Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-483 of 2025

[Muhammad Bilal Sarwar vs. Mst. Anum Shakeel]

Petitioner	Through Mr. Muhammad Anwar Dahri, Advocate.
Respondents	Nemo.
Date of Hearing:	02.09.2025.
Date of Order:	02.09.2025.

ARSHAD HUSSAIN KHAN, J. Through the instant constitutional petition, the petitioner has assailed the Judgment and Decree dated **30.04.2025,** passed by the learned IV Additional District & Sessions Judge, Karachi (East) in Family Appeal No.432 of 2024, whereby the petitioner's appeal was dismissed, thereby upholding the Judgment and Decree dated **16.11.2024** passed by the learned Civil & Family Judge, Karachi (East) in Family Suit No.4511 of 2022, through which the suit filed by respondent No.1 was decreed. For the sake of convenience, both the said decisions shall hereinafter be collectively referred to as the impugned judgments.

2. Concisely, respondent No.1/plaintiff instituted Family Suit No.4511 of 2022 seeking maintenance, recovery of dower amount, and Iddat maintenance against the petitioner/defendant. It was averred that the marriage between the parties was solemnized at Karachi on 24.10.2017, with a deferred dower of Rs.5,000,000/- (Rupees Five Million only), which remained unpaid. It was further pleaded that certain terms were incorporated in the Nikahnama, namely: (i) monthly maintenance of the plaintiff at Rs.20,000/- along with an obligation upon the defendant to transfer a flat comprising five rooms in Karachi in her name under Clause-17; and (ii) in the event of unnecessary divorce, the defendant would be liable to pay an additional sum of Rs.5,000,000/- as fine, apart from the dower. On the basis of these stipulations, the plaintiff prayed for a decree in her favour as follows :

i. To direct the defendant to pay maintenance of the plaintiff No.1 at the rate of Rs.20,000/- per month as mentioned in the Nikahnama, with effect from i.e July 2022 & August, 2022.

ii. To direct the defendant to pay past and future maintenance of the plaintiff No.2 at the rate of Rs.20,000/- per month with effect from July 2022 to onwards on the increment of 10% annually till the marriage of the minor baby namely Aiza Sarwar.

iii. To direct the defendant to pay the dower amount of Rs.5,000,000/- (Rupees Five Million Only).

iv. To direct the defendant to pay the iddat amount at the rate of Rs.20,000/- per month for 3 months and comply the obligations of Clause-17 & 18 of the Nikahnama.

v. To direct the defendant to give a flat consisted of 5 rooms to the plaintiff No.1 as mentioned in the Nikahnama.

vi. Cost of the suit may also be granted.

vii. Any other or further relief(s) which this Hon'ble Court may be pleased to grant under the circumstances of the case.

3. Upon notice, the petitioner/defendant appeared before the learned trial Court and filed a written statement wherein he categorically denied the claim of the respondent/plaintiff. He asserted that the alleged dower amount of Rs.5,000,000/- was never agreed upon and that it was a fabrication subsequently introduced in the Nikahnama. According to him, at the time of Nikah no such terms or conditions, as pleaded in the plaint, were incorporated in any clause of the Nikahnama. He further maintained that the actual dower settled was only Rs.50,000/-, which was duly paid to respondent No.1. On this basis, he prayed for dismissal of the family suit.

Thereafter, the court framed the issues, recorded the evidence of the parties, and ultimately decreed the suit in the following terms:

> "13. Hence, plaintiff No.1 is declared entitled to receive the dower amount of Rupees Five Million from the defendant which is liable to be recovered through the legal means to be implied by this Court against the defaulting defendant. Plaintiff No.1 is also declared entitled to the iddat maintenance of lump sum Rs.30,000/-. Plaintiff No.2/minor is declared entitled to the enhanced maintenance of Rs.15,000/- per month effective from 01.12.2024 with increment of 5% per annum till the end of legal entitlement. If any 17-A arrears are outstanding then the same will also be recoverable from the defendant. The defendant is directed to comply in letter and spirit to avoid facing consequences. Rest of the issues are declined as not maintainable. The present suit stands decreed and disposed of in view of above observations. Let such Decree be prepared according to law. Let the record and proceedings (R&Ps) be consigned to the record room after due compilation and completion of necessary formalities."

4. The aforesaid judgment and decree of the trial court were challenged in Civil Appeal No.432/2024, which was dismissed by the learned Additional District Judge-IV, Karachi [East] by maintaining the judgment and the decree dated **16.11.2024,** passed by the trial court, vide the impugned judgment of the appellate court dated

30.04.2025. The appellate court while dismissing the appeal has observed as follows:

> "12. In view of detailed discussion on the point No.1 and result thereof, since it has been held in preceding point that the appellant got no case at all for interference of this Court, thus, under such circumstances the instant family appeal merits no consideration and the same is hereby dismissed together with stay application with no order as to costs. Resultantly, the impugned judgment and decree dated 16-11-2024 being in accordance with law, facts, oral and documentary evidence are hereby maintained."

The petitioner has, therefore, invoked the constitutional jurisdiction of this Court by filing the present petition, assailing the **concurrent findings** recorded by the two courts below.

5. Learned counsel for the petitioner contended that the impugned judgments passed by the two courts below are not sustainable in law and are liable to be set aside, as both the courts failed to properly consider the relevant facts and the grounds agitated on behalf of the petitioner/defendant. It was argued that the impugned judgments are contrary to the settled principles of law, devoid of legal effect, and amount to a mockery of justice. Learned counsel further urged that the impugned judgments are ultra vires, coram non judice, void ab initio, and of no legal consequence. He submitted that the courts below rendered their decisions in an unduly hasty manner without applying proper judicial mind to the controversy involved, and thus prayed that this court, in exercise of its constitutional jurisdiction, may interfere and set aside the impugned judgments.

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

From a perusal of the record, it is manifest that the petitioner failed to satisfy the decree, and the appeal preferred by him against the judgment and decree of the learned trial court also stood dismissed. Yet, by dragging the matter from one forum to another, particularly in a family dispute, the petitioner has indulged in vexatious litigation, thereby causing undue delay in the enforcement of lawful rights and adding to the already heavy burden of the courts. Such practice has been strongly deprecated by the Hon'ble Supreme Court of Pakistan, which has consistently emphasized that family matters must be decided

and concluded with utmost expedition in order to protect the rights and dignity of the parties, especially women and children[1].

7. Precisely, the stance of the petitioner/defendant is that at the time of Nikah no terms or conditions were incorporated in any clause of the Nikahnama when it was signed by him, and that all the stipulations mentioned in the plaint are false and fabricated. According to him, the dower amount actually settled was Rs.50,000/-, which was subsequently paid to respondent No.1, whereas the claim of deferred dower amounting to Rs.5,000,000/- is wholly exaggerated and could never have been agreed to or acknowledged by him. He further claims that since Respondent No. 1 allegedly left his house without his permission, she is not entitled to claim any maintenance.

8. From a perusal of the record, it appears that respondent/plaintiff No.1, in support of her claim, produced the original Nikahnama during her evidence, which explicitly records the dower amount as Rupees Five Million, payable on demand. Conversely, the petitioner/defendant did not dispute his signature on the Nikahnama, yet, in support of his plea of tampering therein, he neither adduced oral or documentary evidence nor produced the Nikahnama in his own evidence. Having denied the entries but deliberately withholding the document, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984 was rightly drawn against him.

It is a well-settled principle that a presumption of truth attaches to the entries in the Nikahnama[2]. Furthermore, a Nikahnama registered under the Muslim Family Laws Ordinance, 1961 is a public document, carrying with it a presumption of truth. Any party who denies the conditions recorded therein must adduce strong and convincing evidence to rebut it. Since the petitioner failed to rebut the statutory presumption attached to the Nikahnama, the dower amount recorded therein stands accepted as binding, the entries being treated as solemn affirmation of its contents[3]. It is also well settled that documentary evidence prevails over oral testimony. The Supreme Court has repeatedly emphasized the importance of written entries in the

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[1] Shahzad Amir Farid v. Mst. Sobia Amir Farid [2024 SCMR 1292]
[2] Muhammad Aslam v. Mst. Suraya [PLD 2000 Lahore 355]; Abdul Malik and Others v.Mst. Subbha Mai alias Sabbah Mai [2016 MLD 925].
[3]Mst. Nabeela Shaheen v. Zia Wazeer Bhatti [PLD 2015 Lahore 88].

Nikahnama, holding that they must be given precedence when the document is clear and unambiguous[4].

9. It may also be observed that the constitutional petition cannot be considered as second appeal against the order passed by lower appellate court. In the instant case, the two courts below have given concurrent findings against, which the petitioner has 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.

10. 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 injustice[5]. 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 provided[6], 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.

11. Furthermore, the Supreme Court of Pakistan in the case of M. Hamad Hassan v. Mst.Isma Bukhari and 2 others [2023 SCMR 1434]

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[4] Muhammad Yousaf v. Huma Saeed (2024 SCMR 1078)

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

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

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."
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> [emphasis supplied]

12. In view of the facts of the present case, and guided by the authoritative pronouncement of the Hon'ble Supreme Court in M. Hamad Hassan v. Mst. Isma Bukhari and 2 others [supra], no ground for interference is made out. The concurrent findings of the two courts below, being well-reasoned and in accordance with law, are upheld. Consequently, the instant constitutional petition stands dismissed.

JUDGE

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