

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-222 of 2025

[Hassan Ahmed vs.Mst. Mst Aimun Khalid and another]

Petitioner: Through Mr. Qamar Hussain, Advocate.
Respondents: Nemo.
Date of Hearing: 14.03.2025
Date of Order: 14.03.2025

ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition has challenged the impugned judgment and decree dated **01.10.2024**, passed by XXI Family Judge, Karachi [East] in Family Suit No.2100/2023 and the judgment and decree dated **28.01.2025**, passed by learned IV Additional District Judge Karachi [East] passed in Family Appeal No.375/2024 with the following prayers :

- “A. To Call R & P of the Family Appeal No.375/2024 from IVTH ADJ East at Karachi and after hearing learned counsel of the parties set-aside the impugned Judgment & Decree dated: 01/10/2024 of the Family Court and Judgment & Decree dated: 28/01/2025 passed by learned Appellate Court and dismiss the suit of the respondent with cost.
- B. Alternatively to allow the petitioner to deposit Rs.8,000/- per month as maintenance of the minor as per his source of income instead of unjustifiable Rs.20,000/- per month”.

Any other relief which this Hon'ble Court may deem fit and proper in the interest of Justice.

2. Concisely, the facts of present matter are that the plaintiffs / respondents filed family Suit No.2100 /2023 for **dissolution of marriage by way of Khula, gift amount, past & current maintenance** against the defendant/petitioner, which was partly decreed through the judgment dated **01.10.2024** in the following terms:

- “a. Defendant is directed to iddat period maintenance of the plaintiff No. 1 at the rat of Rs.10,000/- per month since date of Khulla till her Iddat period.
- b. Defendant is directed to pay Rs. 300,000/- to plaintiff No. I on account of medical expenses.
- c. Defendant is directed to pay Rs. 20,000/- (twenty thousand rupees) per month maintenance for plaintiff No.2, with 10%

annual increment since filing of the suit till his legal entitlement”.

The aforesaid judgment of the trial court was challenged before IV Additional District Karachi [East] in Family Appeal No.375/2024, which was dismissed through the order dated **28.01.2025**; the judgment and decree of the trial court were maintained by the appellate court. Both the aforesaid judgments and decrees are impugned in the present constitutional petition.

3. Learned counsel for the petitioner has argued that the impugned judgments / orders of the two courts below are illegal, without jurisdiction and nullity in the eye of law. The trial court as well as appellate court did not consider the wealth position of the petitioner that he is unable to pay such a huge maintenance claimed by the respondents / plaintiffs. He has further argued that the impugned judgments are based on misreading and non-reading of the facts, hence liable to be set aside. 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. In the instant case, the petitioner has mainly challenged the monthly maintenance of the minor awarded by the trial court, which was subsequently maintained by the appellate court. From perusal of the record, it appears that the trial court while dealing with this issue has rightly decided **that the defendant is directed to pay Rs.20,000/- per month maintenance for plaintiff No.2 with 10% annual increment since filing of the suit till his legal entitlement** with which the petitioner/defendant is not prepared. Though the trial court has very elaborately discussed this issue; relevant para in this regard for the sake convenience reads as follows:

“Since the plaintiff has claimed the maintenance of minor in prayer clause-E at the rate of Rs.30,000/- per month, but she has failed to prove that defendant is earning handsome amount and he is financially sound person and can easily afford Rs.30,000/- per month for maintenance of the minor, therefore

now it has become obligation upon this Court to decide reasonable maintenance amount of minor / plaintiff No: 02.

Hence looking into attending circumstances of the case, regarding food, clothing, education, other expenses of plaintiff No: 02/minor and dearness rising in country day by day I deem it reasonable to fix Rs. 20,000/- (Twenty thousand rupees) per month maintenance for plaintiff No: 02, with 10% annual increment since filing of the suit till his legal entitlement accordingly. In the light of above discussion, I hereby decide this issues in affirmative”.

6. From perusal of both the impugned judgments, it appears that the trial court while dealing with each and every contentions raised by the petitioner/defendant has given its findings based on sound reasoning and supported by the relevant laws; subsequently, the said findings of the trial court were upheld by the appellate court as well. Hence, in my view, there arises no question that the impugned judgments are erroneous, contrary to law and without application of judicial mind as both the courts below while thoroughly examining the evidence and properly evaluating the facts reached a concurrent conclusion. 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].

7. 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.

8. 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.

9. 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 injustice¹. 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 provided², 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.

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

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

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

legislature's intent to provide a definitive resolution through existing appeal mechanisms.

[emphasis supplied]

11. In view of the foregoing discussion, no case for interference is made out. The concurrent findings of the two courts below are upheld, and the instant constitutional petition is dismissed in limine along with pending applications

JUDGE

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