

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No. S-143 of 2025

[Muhammad Saleh Kaka v. Mst. Naila Kaka & another]

Petitioner: Muhammad Saleh Kaka through Miss.
Samina Ajmeeri, Advocate.

Respondents: None present.

Date of Hearing: **11.02.2026.**

Date of Judgment: **11.02.2026.**

JUDGMENT

RIAZAT ALI SAHAR, J: - Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has prayed for the following reliefs:-

- a) That this Honourable Court may be pleased to set-aside the impugned order dated 28.02.2025 passed by learned IInd Family Judge, Saeedabad, Matiari No.08 of 2022, which are null, void and abinitio and the same has been passed in the grossly erred in ignoring and not taking into consideration the factual and legal aspects giving erroneous findings on the same.
- b) May be pleased to grant any other relief which the Honourable Court deems fit and proper.

2. The petitioner has invoked the constitutional jurisdiction of this Honourable Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, calling in question the legality and propriety of the order dated 28.02.2025 passed by the learned Family Judge-II, Saeedabad, in Family Execution No.20/2022 (Mst. Naila Kaka v. Muhammad Salih Kaka), whereby the learned Executing Court directed attachment of half of the petitioner's salary for satisfaction of the decree.

3. The background of the case is that the respondent instituted a Family Suit No.20/2021 seeking dissolution of marriage by way of *Khula*, recovery of dowry articles including gold ornaments and past maintenance. Vide judgment dated 28.04.2022, the learned Judge, Family Court dissolved the marriage by way of *Khula*, dismissed the claim regarding dowry articles and gold ornaments and decreed past maintenance from 11.03.2020 till completion of Iddat period i.e., 01.12.2021, at the rate of Rs.5,000/- per month.

4. Both parties preferred appeals before the learned District Judge, Matiari, which were transferred to the learned Additional District Judge/Model Civil Appellate Court, Hala. Vide judgment dated 13.10.2022, the learned Appellate Court modified the decree and granted the respondent recovery of gold ornaments and ten un-sewed suits in lump sum value while maintaining the decree of maintenance. The appellate judgment attained finality after dismissal of Constitutional Petition No.798 of 2022 by the Honourable High Court of Sindh and subsequent dismissal of Civil Petition for Leave to Appeal No.687-K/2024 by the Honourable Supreme Court of Pakistan.

5. In execution proceedings, the respondent, in prayer clause (b) of Execution Application No.08/2022, sought direction against the petitioner/judgment-debtor to pay past maintenance of Rs.95,000/-, being for 19 months at the rate of Rs.5,000/- per month from May 2020 till completion of Iddat period i.e., 01.12.2021. In addition thereto, the executable decretal dowry articles as described in the execution order consist of one gold set, two gold bangles, two gold rings totaling approximately 5½ tolas (as per record described as 05 ½ tola) and ten un-sewed suits, or in the alternative to pay cash equivalent to the current market value of the said gold ornaments and articles.

6. The record reflects that the petitioner deposited an amount of Rs.145,000/- (however, as per receipts available on record at pages-21 to 43 of the Court file), the total amount deposited appears to be Rs.178,000/-. Notwithstanding such deposits, the learned Executing Court, vide impugned order dated 28.02.2025, directed the District Accounts Officer, Matiari, to attach half salary of the petitioner with effect from 01.03.2025 till further orders, without calculating the precise outstanding decretal amount inclusive of maintenance and value of gold ornaments/un-sewed suits and without adjusting the payments already made.

7. Learned counsel for the petitioner contends that the impugned order is without lawful authority and contrary to Section 60 of the Code of Civil Procedure, 1908, as the learned Executing Court directed blanket attachment of half of the petitioner's salary without first determining the exact decretal amount comprising (i) Rs.95,000/- towards past maintenance as quantified by the decree-holder herself and (ii) the assessed cash equivalent of one gold set, two bangles, two gold rings weighing approximately 5½ tolas and ten un-sewed suits. She further contends that the petitioner has already deposited the amount, which amount is liable to be adjusted toward satisfaction of the decretal liability; that execution proceedings cannot extend beyond the decree nor operate punitively. She contends that Section 60 CPC limits attachment of salary of a government servant and does not permit indefinite or excessive deduction "till further orders". She also contends that the Executing Court failed to calculate the outstanding balance after adjustment of deposited amounts and instead mechanically ordered attachment of half salary without specifying duration or ceiling and that such action

is in violation of statutory safeguards, amounts to jurisdictional excess and causes grave financial prejudice to the petitioner.

8. Heard and perused the record.

9. Section 60 CPC enumerates property liable to attachment in execution of decree and provides statutory exemptions. In the case of salary of a servant of the State, only a prescribed portion thereof is attachable and attachment cannot be unlimited in duration. The proviso further stipulates that where the attachable portion of salary has remained under attachment for a total period of twenty-four months, it shall thereafter become exempt for a further period of twelve months and where attachment is in execution of the same decree, it shall become finally exempt. The purpose of Section 60 CPC is to ensure that while decrees are enforced, the judgment-debtor is not deprived of his essential means of livelihood. An Executing Court is duty-bound to calculate the exact decretal liability, adjust amounts already received and confine attachment strictly to the unsatisfied portion. Attachment without such calculation or in excess of statutory limits is legally unsustainable.

10. In the present case, the decretal liability consists of (i) Rs.95,000/- towards past maintenance as per the modified decree and execution prayer and (ii) the value of one gold set, two bangles, two gold rings weighing approximately 5½ tolas and ten un-sewed suits, **to be satisfied either in kind or through payment of their current market value as was at the time of passing Judgment dated 13.10.2022 in Family Appeal No.06/2022.** The record, *prima facie*, indicates that the petitioner has already deposited Rs.178,000/-, which amount is required to be adjusted toward the decretal liability before resorting to further coercive measures. The learned Executing Court was under legal obligation to first determine the total executable amount,

including assessed value of gold ornaments and articles, give recognition for all payments and deposits already made and thereafter determine the precise outstanding balance, if any. Salary deduction, if required, ought to have been ordered strictly in accordance with Section 60 CPC and limited both in quantum and in duration.

11. For what has been discussed above, the learned Executing Court is directed to calculate forthwith the total decretal liability inclusive of maintenance and assessed value of gold ornaments and un-sewed suits, adjust the amount of Rs.178,000/- (or as per record of the Executing Court) already deposited, determine the exact remaining balance and upon full satisfaction of the decree, immediately stop further deductions from the petitioner's salary. In case any excess amount has been deducted beyond the decretal liability, the same shall be refunded to the petitioner. This exercise shall be completed positively within fifteen (15) days from receipt of this order.

12. The instant petition stands **disposed of** in the above terms along with pending application(s), if any.

JUDGE

Abdullah Channa/PS