

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Constitutional Petition No.S-646 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For order on MA No.1391/2025
For order on office objection
For hearing of main case.

12.11.2025

Mr. Khalid Mustafa Shoro, Advocate for petitioner.

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1. Urgency granted.

2. Muhammad Waqas Ansari-petitioner/father, impleaded as a defendant in Family Suit No.359 of 2024, filed by the plaintiff, Mst. Anmol-respondent no.1/mother against him, has impugned the interim maintenance order dated 25.03.2025, passed by the learned Family Judge, Jamshoro, in the said Family Suit, concerning the payment of interim maintenance at the rate of Rs.7,000/- per month to their son, Baby Aryan (referred to as “Baby Rayan” in the impugned order).

Counsel for the petitioner/father contended that the impugned order dated 25.03.2025 is “without lawful authority” and “of no legal effect” for the reason that the learned trial Court has directed the petitioner/father to pay the interim maintenance of Baby Rayan at the rate of Rs.7,000/- per month, starting from the date of filing of the suit till further orders, without consideration of the following points:

- (i) the petitioner/father was/is not a salaried person;

- (ii) no weightage was given to the petitioner/father’s defence that apart from pocket money from his father, he had no other source of income ; and,

- (iii) ignored that Baby Rayan-Aryan’s grandfather-daada, the petitioner/father’s father, was the sole bread earner, who

owned and ran a shop, where the petitioner/father along with his siblings also worked and as such the interim monthly maintenance was too cumbersome;

Therefore, the Counsel for the petitioner/father argued that the quantum of the interim maintenance of Rs.7,000/- per month is/was fanciful and arbitrary, particularly when the amount arrived at by the Family Judge had not been scrutinised through evidence, and none of the points raised above were factored in the impugned Order. Therefore, the said Order was liable to be set aside under Article 199(1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 (“the 1973 Constitution”). He relied upon a reported judgment of the Lahore High Court in Makhdoom Ali v. Mst. Razia Sultana, 2007 MLD 41 and another reported judgment in Abbas Ahmed v. Mst. Ayesha Aziz & 3 others, 2009 CLC 980.

Heard counsel. It is well-established now that a challenge to an interim maintenance order passed under Section 17-A of the Family Courts Act, 1964 in writ jurisdiction is maintainable only if it can be demonstrated that such an order defeats the cause of justice and/or perpetuates injustice, is void ab-initio, is fanciful, without jurisdiction or if it has attained the status of a final order. In the present case, the petitioner/father has challenged the interim maintenance fixed by the learned trial Court vide impugned order dated 25.03.2025, after the petitioner/father had been paying the maintenance for the last six months. This challenge, filed in the High Court on 30.10.2025, raises the question of its delay in filing, when the ground being agitated by the petitioner/father before this bench is that the latter has no independent source of income. Clearly, if such a concern were bona fide, the petitioner/father would not have waited for almost six months, approaching the doors of this Court after having deposited the interim maintenance amount in the Court for the last six months. The Counsel for the petitioner/father argued that part of the delay in approaching the High

Court against the impugned Order was that the parties were trying to resolve the matter amicably, and that took time. Hence, the petitioner/father did not challenge the impugned Order earlier. Yet, according to the Counsel, the petitioner/father pronounced talaq on the respondent/mother on 21.08.2025; thus, there is still a delay of about two months before the petitioner/father approached this Court. If the interim maintenance was so exorbitant, then the petitioner/father should not have been tardy in seeking relief. Finally, the petitioner/father, born on 16.11.1993, is approximately 35 years old, and his economic and financial status is not permanently fixed. There is still always potential for growth, whereas the interim maintenance is a stopgap measure during the trial proceedings and is not permanent. Thus, it cannot be assumed that the defence plea taken by the petitioner/father will remain the same during the trial. Clearly, while the pleas taken by the petitioner/father concerning affordability will require evidence during the trial, yet, it isn't the case that the impugned Order is wholly arbitrary, as the amount of Rs.7,000/- per month, given the cost of living, appears to be reasonable.

The Counsel for the petitioner/father has also argued that the interim maintenance of Rs.7,000/- per month is also burdensome on the petitioner/father's father, that is, the paternal grandfather-daada. This plea will also require evidence. For the moment, admittedly, the grandfather (Dada) has been financing his grandchild's monthly maintenance. If the quantum of maintenance was so cumbersome for the paternal grandfather, he should have raised his plea earlier as well. Unlike his son, the petitioner/father, the paternal grandfather did not have to wait for the outcome of the attempt to settle the matter, if indeed the quantum so fixed by the Family Judge was beyond his (of the paternal grandfather's) means. Once again, the defence raised by the Counsel for the petitioner/father raises triable issues. The entire purpose of Section 17-A of the West Pakistan Family Court Act, 1964, is to ensure that while the trial proceedings are in process, the welfare of the minor is not jeopardised. Hence, the Courts have narrowed the ground of challenge to

an Order passed under Section 17-A of the West Pakistan Family Court Act, 1964.

A challenge to an order passed under Section 17-A of the West Pakistan Family Court Act, 1964, is to be considered in the most exceptional circumstances, as it directly impacts the welfare of the child during the pendency of the Family Suit. In the instant case, no extraordinary circumstances are made out for me to review and/or modify and/or intervene in the interim maintenance amount of Rs.7,000/- per month.

The Family Judge had to consider the maintenance of both the respondent/mother and the child. At the time when the Family Judge considered the said issue, the respondent/mother was still married to the petitioner/father. Yet, to this end, for the reasons articulated in the impugned Order, the Family Judge, did not grant any interim maintenance for the respondent/mother, even though at the material time, the respondent/mother was legally and lawfully married to the petitioner/husband. After rejecting the mother's claim for maintenance, the Family Judge determined that the interim maintenance would be Rs.7,000/- per month. This monthly figure could have been higher if the Family Judge had granted maintenance to the respondent/mother, but (rightly or wrongly) he did not. Thus, the petitioner/husband was made liable to pay the interim maintenance amount at Rs.7000/- only concluding that it was consistent with the responsibility of the father/petitioner as the sole provider of the bread and butter to the family. Clearly, it is also a trite proposition that the paternal grandfather/Daada may also be responsible for the maintenance of his grandchild; hence, the petitioner/husband's plea that he has to rely on his father to fulfil his liability of payment of interim maintenance is neither here nor there, and does not persuade this bench.

Given the above reasons, I do not find any material illegality or fancifulness in the impugned Order, which is interim in nature and subject to final adjudication after recording evidence of the parties. Therefore, at this stage, the impugned order cannot be challenged under writ jurisdiction, and the writ petition is dismissed.

It is clarified that the observations made by me are for the purpose of deciding this petition and may not influence the outcome of this matter and/or prejudice the lower forum.

Asif I. Khan

J U D G E