

*Order Sheet***IN THE HIGH COURT OF SINDH, KARACHI****C.P. No.S-1468 of 2024**

[Osama Nadeem vs. Mst.Minha Khan]

Petitioner	Through M/s. Shahid Hussain and Sadia Mumtaz, Advocates.
Respondents	Nemo
Date of Hearing:	13.08.2025.
Date of Order:	13.08.2025.

ARSHAD HUSSAIN KHAN, J. Through instant constitutional petition, the petitioner challenges the Judgment & Decree dated 06.12.2024, passed by Additional District & Sessions Judge-VIII, Malir, Karachi, in Family Appeal No.21 of 2024, maintaining the judgment dated 29.11.2023, passed by IXth Civil/Family Judge in Family Suit No. 04/2022 whereby the suit filed by respondent was decreed.

2. Concisely, the respondents/plaintiffs filed suit No. 04 of 2022 for recovery of maintenance, dowry articles and dower amount against the petitioner/defendant-Osama Nadeem before the court of IXth Civil/Family Judge, Malir, Karachi, with the following prayers.

- a. To direct the defendant to pay the past maintenance of plaintiff No. 1 till her Iddat & after receiving written Talaq which was effective from the same date and time, therefore, the iddat period also starts from 09-02-2022, and the plaintiff No. 1 is claiming Rs. 35,000/-per month maintenance allowance for herself & Rs. 25000/-per month as future monthly maintenance for plaintiffs No. 2 & 3 excluding education charges, tuition fees, school van, uniform etc. as & when situated so arises with increase of 20% per annum and thereafter expenses of college/university also included therein beside the marriage charges.
- b. To direct the defendant to release the dower articles of plaintiff as per attached list of dowry articles or in case of damage, to direct the defendant pay the equivalent amount as per market value.
- c. Cost of the suit.
- d. Any other relief /relieves, which this Court may deem fit and proper in the circumstances of the case.

3. Before the learned trial court, the petitioner /defendant contested the family suit by filling written statement; denied the claim of the respondents/plaintiffs and prayed for dismissal of the family suit. As per record, the pre-trial proceedings were held but declared as

failed. Thereafter, issues were framed; evidence of the parties were recorded; and the suit was decreed as follows :

“Suit of the plaintiff is decreed for recovery of the maintenance & dower amount with no order as to cost. Defendant is directed to pay iddat period maintenance of plaintiff No.1 at the rate of Rs. 12,000/- totaling to Rs.36000/-, Defendant to pay past maintenance of plaintiffs No.2 & 3 at the rate of Rs.7000/-each from filing of this suit since March 2022 till November 2023 totaling to Rs.294000/-. Defendant is directed to pay Rs. 10,000/- each minor as monthly future maintenance for minor plaintiffs No.2 & 3 i.e. from the month of December 2023 onwards till their legal entitlement with increment of 5% per annum for future into maintenance. He is further directed to pay Rs.7500/-as annual amount for minor plaintiffs towards their clothing and shoes. Defendant is directed to pay the dower amount of Rs. 1,00,000/- [rupees one lac] to plaintiff No. 1. The interim maintenance amount will be adjusted. Defendant is directed to submit the same in the Nazir office. Office is directed to issue the decree.”

4. Against the aforesaid judgment of the learned civil judge, the petitioner/defendant has filed Appeal No.21/2024, which was dismissed through the impugned judgment with the following observations :

“For the reasons outlined above, this Court finds that the Judgment and Decree dated 29.11.2023, rendered by the learned Civil/Family Judge-IX, Malir, Karachi, is founded on well-reasoned conclusions, after a thorough evaluation of the evidence presented. Therefore, no grounds exist for interference by this Court. Accordingly, the appeal against the judgment and decree dated 29.11.2023, passed by the trial court, is hereby dismissed.”

The petitioner herein filed the instant petition against the concurrent findings of the two courts below.

5. Learned counsel for the petitioner has contended that the impugned judgments of the two courts below are bad in law; liable to be set aside as both the courts below have failed to consider the real facts and the grounds agitated on behalf of the petitioner. That the impugned judgments are the outcome of misreading and non-reading of the material on the record. It is contended that both the courts below have failed to apply their judicial mind while considering the income of the petitioner. It is argued that the courts below have also failed to consider that the respondent, being disobedient wife, is not entitled to claim the maintenance of *iddat* period. He has further argued that the courts below have also failed to take into account the fact that the petitioner has contracted second marriage and out of said marriage he

has one female child, as such it is not possible for the petitioner to pay Rs.10,000/- per month to each minor [respondents No.2 & 3] towards their monthly future maintenance and Rs.12000/- per month as maintenance of *iddat* period of respondent No.1. Lastly, learned counsel has prayed for interference in the matter by this Court in its constitutional jurisdiction.

6. Heard learned counsel for the petitioner, perused the record and the relevant law.

From perusal of the record, it appears that the petitioner through instant constitutional petition has assailed concurrent findings recorded by both the learned trial court and the appellate court in a family matter relating to recovery of maintenance, dowry articles, and dower amount. The record reflects that the learned trial court, after framing of issues, recording of evidence, and hearing the parties, decreed the suit to the extent of *iddat* period maintenance, past and future maintenance for minor children, clothing allowance, and dower amount. The learned appellate court, upon reappraisal of the evidence and after hearing the petitioner, dismissed the appeal and maintained the decree of the trial court in its entirety.

7. The plea regarding the petitioner's alleged limited income and the disobedience of respondent No.1 were duly considered by the learned trial court and the appellate court and findings were recorded against the petitioner on the basis of evidence. Moreover, questions relating to quantum of maintenance, entitlement to *iddat* period maintenance, and assessment of the petitioner's financial capacity are matters of factual determination within the exclusive domain of the family court, and have been conclusively adjudicated in the present case. The petitioner has failed to point out any error of law or jurisdictional defect in the impugned judgments.

8. In the instant case, the petitioner has also 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. It is a well-settled principle of law that the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, is supervisory in nature and not appellate. This Court neither undertakes a re-appraisal of evidence nor substitutes its own findings for those concurrently recorded by the courts below, unless it is established that the impugned judgments are vitiated by lack of jurisdiction, manifest illegality, or perversity resulting in miscarriage of justice. The petitioner's stance, however, is essentially directed against concurrent findings of fact, duly arrived at by the fora below upon proper appreciation of evidence.

10. It is observed that 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.¹

11. 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 injustice². 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 provided³, 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.

¹ Shahzad Amir Farid v. Mst. Sobia Amir Farid [2024 SCMR 1292]

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

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

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

[emphasis supplied]

13. In view of the facts and circumstances of the present case, and in light of the authoritative pronouncement of the Supreme Court in the case of *M. Hamad Hassan* [supra], no ground for interference is made out. The concurrent findings recorded by the courts below suffer from no legal infirmity warranting this Court's intervention. Consequently, this constitutional petition is dismissed.

JUDGE