

## Order Sheet

## IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-18 of 2025

[Muhammad Nsr Khan vs.Mst. Syeda Mahera Urooj and another ]

Petitioner: Through Mian Ashfaque Ahmed, Advocate.

Respondents: Nemo.

Date of Hearing: 12.03.2025

Date of Order: 12.03.2025

**ARSHAD HUSSAIN KHAN, J.** The petitioner through instant constitutional petition has challenged the preliminary decree dated **05.09.2024**, passed by XVIII Civil/Family Judge, Karachi [Central] in Family Suit No.2883/2023 and the judgment and decree dated **10.12.2024**, passed by learned VI Additional District Judge Karachi [Central] passed in Family Appeal No.113/2024. The petitioner has prayed for setting aside the impugned judgments/orders and suspension of their operation.

2. Concisely, the facts of present petition are that respondents/plaintiffs filed family suit for recovery of maintenance, medical/delivery expenses, gold ornaments and dower amount of Rs.25,000/- against the cvpetitioner/defendant. Subsequently, upon issuance of the notices, petitioner /defendant appeared before the trial court and filed his written statement denying the allegations leveled by the respondents/plaintiffs and urged that the suit is liable to be dismissed. On 27-02-2024, the trail court on an application of respondents/plaintiffs u/s 17-A of the Family Court Act 1964, allowed the interim maintenance of the minor. The petitioner/defendant, however, failed to comply with the aforesaid order, the respondents/plaintiffs filed an application for striking off the petitioner's defense, which was allowed. Consequently, a preliminary decree dated **05.09.2024** was passed to the extent of maintenance of the minor [respondent No.2]. From the record it also appears that subsequently on 17.10.2024, the suit was finally decreed, however, the record does not show that the petitioner has filed any appeal against the final judgment and decree or not. Nonetheless, the petitioner challenged the said preliminary decree before Vth Additional District

Judge, Karachi [Central] in Family Appeal No.113/2024, which was dismissed by maintaining the order of the trial court, vide order of the appellate court dated **10.12.2024**. Both the aforesaid orders/judgments of the courts below are impugned in the present constitution petition.

3. Learned counsel for the petitioner has argued that the impugned judgments / orders of the two courts below are bad in law; liable to be set aside as both the courts below have failed to consider the real facts and the grounds agitated on behalf of the petitioner / defendant. He has further argued that the trial court has granted a huge amount of interim maintenance and the petitioner, being jobless, is unable to pay such a huge amount of maintenance and in this regard the petitioner had filed an application under section 151 CPC to reduce the maintenance amount, but the trial court failed to consider the same and passed the impugned preliminary decree in hasty manner. He has argued that the courts below have failed to consider the material available on the record. Lastly, he has argued that both the courts below have failed to apply their judicial mind while deciding the instant matter and prayed for interference by this Court in its constitutional jurisdiction.

4. Heard learned counsel for the petitioner and perused the record. At the very outset, learned counsel was asked about maintainability of the present constitutional petition, however, he has not been able to satisfy the Court.

5. From perusal of the record, it appears that the petitioner despite having sufficient opportunity failed to pay the interim maintenance allowance to his minor daughter. Resultantly, his defence was struck off and the suit was decreed to the extent of maintenance of the said minor. Thereafter, the appeal preferred by the petitioner against the preliminary decree was also dismissed. Yet, dragging the matter from one court to another, especially the family case, constitutes vexatious litigation, adds undue delay, and unnecessarily overburdens the courts. Such practice is strongly discouraged by the Supreme Court of Pakistan. Reliance in this regard can be placed upon the case of *Shahzad Amir Farid vs. Mst. Sobia Amir Farid* [2024 SCMR 1292].

6. It may be observed that the constitutional petition cannot be considered as second appeal against the order passed by lower appellate court. Furthermore, learned counsel for the Petitioner could not point out any illegality, infirmity or jurisdictional error in the impugned judgment/order, which could warrant interference by this Court in its extraordinary jurisdiction.

7. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

8. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice<sup>1</sup>. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided<sup>2</sup>, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

9. Furthermore, the supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434]

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<sup>1</sup> Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

<sup>2</sup> Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

while dilating upon the scope of constitutional jurisdiction of the High Court has observed as under:

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.

[emphasis supplied]

10. In view of the foregoing discussion and the authoritative pronouncement of the Supreme Court, in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [supra], no case for interference is made out. The concurrent findings of the two courts below are upheld, and the instant constitutional petition is dismissed.

JUDGE