

ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

C.P.No. S-334 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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05.11.2025.

M/s Farhad Ali Abro and Shaukat Ali Kaka, Advocates for petitioner.

Mrs. Razia Ali Zaman Khan, Advocate for respondent.

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Counsel for the petitioner, father of two minors – a 11-year-old son and a 9-year-old daughter - contended that pursuant to the final order dated 26.02.2024,¹ passed in C.P.No.S-312/2023, this Court modified the appellate judgment and decree dated 30.05.2023,² passed by the IXth Addl. District Judge in Family Appeal No.28/2023 and the consolidated judgment and decree dated 14.01.2023,³ passed by the VIIth Family Judge, Hyderabad, in Family Suit Nos. 621/2019 (restitution), 1090/2020 (maintenance) and 304/2021 (dissolution of marriage, dowry, etc.). The Petitioner-father also preferred an appeal to the Supreme Court of Pakistan in C.P.L.A. Nos.1785/2024 and 1786/2024 against the High Court's Order dated 26.02.2024, but the Apex Court dismissed the same vide Order dated 24.01.2025.⁴

2. Petitioner-father's Counsel argues that the High Court's final order dated 26.02.2024 wiped clean the Family Judge's earlier award of 10% annual increment on the principal amount of maintenance of Rs.15,000/- per month per child, awarded from April 2019 onwards. He contended that, as per the petitioner's interpretation of the final order passed by the High Court, the petitioner is/was liable to pay the maintenance amount of Rs.20,000 per month for each minor, albeit from the date of the final order dated, i.e. 26.02.2024, with 10% annual increment. He argued that as the petitioner-father continued to deposit the maintenance amount as per the earlier award up to the date of the final order, the Family Judge of the Executing Court in Execution Application No.104/2023 vide order dated

¹ Available from pages 3 to 7 of the Petitioner's Statement dated and filed on 09.12.2024.

² Available from pages 9 to 15 of the Petitioner's Statement dated and filed on 09.12.2024.

³ Available from pages 17 to 29 of the Petitioner's Statement dated and filed on 09.12.2024.

⁴ Available on page 71 of the Respondent's Statement dated and filed on 07.03.2025.

06.07.2024 (which is impugned in the petition)⁵ has failed to appreciate that the petitioner-father had paid an excess amount and that such erroneous sum determined by the Execution Court, intended to be deducted from his salary, was “misconstrued”.

3. Counsel for the respondent-mother has contended that during the course of the hearing of this petition, the VIIIth Family Judge, Hyderabad, on 06.05.2025, has submitted to this Court its calculation, which is consistent with the High Court’s Order dated 26.02.2024 in C.P. No.S-312/2023. Counsel contended that the petitioner-father had challenged the impugned Order dated 06.07.2024, passed in the Execution Application No.104/2023, wherein the petitioner-father had challenged the attachment of salary. Therefore, the High Court could not go behind the orders it had already passed in C.P.No.S-312/2023 in relation to the recalculation of the amount due, which order had attained finality. Finally, the respondent-mother contended that after 26.12.2024, the petitioner-father had not deposited any maintenance in the execution proceedings. However, in rebuttal, the petitioner-father’s counsel responded that as this Court had passed an ad-interim stay order dated 12.12.2024 in this petition, no maintenance had been deposited during its pendency till date.

4. Heard Counsel, perused the material on record. It is common ground that the difference of opinion between the petitioner-father and the respondent-mother concerns the interpretation of this Court’s Order dated 26.02.2024, viz., the maintenance paid and payable for the two minor children. Thus, while the VIIIth Civil Judge/Family Judge, Hyderabad, has submitted a detailed report to this Court regarding the maintenance of respondent as former spouse of the petitioner and dowry articles and the maintenance of minors, for purpose of this petition, given that the petitioner-father is aggrieved by the quantum of funds deposited and the amount outstanding, as per the High Court’s Order dated 26.02.2024, passed in C.P. No. S-312/2023, the petitioner-father’s challenge is limited to the quantum of the monthly maintenance of the minors. Therefore, I have reproduced only that relevant section from the report submitted by the Family Judge herein below, which covers the subject matter of the dispute between the parties, and will deal with the matter concerning the maintenance of the minor only:

⁵ Available on pages 13-15 of the main petition file.

**MAINTENANCE OF MINORS
AS PER THE FAMILY JUDGE OF EXECUTION COURT
REPORT DATED 06.05.2025**

S.No.	Period/Nature	Monthly Rate	Amount	Remarks
01	April 2019 to 28.02.2024 57 months	Rs.20000/- each child total Rs.40000/- per month	22,80,000/-	Maintenance of minors
02	01.03.2024 to February 2025	Rs.22000/- each child total Rs.44000/- per month	528,000/-	Maintenance of minors
03	01.03.2025 to April 2025	Rs.24200/- each child total Rs.48,400/- per month	Rs.96,800/-	Maintenance of minors
		AMOUNT RS.29,04,800/-		

5. As per the Consolidated judgment and decree dated 14.01.2023, passed in Family Suit No.621/2019, the learned VIIIth Family Judge, Hyderabad, had decreed the suit in favor of the respondent-mother, entitling her for maintenance of minors at the rate of Rs.15,000/- (rupees fifteen thousand) each minor, per month with 10% annual increment since April-2019 till the legal entitlement of minors. Thereafter, when the petitioner-father challenged the said trial/family court's judgment, the IXth Addl. District/Family Judge, Hyderabad, in Family Appeal No.23/2023, modified the same vide its appellate judgment and decree dated 30.05.2023 only to the extent of an increase in the maintenance amount of minors from Rs.15,000/- to Rs.20,000/- per month for each minor with 10% annual increment till legal entitlement with no order as to costs. Finally, when this appellate judgment and decree was also challenged by the petitioner-father in the High Court in C.P. No.S-312/2023, after hearing the parties, this Court, exercising writ jurisdiction vide its Order dated 26.02.2024, maintained the appellate judgment and decree dated 30.05.2023 to the extent that the High Court directed the petitioner-father to pay the maintenance amount of Rs.20,000/- [Rupees Twenty Thousand] per month for each minor however **from today [26.02.2024]** with 10% annual increment as enhanced by the learned appellate Court.

6. A bare reading of the High Court's Order dated 26.02.2024, passed in C.P. No.S-312/2023, reveals that the appellate judgment and decree dated 30.05.2023, essentially modified the appellate Court's judgment and decree dated 30.05.2025, as follows:

- (i) First, the High Court determined that the applicability of its Order was to come into effect from the date of the Order, i.e. 26.02.2024 onwards.
- (ii) Secondly, the maintenance amount for minors of Rs.20,000/- per month per minor to be paid by the petitioner-father as per the appellate Court's judgment dated 30.05.2023, stood maintained by the High Court's Order, meaning thereby that the increase in the maintenance amount of minors from Rs.15,000/- to Rs.20,000/- by the appellate Court was upheld by the High Court.
- (iii) Thirdly, the High Court disagreed with the time frame for the increase in the quantum of the maintenance of the minor for the period from April 2019 till the legal entitlement of the minor. The High Court, in its Order dated 26.02.2024 in C.P. No.S-312/2023, observed that the period for the enhancement of the maintenance amount for the minors of Rs.20,000 would apply from the date of the Order, i.e. 26.02.2025 and not from April 2019.
- (iv) Fourthly, the High Court observed that the increase of 10% per annum will apply from 26.02.2024 onwards. In other words, for the removal of doubt, the 10% annual increase as enhanced by the appellate Court would not apply for the period April 2019 to 26.02.2024, but would come into effect from 26.02.2024 onwards.

7. The High Court's Order dated 26.02.2024 was also challenged by the petitioner-husband before the Supreme Court and was dismissed vide Order dated 24.01.2025. Thus, the said Order attained finality.

8. I have perused the VIIIth Civil Judge/Family Judge, Hyderabad's, detailed report dated 06.05.2025 submitted to this Court, and find that the Family Judge's interpretation of the High Court's Order dated 26.02.2024, passed in C.P. No.S-312/2023, as recorded in the said Report (reproduced herein above in paragraph 3), is not on point. The learned Family Judge has applied the monthly maintenance of Rs.20,000 from April 2019 onwards instead of the date of the Order of 26.02.2024. It

appears from the plain reading of the Order that the learned Judge added the words “from today”, deliberately, to apply to both the maintenance amount of Rs.20,000, and the 10% annual increment. Therefore, the Execution Court will have to revise its calculation of outstanding payments accordingly, as well as factor in the 10% yearly increment from 26.02.2024 onwards until the date of legal entitlement of minors.

9. There is another issue which needs to be addressed, i.e. the petitioner-husband has alleged that some portion of the liability/payments has been allegedly made/deposited in the District Court at Karachi District East, but the same was not adjusted against the outstanding liability of the petitioner-husband by the learned Family Judge in the Execution proceedings. It is not the domain of the High Court while exercising writ jurisdiction to enter into any fact-finding exercise. Therefore, the Family Judge of the Execution Court is at liberty to determine this point as and when and if the petitioner-father submits such material.

10. Last, but not least, I now come to the impugned Order dated 06.07.2024, passed in Family Execution Application No.104/2023, itself.⁶ The learned Family Judge of the Execution Court dismissed the petitioner-father’s application concerning the attachment of salary based on a Statement regarding arrears filed by him, when the petitioner-husband alleged that the outstanding amount was contrary to the High Court’s Order dated 26.02.2024 passed in C.P. No.S-312/2023 (subsequently upheld by the Supreme Court of Pakistan vide its Order dated 24.01.2025 in C.P.L.A. Nos.1785/2024 and 1786/2024).⁷ The learned Family Judge found in paragraph 4 of the impugned Order that the High Court did not modify the appellate Court’s judgment dated 30.05.2024, and held that the petitioner-husband’s contention that the outstanding amount payable was erroneous was “misconstrued”. As discussed by me, herein above, the learned Judge of the High Court made the payment of an enhanced amount as per the appellate judgment, subject to “from today”. This meant that the appellate judgment and decree dated 30.05.2023, which fixed the amount payable for the period from April 2019 onwards, stood modified. This reference to “from today” modifying the period from which the enhanced amount would take effect, i.e., not from April 2019 but “from today,” i.e., 26.02.2024, was

⁶ Available on pages13-15 of the main petition.

⁷ Available on page 71 of the Respondent’s Statement dated and filed on 07.03.2025.

perhaps inadvertently overlooked in paragraph 4 of the Family Judge's impugned Order dated 06.07.2024. Be that as it may, while the Family Judge's impugned Order dated 06.07.2024 in Ex. Appln. No.104/2023, is maintained, however, to the extent of paragraph 4 of the said impugned order, the observations made by the learned Family Judge in the said paragraph, given the above reasons, are set aside with directions to the Execution Court to enforce the appellate Court's judgment and decree dated 30.05.2023 as modified by the High Court's Order dated 26.02.2024 passed in C.P. No.S-312/2023, as per the interpretation of the Order dated 26.02.2024, as clarified herein above.

11. Given the above, the ad-interim order dated 12.12.2024 passed by this Court is recalled, and this petition, along with all its applications, stands disposed of in the above terms.

JUDGE

Tufail