IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1239 of 2025

Petitioner	:	Ms. Aisha Qazi and two others, through Mr. Saadat Yar Khan, Advocate
Respondent No.1	:	Irshad Ali Shah son of Sultan Ali Shah, through Mr. Mamoon A.K. Shirwany, Advocate
Date of Hearing	:	09.04.2026
Date of Announcement	:	18.07.2026

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- This Constitutional Petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 against an interlocutory Order dated 20.10.2025 [**impugned Order**] passed by the learned Family Judge-XXIII, Karachi East, in Family Execution No. 07 of 2020 arising out of Family Suit No. 1723 of 2018, whereby three interlocutory applications filed by the petitioner before the learned Executing Court were decided.

2. Heard learned counsel for the parties and perused the record with their able assistance. To avoid repetition, the respective contention of the parties will be discussed at the relevant portions in this Order, for brevity's sake.

3. Succinct facts are that the Petitioner No.1 [wife] and Respondent No.1 [**husband**] were married, and the couple was blessed with two sons (i) Syed Subhan Ali Shah and (ii) Syed Sultan Ali Shah. Due to matrimonial issues between the parties, the wife preferred Family Suit No.1723 of 2018, wherein a decree for maintenance was passed, for payment of dower amount, wife's maintenance and for maintenance of minors was decreed with specific terms. For implementation thereof, Family Execution Application No. 07 of 2020 was initiated by wife before the learned Family Judge-XXIII, Karachi East.

4. Before the learned Executing Court, the petitioner/ decree holder filed three applications: (i) The first application dated 08.09.2025, for increase in maintenance/ additional maintenance (ii) the second one, also dated 08.09.2025, was filed for attachment of salary of the Judgment Debtor, and (iii) the third application dated 17.09.2025, for payment of maintenance and enhancement thereof on account of educational expenses. Counter-affidavits to these applications were filed by the Judgment Debtor.

5. With regards to the application for enhancement of monthly maintenance is concerned, the learned Family Judge found, upon perusal of the record, that the predecessor judge had already examined the financial position of the judgment debtor at the time of fixing maintenance at Rs. 10,000/- and Rs. 12,000/- per month for the two minors respectively, along with a ten percent annual increment. After the application of annual increments over the years, both minors were, at the time of the impugned order, collectively receiving Rs. 40,000/- per month as total maintenance, and the increment was continuing to apply annually until the legal entitlement of the minors ceases. The learned

Family Judge found that no material change in circumstances had been brought on record that would justify further enhancement at that stage. The learned Family Judge also found that granting additional or separate enhancement at that point would amount to reopening settled findings and would impose an undue burden on the judgment debtor, contrary to the principles of equity and proportionality.

6. Perusal of the order impugned reflects that the reasoning given by the learned Family Judge on the issue of income of the Judgment Debtor is sound and cannot be said to be arbitrary or unjust. The respondent is serving in the Customs Intelligence Department. No material whatsoever has been placed on record, neither before the learned executing Court nor before this Court, to establish that the salary or any other income of the Judgment Debtor has increased. The mere fact that the minors are enrolled in expensive private institutions does not by itself establish that the existing maintenance, which carries an annual increment, is wholly insufficient to meet their reasonable needs. The prayer for enhancement of monthly maintenance was therefore rightly disallowed.

7. Two interesting legal questions also arise here **(a) Whether an Executing Court can amend or modify a decree, to add a relief, which was not recorded in the decree?** and **(b) whether an Executing Court, by conducting a fresh reassessment on a question of fact, disturb the findings as were recorded in the Judgment?**

7.(i) The first question was addressed by his Lordship Mr. Justice Javed Iqbal of the Honourable Supreme Court of Pakistan in *'Sardar Ahmed Yar Khan Jogezai and 2 others v. Province of Balochistan through Secretary, C&W Department'* (**2002 SCMR 122**) by holding that it was beyond the Jurisdiction of the Executing Court to modify or change a decree, nor could it delete, insert or add anything therein, and any such exercise would be arbitrary, capricious and *coram non judice*. It was further held that such an act would amount to an attempt to frustrate the object of the Judgment and decree, which had already attained finality and, that an Executing Court cannot go beyond the terms of the decree, and when a decree has attained finality, it has to be executed even if it was erroneously passed, and the Executing Court could not even rectify any mistake in the decree.

(ii) In *'Province of Punjab through Secretary Industries, Government of the Punjab v. Burewala Textile Mills Limited'* (**2001 SCMR 396**) the Honourable Supreme Court concluded that modification of a decree by an Executing Court allowing payment of further interest under section 34(2) CPC., regarding which the decree was silent, amounts to modification in the decree, without any legal justification.

(iii) Justice Syed Zahid Hussain of Honourable Lahore High Court declared in the case of *'Muhammad Ali v. Zakir Hussain'* (**PLD 2005 Lahore 331**) that the settled rules regarding execution of decree are, that it is the decree drawn by the Court which is executable and not the Judgment/ findings; that the Executing Court cannot go behind the decree; that the Executing Court must take the decree as it stands and cannot make any alteration or modification therein, and that in case of reversal, modification or alteration of the decree by the Court of last instance, the decree is to be executed accordingly; and that nothing can be imported in the decree based on any assumption.

(iv) The Honourable Indian Supreme Court also dealt with the said proposition in *'Topanmal v. Kundomal Gangaram'* (**AIR 1960 Supreme Court 388**) and declared that the Executing Court could not go behind the decree by giving a relief to the Plaintiff; and that a Court executing a decree must take the decree as it stands, for the decree is binding and conclusive between the parties to the suit. Further guidance in this regard can also be taken from the cases of *'Syed Riaz Ahmad Shah and another v. Dayal Singh College Trust Society and another*' (**1972 SCMR 237**), *'Mst. Naseem Akhtar and 4 others v. Shalimar General Insurance Company Limited and 2 others*' (**1994 SCMR 22**), *'Muhammad Ali v. Ghulam Sarwar and others'* (**1989 SCMR 640**), *'Ghulam Muhammad v. Sultan Mahmud and others'* (**PLD 1963 SC 265**), '*Sunder Das v. Ram Parkash'* (**AIR 1977 SC 1201**), *'Messrs Haji Ahmed &. Co. v. Muhammad Siddique and others*' (**PLD 1965 Karachi 293**), '*Abdul Khaliq v. Haji and another'* (**PLD 1983 Lahore 445**).

8. With regard to the second legal question, **(b) whether an Executing Court, by conducting a fresh reassessment on a question of fact, disturb the findings as were recorded in the Judgment?** the following position emerges from study:

(i) The Honourable Supreme Court of Pakistan in the case of ***'Mst. Naseem Akhter and 4 others'*** (1994 SCMR 22) held that the plea of incorrect assessment of liability by the trial Court, cannot be assessed by the Executing Court; that the decree has to be implemented in letter and spirit; that although the liability of the J.D. was limited, the Decree Holder they could not contend before the Executing Court the liability of the Judgment Debtor was not correctly assessed or determined by the trial Court. Finally, it was concluded that once a decree was passed, it had to be executed in its terms, and it was not open to the Executing Court to go behind or beyond the terms of the Decree and re-determine the liability of parties.

(ii). In the case of ***'National Bank of Pakistan through Vice President/General Attorney V. Messrs Murtaza Haseeb Textile Mills Ltd. through Chief Executive and 13 others***' (2016 CLD 784), it was held that even if the decree was erroneous, Section 47, CPC. did not entitle a party to seek retrial of the issues involved in the suit. It was further held that Section 47 C.P.C. empowers the Executing Court to decide all the questions arising between the parties to the suit in which the decree has been passed, to the extent of questions relating to the execution, its discharge or its satisfaction. It was finally held that Section 47, CPC., did not deal with pre-decretal matters.

(iii). In ***'Sughra Bibi V. National Logistic Cell and others'*** (2002 YLR 960), it was held that it was not open to the Executing Court to go behind a decree or re-determine the liabilities of the parties but the Executing Court has to execute the existing decree, and in case the Judgment Debtor wants to contests the decree as void or without jurisdiction, it should avail the appropriate remedy by getting the decree modified form the appropriate forum.

(iv). In ***'Mst. Yasmeen v. National Insurance Corporation and others'*** (2004 CLC 979), it was held that where a decree had become final, the Executing Court would have no option but to execute the same as it was passed; and the Executing Court had no jurisdiction to re-determine the liability of any party or reconsider the law for that purpose.

(v). Same principles were also followed by this Court in the case of ***'Hyder Khan Vs. Mumtaz Ali & another'*** in Civil Misc Appeal No.S-03 of 2024 vide Order dated 07.11.2025, in execution proceedings of a summary suit.

9. With respect to the application for payment of the amount of Rs. 221,460/- claimed as outstanding educational expenses, the record before the learned Family Judge clearly showed that a certified copy of the order dated 26.09.2025 passed by this Court in C.P No. S-1489 of 2024 had been received by the Family Court. In those proceedings, learned counsel for the decree holder had not pressed the contempt application filed against the judgment debtor for alleged non-compliance with the earlier order of this Court dated 04.03.2025, and had undertaken to furnish a copy of the voucher evidencing payment received by the decree holder of Rs. 221,460/- towards the educational expenses. In view of this development, the decree holder's application seeking payment of that same amount stood rendered infructuous, since this Court had already recorded satisfaction upon the respondent's payment and the petitioner's undertaking. The learned Family Judge was therefore justified in dismissing that application as infructuous.

10. The repeated argument agitated by the Respondent side regarding observations made by the learned Family Court against learned counsel for the petitioner on the issue of non-existing AI-generated Judgments, as were relied upon by the petitioner's side on 19.9.2025 before the learned Family Court (while none of the such Judgments existed in the law journals), suffice it to say that once the same were fairly withdrawn by the petitioner side on 20.10.2025 being a genuine inadvertence, the same does not hold much relevance, especially considering the spotless career, not only of the learned Advocate for the Petitioner, but also of his father and his brother as respectable officers of this Court since past many decades. Such an argument is therefore rejected as being irrelevant for the purpose of the present discussion.

11. Lastly, in terms of section 14(3) of the Family Courts Act, 1964 no appeal or revision shall lie against an interim order passed by the Family Court. As held in ***"Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary, S&GAD, Karachi and another"*** (1996 SCMR 1165), a statute, expressly excluding a right of appeal from an interim order, cannot be bypassed by bringing under attack such an interim order in Constitutional Jurisdiction. One of the core objectives of family laws is to resolve family disputes expeditiously, to spare the parties the ordeal of litigation, and to curb the mischief of delaying tactics. By now, it has been consistently laid down by the superior courts that the legislature's intent with reference to the Family Courts Act, 1964 was to simplify the procedure and bypass legal complexities. Interference under the constitutional jurisdiction is permissible only in case of any jurisdictional defect or legal infirmity which does not exist in the present case. Even otherwise, the scope of interference by this Court under Article 199 of the Constitution in family matters against interlocutory Orders is much narrower than the scope of an appeal. Neither can it be treated as an appeal over findings of fact recorded by the Court below, nor can it be used to disturb such findings only because a

different view could be taken of the same evidence. Constitutional jurisdiction may be invoked where there is a basic Jurisdictional defect.

12. Applying the above settled principles and with due reverence to the learned counsel for the petitioner, I am unable to agree with his insistence to issue writ in the present petition against the interim Order impugned, as a matter of precedence from the earlier petition in the same dispute. In the present case, this Court has examined the impugned order carefully and finds that the learned Family Judge exercised his jurisdiction lawfully, applied his judicial mind to the facts and circumstances, and gave cogent reasons for dismissing the applications. The impugned Order does not suffer from any jurisdictional defect, nor does it reflect any arbitrary exercise of power.

13. Upshot of the above discussion is that the petitioner has not been able to make out a case of jurisdictional error, or blatant violation of law, which could justify interference under writ jurisdiction of Article 199 of the Constitution, as against the interim Order on interlocutory applications by the learned executing Family Court. This petition is therefore dismissed, along with pending applications, with no order as to costs.

JUDGE