

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Constitutional Petition No. S – 332 of 2025.
(Ashfaque Ali Pathan vs. Mst. Sameena & others)*

*For the hearing of CMA 944/2025
For the hearing of the main case.*

23.02.2026.

Mr. Saifullah Soomro, Advocate for Petitioner.

Mr. Agha Ather Hussain Pathan, Assistant Advocate General.

ORDER

Ali Haider 'Ada' J.: Through the instant petition, the petitioner has assailed the order dated 18.10.2025 passed by the learned Family Judge, Sukkur, in Family Suit No.158 of 2025, whereby an application under Section 17-A of the Family Courts Act, 1964 was allowed to the extent of Rs.8,000/- per month as interim maintenance, and the petitioner was directed to deposit the said amount.

2. Briefly stated, Respondent No.1 instituted a suit for maintenance against the petitioner, seeking a direction for payment of Rs. 7,000/- per month for herself and Rs. 5,000/- per month each for the minor children, namely Respondents No.2 and 3. During the pendency of the suit, an application under Section 17-A of the Family Courts Act was moved for the grant of interim maintenance, which was allowed through the impugned order.

3. Learned counsel for the petitioner submits that although the scope of interference against an interlocutory order in constitutional jurisdiction is limited, the right of hearing is a fundamental right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, which ensures fair trial. It is contended that the impugned order has been passed without affording a proper opportunity of hearing to the petitioner. Learned counsel confines his prayer to the extent that the learned trial Court be directed to

decide the application afresh after providing due opportunity of hearing to both sides.

4. Conversely, learned Assistant Advocate General, upon reference to the order sheet, submits that it does not clearly reflect as to who appeared and whether arguments were advanced before passing of the impugned order. He submits that, if deemed appropriate, the matter may be remanded to the learned trial Court with a direction to decide the application under Section 17-A of the Family Courts Act within a stipulated period.

5. It has come on record that on 27.11.2025, learned counsel appeared on behalf of respondent No.1, and the matter was fixed in her presence. However, on 27.01.2026, neither the counsel for the respondent nor the respondent herself appeared. Today, when the matter was again fixed, no one has appeared on behalf of the respondent, nor has any intimation been received. In these circumstances, no option remains but to proceed with the matter, as the respondent has chosen to remain absent.

6. Heard the learned counsel as well as AAG and perused the material available on record.

7. In the instant case, the learned trial Court, while deciding the application for interim maintenance moved under Section 17-A of the Family Courts Act, 1964, recorded its observations at the time of passing the impugned order. For ready reference, the said order is reproduced herein below:-

“Application u/s 17-A for both minors allowed as the extend of Rs.8000/- per month. He is directed to deposit the same on every 1st of the calendar to the nazir of this Court, without fail.”

8. It is a settled principle of law, and indeed the mandate of justice, that no person shall be condemned unheard. Every litigant must be afforded a fair and reasonable opportunity to plead and defend his or her case in consonance with the well-established principle of *Audi Alteram Partem*. Courts are expected to ensure

adherence to legal process and to avoid undue reliance on technicalities that may defeat the ends of justice. Reliance is placed upon the judgment of the Supreme Court of Pakistan in **Messrs Mobiserve Pakistan (Pvt.) Limited v. Messrs V-Tech, 2025 SCMR 1936**, wherein the august Court reaffirmed the necessity of observing the principles of fair trial.

9. Latin Maxims has historically been employed in the common law system owing to their deep-rooted origins. Latin Maxims were adopted as the language of formal Court records. Although the Pleading in English Act, 1362, introduced the use of English in Court proceedings, many foundational legal principles continued to be expressed in Latin, and such usage continues to this day. Common law, being precedent-based, has preserved numerous Latin maxims that summarize enduring principles of justice. One such maxim is *Audi Alteram Partem*.

10. In Black's Law Dictionary (Revised Fourth Edition), the maxim *audi alteram partem* is defined as: "*Hear the other side; hear both sides. No man should be condemned unheard. Broom, Max. 13; L.R. 2 P.C. 106; Lowry v. Inman, 46 N.Y. 119; Shaw v. Stone, 1 Cush. (Mass.) 243.*" Herbert Broom, in his celebrated work on Legal Maxims, explains that "*No man shall be condemned unheard wherein further defined that It has long been a received rule that no one is to be condemned, punished, or deprived of his property in any judicial proceeding, unless he has had an opportunity of being heard. In the words of moralist and poet.*"

11. The right of hearing forms the foundation of the principle of fair trial. Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, guarantees the right to a fair trial as an independent fundamental right. In this regard, reliance is placed upon the judgment of the Supreme Court in **Chairman NAB v. Nasar Ullah, PLD 2022 SC 497**.

12. Likewise, it has been held that a Court is obliged to address the contentions raised before it and to pass a reasoned and speaking order. In **Town Committee Piplan v. Muhammad Hanif, 2008**

SCMR 723, the Supreme Court observed that the Court was required to deal with all aspects of the case after hearing the parties and considering the relevant precedent; failure to do so rendered the impugned judgment unsustainable, and the matter was remanded for fresh decision after affording a proper opportunity of hearing.

13. In the instant matter, it prima facie appears that the learned trial Court passed the impugned order without recording adequate reasons and without affording an opportunity of hearing to the parties. In such circumstances, remand is warranted so that the matter be decided afresh on merits through a speaking order after providing due opportunity to all concerned. Support in this regard may also be drawn from the judgments of the Supreme Court in **Rehman Shah v. Sher Afzal**, 2009 SCMR 462, and **Gul Rehman v. Gul Nawaz Khan**, 2009 SCMR 589.

14. For the foregoing reasons and discussion, the impugned order dated 18.10.2025, passed by the learned Family Judge, Sukkur, in Family Suit No.158 of 2025, is hereby set aside. The matter is remanded to the learned trial Court with a direction to decide the application under Section 17-A of the Family Courts Act afresh, after affording an opportunity of hearing to all concerned, and to pass a speaking order in accordance with law. It is further clarified that in the event of non-appearance or non-cooperation by either party, particularly the petitioner, with a view to delay or avoid the proceedings, the learned trial Court shall be at liberty to proceed strictly in accordance with the procedure prescribed under the law.

The petition, along with the listed application, stands disposed of in the above terms.

JUDGE