HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-445 of 2023

[Mst.Naseema Dahri v. Karam Ali and others]

Petitioner	:	Mst.Naseema Dahri Through Mr.Jahangir Khyber, Advocate
Respondent No.1	:	Karam Ali s/o Wale Dino @ Walo Dahri Through Mr.Imdad Ali Memon, Advocate
Respondents No.2 &3 by	:	Mr.Muhammad Ismail Bhutto, Additional Advocate General, Sindh
Date of hearing	:	**26.01.2026**
Date of Decision	:	**26.01.2026**

JUDGMENT

ARBAB ALI HAKRO, J.- Through this Constitutional Petition, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, calling into question the legality, propriety and judicial soundness of the judgment and decree dated 12.09.2023[1], whereby Family Appeal No.06 of 2023 was dismissed and the judgment dated 26.04.2023[2], in Family Suit No.21 of 2022, was maintained.

2. The essential facts, as can be culled from the pleadings and the record are that the petitioner Mst. Naseema Dahri, along with her late mother, Mst. Jam Zadi instituted Family Suit No.21 of 2022 seeking (i) recovery of dower allegedly fixed as *one buffalo*, and (ii) past and future maintenance for both plaintiffs. It was asserted that the marriage between the late Mst.Jam Zadi and respondent No.1, Karam Ali, were solemnised in the year 1978, and soon thereafter, the respondent subjected her to persistent maltreatment, ultimately expelling her from the matrimonial home along with the petitioner, who was then an infant. It was further pleaded that despite repeated demands, the respondent neither paid the dower nor extended any maintenance to the wife or the minor

[1] rendered by the learned Additional District Judge/Model Civil Appellate Court, Hala (Available on Page-11-21)
[2] passed by the learned Family Judge-II, Hala (Available on Page 33)

daughter, compelling the plaintiffs to reside at the parental home of Mst.Jam Zadi for nearly four decades.

3. The respondent contested the suit by filing written statement, who denied the fixation of dower in the form of a buffalo, asserting instead that the dower was Rs.5,000/-, allegedly paid at the time of marriage. He further claimed that he had divorced Mst.Jam Zadi in the year 1982, and that the petitioner was not his daughter, relying upon a disputed death certificate and other documents.

4. Learned Family Court, after framing issues and recording evidence, dismissed the suit on 26.04.2023, holding inter alia that the claim for dower was hopelessly time-barred, and that the petitioner, being an adult woman capable of maintaining herself, was not entitled to maintenance. The appellate Court, upon reappraisal of the record, concurred with these findings and dismissed the appeal vide judgment dated 12.09.2023. Aggrieved thereby, the petitioner has approached this Court.

5. Learned counsel for the petitioner submitted that both courts below committed a manifest error of law by failing to appreciate that the petitioner, being an unmarried adult daughter, is entitled to maintenance under Para 370 of Mulla’s Principles of Mahomedan Law, irrespective of her age, until her marriage. It was argued that the appellate Court did not frame any point for determination regarding the petitioner's entitlement to maintenance, despite the trial Court having framed and decided the issue adversely. Counsel further contended that the courts below misread the evidence by treating the petitioner as a self-sufficient woman without any proof on record. It was urged that the respondent’s denial of paternity was an afterthought, contradicted by his own conduct, including the issuance of CNICs and other official documents. Learned counsel maintained that the findings regarding limitation were misconceived, as the claim for maintenance is a recurring cause of action, and the courts below failed to exercise jurisdiction vested in them by law. It was lastly argued that the impugned judgments suffer from non-application of the judicial mind,

misreading of evidence and failure to consider material facts, warranting interference under Article 199.

6. Conversely, learned counsel for respondent No.1 supported the impugned judgments, contending that the suit was a belated attempt to harass the respondent after nearly four decades of silence. He submitted that the claim for dower was hopelessly time-barred and that the courts below rightly dismissed the same. Regarding maintenance, it was argued that the petitioner is an adult woman, fully capable of maintaining herself and that she deliberately chose to remain unmarried. Counsel further submitted that the respondent has already instituted F. C. Suit No.74 of 2023, seeking a declaration that the petitioner is not his biological daughter and therefore the question of maintenance cannot be adjudicated until the issue of paternity is conclusively determined. He maintained that the findings of both courts below are based on a proper appraisal of evidence and do not warrant interference in constitutional jurisdiction.

7. Learned A.A.G adopted a neutral stance, submitting that the matter essentially pertains to private rights between the parties and the State has no substantive interest except to the extent of ensuring that the courts below acted within the bounds of law. He submitted that the scope of constitutional jurisdiction is limited, and that unless the petitioner demonstrates a jurisdictional defect, perversity, or a violation of fundamental rights, this Court ordinarily does not interfere with concurrent findings of fact.

8. Having heard learned counsel for the parties at considerable length, examined the impugned judgments of the Family Court and the Appellate Court with the care which the matter deserves

9. First, the question is whether the impugned concurrent judgments suffer from misreading or non-reading of evidence or misapplication of law to warrant interference in constitutional jurisdiction under Article 199 of the Constitution? This point is the well-settled contour of jurisdiction under Article 199. This Court does not sit as a third Court of appeal over judgments of the Family Court and

the appellate forum. Interference with concurrent findings of fact is permissible only where such findings are shown to be perverse, based on misreading or non-reading of material evidence, or where the courts below have acted without jurisdiction or in derogation of express statutory command.

10. In the present case, the learned Family Judge framed proper issues, afforded full opportunity to both sides to lead evidence and rendered a reasoned judgment. Learned Additional District Judge, Hala/MCAC, re-appraised the evidence, framed points for determination and affirmed the trial Court's conclusions with independent reasons. The record does not reveal any material piece of evidence that has been completely ignored, nor does it disclose that any inadmissible material was made the sole foundation of the impugned findings.

11. The petitioner’s principal grievance is not that the evidence was not considered, but that it was not appreciated in the manner she would have preferred. That, by itself, does not furnish a ground for constitutional interference. The courts below have addressed limitation, entitlement to dower, entitlement to past and future maintenance and the effect of the pending civil suit regarding paternity. Their approach is structured, reasoned and anchored in the applicable law. No jurisdictional defect or perversity is made out.

12. Secondly, the question is whether the claim for dower and past maintenance was rightly held to be barred by limitation**?** The petitioner's mother, late Mst.Jam Zadi asserted that her marriage with respondent No.1 took place in 1978 and that dower was fixed as one buffalo, which allegedly never paid. The suit was instituted in 2022, approximately forty-four years after the marriage and about four decades after the spouses separated. The Family Court and the Appellate Court both held the claim for dower to be time-barred by reference to Article 103 of the Limitation Act, 1908, which prescribes a period of three years for recovery of dower, ordinarily from the date of demand and refusal or from dissolution of marriage.

13. The petitioner has not pointed to any legal principle that would suspend or neutralise the operation of Article 103 in the context of dower. The Family Courts Act, 1964, does not exclude the Limitation Act. On the contrary, the Supreme Court has consistently held that limitation provisions are mandatory and that courts are bound, under section 3 of the Limitation Act, to dismiss suits, appeals or applications instituted beyond the prescribed period, even if limitation is not pleaded as a defence.

14. As regards past maintenance, the plaintiffs claimed arrears for forty years for both the wife and the daughter. The courts below applied Article 120 of the Limitation Act, which governs suits for arrears of maintenance and restricts recovery to six years preceding the suit. This approach is in line with the jurisprudence that, while maintenance is a continuing obligation, arrears beyond the statutory period cannot be recovered unless there is a specific legal basis to do so.

15. The reasoning of the courts below is further fortified by the principles articulated in the case of ***Mst. Ghulam Fatima***[3]. In that case, the Lahore High Court, after an exhaustive survey of Hanafi authorities including Hedaya and Durr-ul-Mukhtar, held that maintenance is due only to the extent of actual necessity; a child who is already being voluntarily maintained by another and is not in actual want cannot demand maintenance from the father and neither the child nor the person voluntarily maintaining the child can claim past maintenance from the father unless such maintenance has been previously fixed by a Court decree or by the father himself. It is further held that even decreed maintenance, if allowed to remain in arrears for a considerable period without demand, may not be recoverable, because the very lapse of time indicates absence of necessity. That decision, though rendered in the context of a suit by a mother for reimbursement of past maintenance, rests on a broader doctrinal foundation: arrears of maintenance are not treated as an open-ended, perpetual debt in Hanafi law; they are closely tied to actual need and timely assertion.

[3] Mst. Ghulam Fatima v. Sheikh Muhammad Bashir (PLD 1958 (W.P.) Lahore 596)

16. In the present case, there was neither any prior decree fixing maintenance nor any agreement by the respondent acknowledging arrears. The plaintiffs remained silent for decades and approached the Family Court in 2022. The courts below, therefore, correctly concluded that the claims for dower and for long-past maintenance were hopelessly barred by limitation and, in any event, not supported by the doctrinal framework governing arrears. I find no misapplication of law on this score; therefore, findings on limitation are unassailable.

17. Thirdly, whether, notwithstanding limitation, the petitioner, as an unmarried adult daughter, is entitled to future maintenance from respondent No.1 under Islamic law and Para 370 of Mulla's Principles of Mahomedan Law**?** This is the core question pressed by learned counsel for the petitioner: that, even if past maintenance is time-barred, the petitioner, being an unmarried daughter, is entitled to future maintenance until marriage and that the courts below failed to properly apply Para 370 of Mulla's Principles of Mahomedan Law.

18. Para 370, as consistently cited by the courts, provides in substance that: a father is bound to maintain his sons until they attain puberty; he is bound to maintain his daughters until they are married; he is not bound to maintain adult sons unless disabled by infirmity or disease and he is not bound to maintain a child who is capable of being maintained out of his or her own property.

19. The obligation to maintain a daughter until marriage is not an abstract, absolute liability detached from factual context. It is conditioned by dependency and incapacity to maintain herself. This is also consonant with the reasoning in the case of ***Mst. Ghulam Fatima*** (supra), where it was held that a father's liability extends only to such children as are "really in need of maintenance" and that a child having means of its own, or being adequately maintained by another, cannot insist on maintenance from the father.

20. In the present case, the petitioner is about 42–45 years of age; she has been living separately from the respondent for approximately forty years; she has been maintaining herself and is capable of meeting her own expenses; she refused the offer of residence and support made by the respondent during the

proceedings, which was verified through a bailiff's report and no cogent reason was advanced as to why she has chosen to remain unmarried and yet seeks to saddle the respondent with lifelong financial responsibility. These are findings of fact, based on the petitioner's own deposition and the surrounding circumstances. Once it is judicially determined that the petitioner is self-supporting and not in actual need, the normative content of Para 370 does not compel the Court to decree maintenance merely because she is unmarried. The obligation to maintain an unmarried daughter is rooted in her dependency and vulnerability, not in the mere formal status of being unmarried at any age.

21. The courts below also took note of the fact that the respondent has instituted a separate civil suit seeking a declaration that the petitioner is not his biological daughter and for cancellation of her CNIC. While the Family Court rightly refrained from deciding the question of paternity conclusively in the family suit, the existence of a bona fide paternity dispute, sub judice before a competent civil Court, is a relevant factor in exercising discretion on the question of maintenance. To decree future maintenance in the face of a pending declaratory suit on paternity would risk prejudging an issue that properly falls within the remit of that civil Court.

22. In this backdrop, the refusal to grant future maintenance cannot be characterised as a misapplication of Para 370. Rather, it reflects a contextual application of that provision, harmonised with the broader principles articulated in the case of ***Mst. Ghulam Fatima*** (supra) and that the maintenance is a function of need, dependency and lawful relationship, not a perpetual annuity detached from factual realities.

23. Learned counsel for the petitioner sought to rely on the general proposition that a father is under an obligation to maintain his children and that such obligation is recognised in Islamic law and in Mulla's Principles. That proposition, in isolation, is uncontroversial. In the case of ***Mst. Ghulam Fatima*** (supra) it was held that a father is bound to maintain his indigent children himself, but not through a third person unless so directed by the Court; that a

child who is already being voluntarily maintained by another and is not in actual want cannot demand maintenance from the father; that a person voluntarily maintaining the child of another cannot claim reimbursement from the father and that neither the child nor the person maintaining it can claim past maintenance unless it has been previously fixed by decree or agreement. The Court drew heavily on classical Hanafi texts, emphasising that maintenance is due only to the extent of necessity and that arrears, if allowed to accumulate without demand, may cease to be recoverable. The distinction between the wife's right to maintenance, recognised regardless of her financial position, and the child's right, conditioned by need, was also underscored.

24. Transposed to the present case, these principles yield the following consequences: the petitioner and her late mother voluntarily lived apart from the respondent for decades without seeking judicial fixation of maintenance; there is no prior decree or agreement fixing maintenance or acknowledging arrears; the petitioner is self-supporting and not in actual want; the claim for long-past arrears is barred by limitation and doctrinally inconsistent with the Hanafi approach to arrears and the claim for future maintenance fails on the touchstone of dependency and need.

25. Synthesising the foregoing discussion, the legal position may be stated thus the claim for dower, arising from a marriage solemnised in 1978, was instituted in 2022 and is clearly barred by Article 103 of the Limitation Act; the claim for past maintenance spanning forty years is barred by Article 120 of the Limitation Act and is inconsistent with the doctrinal framework governing arrears of maintenance in Hanafi law as explicated in case of ***Mst. Ghulam Fatima*** (supra); future maintenance, though not barred by limitation as a recurring cause of action, is not an automatic entitlement; it is conditioned by dependency and need. The concurrent finding that the petitioner is self-supporting, has chosen to remain unmarried and refused the respondent's offer of residence and support is a factual determination that this Court cannot reappraise in constitutional jurisdiction. The existence of a pending civil suit on paternity

further militates against granting maintenance at this stage, lest this Court indirectly prejudge an issue sub judice before a competent forum. No misreading or non-reading of evidence, no misapplication of an explicit statutory provision and no jurisdictional defect have been demonstrated in the impugned judgments. In these circumstances, the case does not cross the high threshold required for interference with concurrent findings of fact under Article 199. The petition, in substance, invites this Court to re-evaluate evidence and substitute its own view for that of the courts below, which is impermissible in constitutional proceedings.

26. For the reasons recorded above, the impugned judgment dated 12.09.2023, passed by the appellate Court, affirming the judgment and decree dated 26.04.2023 of the Family Judge, does not suffer from any legal infirmity, perversity, or jurisdictional defect warranting interference in constitutional jurisdiction. Consequently, the Constitutional Petition is, therefore, **dismissed**, with no order as to costs.

JUDGE

AHSAN K. ABRO