shazia Zarrar,  
Respondent No.2: Muhid Zarrar  
Respondent No.3: Wara Zarrar  
Respondent No.4: Faaz Zarrar  
through Dr. Rana Khan, advocate.

Date of hearing: **26.02.2020**

Date of Judgment : **26.02.2020**

**JUDGMENT**

**NAZAR AKBAR, J.** The petitioner through this constitutional petition has challenged the order dated **22.10.2019** passed by Vth (MCAC) Addl. District Judge, West Karachi in Family Appeal **No.68/2019** whereby judgment of the trial Court passed in Family Suit **No.1662/2015** dated **30.7.2019** by IIIrd Family / Civil Judge & Judicial Magistrate, West Karachi was modified/maintained.

2. Briefly stated the facts of the case are that Respondent No.1 filed Suit **No.1662/2015** for recovery of dower, maintenance, and medical expenses etc. in the Family Court. On service the petitioner filed written statement denying the allegations and raising dispute of factual nature.

3. After framing of issues, recording of evidence and hearing the parties, learned trial Court by order dated **30.07.2019** decreed the suit of Respondent No.1 in the following terms:-

“In view of the findings on issues No.1, 2, 3, 4, 5 & 6 the suit of the plaintiff is hereby decreed, the plaintiff No.1 is entitled only for Rs.50,000/- (Fifty Thousand) unpaid dower, the plaintiff No.1 is entitled for maintenance of her Iddat period of three months only from 10.07.2015 (receiving date of Divorced Deed) to 09.10.2015 and same is hereby fixed Rs.20,000/- (Twenty Thousand) per month (total Rs.60,000/-) for Iddat period only. As far as the maintenance of minors are concerned, the same is hereby fixed at the rate of Rs.20,000/- (Twenty Thousand) per month for each minors/plaintiff s No.2 to 4 with increase of 10% per annual from filing of present suit till decree (today i.e. 30.07.2019) as well as future maintenance of the minors/plaintiffs No.2 to 4 at the same rate till the minors attained the age of maturity (admission fee foundation, security deposit, tuition fee, medical fee per semester, workshop fee / Library fee per semester and Van fee are also included in above granted maintenance), the Plaintiff No.1 is not entitled for Rs.100,000/- as medical expenses. The order dated 01.03.2016 for interim maintenance is hereby modified and maintenance of the minors is enhanced from Rs.8000/- to Rs.20,000/- each per month with 10% increase per annum. Whatever, the defendant has deposited in terms of interim maintenance be adjusted as arrears”.

The petitioner/appellant filed appeal which was disposed of by the appellate Court. Learned Vth Additional Sessions Judge, Karachi West, dismissed the Family Appeal **No.68/2017** filed by the petitioner with certain modification by order dated **22.10.2019**. The relevant appellate order is as under:-

“The children are school going and no doubt it is the obligation of father to maintain the children and not only to the extent of their education but all the basic needs of the children have to be fulfilled. So far the quantum of the maintenance is concerned, during arguments it is brought in notice that the appellant is a Serving Brigadier in Pakistan Army and drawing a salary of about two lacs per month. Thus, keeping in view the status of appellant the quantum of maintenance

@ 20000/- per month is quite adequate. The trial court was justified in fixing maintenance of Rs.20,000/- each for ex-wife and two elder children of the appellant. However, the youngest child is studying in class-III, having less education fee etc as compared to two other elder sons of appellant. Hence it would be appropriate to fix the maintenance of the youngest child @ Rs.15000/- per month. The order of family court is modified to that extent accordingly”.

The petitioner has preferred instant petition against the two judgments.

4. I have heard learned counsel for the parties and perused the record

5. Learned counsel for the petitioner has assailed both the orders but unfortunately he has not identified any misreading and non-reading of evidence in coming to the conclusion by both the Courts below, not a single sentence from the evidence of either side has been referred to by the learned counsel to assert that the two judgments suffer from any illegality on account of misreading of evidence. He has however, contended that the two Courts below have failed to appreciate that the petitioner has contracted second marriage and he has so far one more child from the second wife aged about 2/3 years and therefore, his expenses have been increased. The very fact that petitioner has contracted second marriage and having one more child is in fact a fatal argument to claim that financial position of the petitioner is such that he would not be able to meet the orders passed by the two Courts below for maintenance of his own children. It is indeed very unfortunate that educated people of this country do not mind avoiding statutory, legal moral and religious liabilities in the name of their resources and at the same time they do not hesitate in multiplying their responsibilities. The second wife and child is not

supposed to be brought up by the petitioner at the expenses of the liabilities of the three children on the shoulder of the petitioner. Even otherwise it is only salary on which he is trying to impress upon the Court that resources of the petitioner are meager. The perks and privileges and many other things attached to the office of the petitioner are also resources of the petitioner and the children from the first wife are also entitled to have benefit of all that as well. Be that as it may, at least no case is made out for interference in the concurrent findings by this Court in exercise of its constitutional jurisdiction. It is settled law that constitution petition does not lie against concurrent findings of facts.

6. In view of the above discussion, this petition is dismissed alongwith listed applications being not maintainable.

JUDGE

Karachi  
Dated:26.02.2020

SM