

## IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Ali Haider "Ada"

### Constitution Petition. No.S-730 of 2024

Petitioner : Sehrish Yaseen d/o Muhammad Yaseen  
Through Mr. Zia Ahmed Awan, advocate.

Respondents : 1. Saim Shibli Ehtesham s/o Tariq Ehtesham  
Through Ms. Basil Nabi Malik, advocate.

: 2. XX<sup>th</sup> Family Judge, Karachi (South).

: 3. VII<sup>th</sup> Additional District Judge, Karachi (South).  
Through Mr. Muhammad Javed, AAG.

**Date of hearing : 14.02.2025.**

**Date of Order : 14.02.2025.**

### O R D E R

**ALI HAIDER ADA-J:-** Through this Constitution Petition, the petitioner has challenged the consolidated judgment and decree dated 04.05.2024 passed by the learned VII<sup>th</sup> Additional District Judge (Model Civil Appellate Court), Karachi (South), as the appellate Court upheld the order of the learned XX<sup>th</sup> Civil and Family Judge, Karachi (South), the petitioner filed a suit for maintenance against respondent No.1 with the following prayers:-

- a). **Direct the defendant to pay a sum of Rs.200,000/- (Rupees two lac only) as monthly future maintenance amount to the plaintiffs.**
- b). **Direct the defendant to pay the deferred dowry amount of Rs.300,000/- (Rupees Three Hundred thousand only) to the plaintiff No.1.**
- c). **Direct the defendant to pay the Admission Fees of Rs.200,000/- (Rupees Two lac only) for enrolling plaintiff No.2 in Bay View School Session of 2021-2022.**
- d). **Direct the defendant to start paying the monthly maintenance on the first day of each calendar month for plaintiff No.1 (Wife) @ Rs.100,000/- (Rupees one hundred thousand) per month from May, 2019 @ 10% increase each year as future maintenance, till filing of this family suit the total amount of thirteen (27) months is Rs.27,00,000/- (Rupees Twenty Seven Lac only)**

- e). **Direct the defendant to start paying the monthly maintenance on the first day of each calendar month for plaintiff No.2 (Minor daughter) @ Rs.100,000/- (Rupees one hundred thousand) per month from July, 2018 till her wedding @ 15% increase each year as future maintenance, till filing of this family suit the total amount of thirteen (36) month is Rs.36,00,000/- (Rupees thirty six lac only)**
- f). **Direct the defendant to pay in addition to this an increase in the aforesaid future maintenance amounts when any special requirements occur and/or with time.**
- g). **Grant such future and better relief which this Hon'ble Court deems proper in the circumstances of the case.**
- h). **Cost of the suit.**

02. On 27.11.2023, the learned trial Court passed a judgment whereby the suit of the petitioner was decreed on specific terms and conditions. The minor/ward was held entitled to recover Rs. 40,000/- from the respondent as compensation for past maintenance. Additionally, the petitioner was declared entitled to recover maintenance for the 'Iddat' period at the rate of Rs. 50,000/- per month. However, the petitioner's prayer for admission fees was declined. Furthermore, future maintenance of Rs. 70,000/- per month with an annual increase of 10% was granted. Both parties challenged the judgment before the appellate forum: the petitioner by filing an appeal and the respondent by contesting the trial Court's decision. The learned appellate Court, through the impugned consolidated judgment, upheld the maintenance order. Hence, this petition.

03. Learned counsel for the petitioner submits that the impugned consolidated judgment and decree of the Courts below are not sustainable in the eyes of law. It is contended that the learned trial Court failed to properly appreciate the material available on record, wherein the respondent admitted to earning a monthly salary of Rs. 2,700,000/-. Despite this, the learned trial Court granted maintenance of only Rs. 70,000/- per month, which is grossly inadequate considering the petitioner's financial needs for sustaining

a reasonable standard of living. Accordingly, it is prayed that the impugned judgments of the learned courts below be set aside.

04. On the other hand, learned counsel for the respondent submits that the decision of the learned courts below suffer from no legal infirmity. It is contended that the petitioner, driven by financial motives rather than genuine need, is unjustifiably claiming an excessive amount of maintenance.

05. Heard the learned counsel for the parties and perused the material available on record.

06. From a perusal of the record, it reflects that in cross examination the respondent deposed that "It is correct to suggest that I am earning monthly salary in sum of Rs.27,00,000/- (Rupees Twenty Seven Lac Only)". The learned trial Court failed to consider the respondent's financial status and monthly income in its determination. Therefore, in order to reach a proper conclusion, this matter is remanded by setting aside the consolidated judgment and decree of the learned court below, with directions to pass a fresh decision based on the material available on record. Reliance is placed 2009 SCMR 462 "Rehman Shah and others Vs. Sher Afzal and others, the Hon'ble Apex Court in para No.3 passed the observation, which is reproduced as under:-

**"3. Power to remand the case should not be exercised lightly but sufficient care should be taken in this regard and court should examine the evidence and if it comes to the conclusion that it is not sufficient to pronounce the judgment or decide the issues between the parties, it can remand the case or may itself record the evidence and decide it, as held by this Court in Fateh Ali Vs. Pir Muhammad and another 1975 SCMR 221, Sher Muhammad and others V. Jamadar Ghulam Ghous 1983 SCMR 133, Arshad Ameen V. Messrs Swiss Bakery and others 1993 SCMR 216 and Syed Abdul Hakim and others V. Ghulam Mohiuddin PLD 1994 sc 52. In the instant case, there was no sufficient material on record to decide the lis effectively and properly and do complete justice between the parties. In this regard, we consider it appropriate to reproduce para. 5 of the impugned judgment which reads:--**

**'What is the basis of entries made in the column of "Legaan", and how far they are supported by deeds,**

are the questions which unfortunately have not been attended to by either of the Courts below. No doubt, entries made in the rent column cannot override those made in the possessory column, all the same there is no harm to make an inquiry as to the origin of such entries and basis therefor. No finding one way or the other could be handed down without inquiring whether the deeds have any nexus with the entries made in the rent column. Therefore, I do not feel inclined to maintain the impugned judgments.

For the reasons discussed above, this petition is allowed, the impugned judgments and decrees of both the Courts below are set aside and the case is sent back to the learned Court for decision afresh in accordance with law.”

07. In view of the above, the impugned consolidate judgment and decree of learned Courts below dated 27.11.2024 and 04.05.2024 are hereby set-aside with directions to the learned trial court to pass a fresh decision based on the material available on record.

**JUDGE**