IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. S-71 of 2025
[*Iftikhar* Ali v. Learned District Judge Tando Allahyar & others]

Petitioner:	Through Mr. Muhammad Zakaria Baloch, Advocate.
Respondent No.3:	Through Mr. Nabeel Ahmed, who is holding brief on behalf of respondent No.3's counsel.
Date of Hearing:	09.02.2026
Date of Judgment:	09.02..2026.

JUDGMENT

***RIAZAT ALI SAHAR, J*: -** Through the instant Constitutional Petition, the petitioner has impugned the Judgment dated 31.01.2025 and Decree dated 06.02.2025 passed by the learned Model Civil Appellate Court (MCAC) / District Judge, Tando Allahyar, whereby Family Appeal No.01 of 2025 filed by the petitioner was dismissed and the Judgment and Decree dated 30.11.2024 rendered by the learned Civil Judge / Family Judge-I Chamber, decreeing the suit for maintenance and recovery of dowry articles, were maintained, invokes the extraordinary constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking following reliefs:

> *"(A). That, this Hon'ble Court may graciously be pleased to set-aside the impugned Judgment dated 31.01.2025 & Decree dated 06.02.2025 passed by the Respondent No.1 and Judgment & Decree dated 30.11.2024 passed by the Respondent No.2, being illegal, unlawful, against the law, contrary to the principles of natural justices, law and facts.*
>
> *(B). That any other relief which this Hon'ble Court may to deem fit, proper and appropriate be awarded to the petitioner."*

2. Brief facts leading to filing of instant petition are that respondent No.3 Mst. Raheela instituted Family Suit No.31 of 2024 stating therein that she solemnized marriage with petitioner on 03.11.2023 as per Muhammadan law against the unpaid dower amount of Rs.50,000/-. It is stated that respondent No.3 at the time of her Rukhsati brought dowry articles which are in possession of the petitioner. During the subsisting of marriage, the respondent No.3 got pregnant with the petitioner's baby; however, the petitioner did not bear the medical expenses in respect of her check-up / treatment / Medical and food etc. amounting to Rs.50,000/- which were born by her parents, as such, she started to work in Hyderabad and then filed the Suit with following prayers:

> *a) That this Honorable Court may be pleased to direct the defendant to pay maintenance to plaintiff @ Rs.15,000/- per month with 20@ annual increment.*
>
> *b) That this Honourable Court may be pleased to direct the defendant to pay previous maintenance Rs.50,000/- which have been paid by plaintiff's parents.*
>
> *c) That this Honourable Court may be pleased to direct the defendant to return the dowry articles (mentioned in list) which were given by plaintiff's parents at the time of her marriage.*
>
> *d) The cost of the suit be borne by the defendant.*
>
> *e) Any relief, which this Honourable court deems fit and proper, be also awarded to the plaintiff."*

3. After admitting the suit, the petitioner filed a written statement denying respondent No.3's assertion that dower amount of Rs.50,000/- was paid in shape of gold ring which is in her possession. He also submitted that he had divorced the respondent No.3 on 27.05.2024 but she has concealed such fact. He denied the claim of giving dowry articles by respondent No.3's parents and submitted that his family born expenses of wedding events amounting to Rs.660,000/-. He pleaded that bills were bogus and false as the dates of bills were cut and edited by the respondent No.3. He submitted that he was a loving and caring husband tried his best to keep the respondent No.3 happy but she wanted luxury life which the petitioner could not provide due to his poor financial condition. He gifted the valuable articles viz. OPPO A16 cell phone, pair of gold

earring, gold nose pin and gold Nath to the respondent No.3 same are still in her possession. Lastly he submitted that respondents No.3 be directed to pay the petitioner Rs.330,000/- which is half of the wedding function and gifts given by him.

4. The learned Trial Court from the pleadings of the parties made as many as three issues:

1. *Whether the plaintiff is entitled to recover her maintenance at the rate of Rs.15,000/- per month with enhancement of 20% per annum and her past maintenance of Rs.50,000/- from the defendant till her legal entitlement?*
2. *Whether the defendant is legally bound to return the dowry articles of the plaintiff as per to the plaintiff.*
3. *What should the decree be?*

5. Learned counsel for the petitioner contended that the impugned judgments and decrees passed by the learned trial Court as well as the learned appellate Court are patently illegal, arbitrary and unsustainable in law, having been rendered in gross disregard of the pleadings, evidence on record and settled principles governing maintenance and recovery of dowry articles. The petitioner's learned counsel has primarily argued that the amount of maintenance set by the learned Trial Court and upheld by the learned Appellate Court was beyond the petitioner's means but neither of the lower courts took into account the petitioner's financial situation; that the fact petitioner's disobedient wife left the home was not taken into consideration even she is / was not entitled to any maintenance; that prejudice caused to the petitioner as his evidence was recorded by the Trial Court in absence of his counsel which is against the mandate of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973; that only respondent No.3's version was taken into account however petitioner's case was left unattended. He contended that both the Courts below failed to properly appreciate the material contradictions in the respondent's own testimony, particularly the findings of learned Trial Court were not based on issues which fact too ignored by the learned Appellate Court. Learned counsel further contended that the petitioner's financial incapacity, unemployment and financial condition duly brought on record through evidence

were completely ignored, resulting in a decree which is neither executable nor equitable. He contended that the findings recorded are based on misreading and non-reading of evidence, suffer from jurisdictional error, and have occasioned a grave miscarriage of justice, thereby warranting interference by this Honourable Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. Notices were issued, pursuant to which the respondent No.3 engaged a counsel, filed objections in the shape of a counter-affidavit, controverted the contents of the Constitutional Petition. According to contents of objections that when respondent No.3 demanded the dowry articles, the petitioner used abusive language and refused to hand over dowry articles; that petitioner failed to provide maintenance during the period of pregnancy of respondent No.3; that it was parents of respondent No.3 who bore the medical expenses of Rs.50,000/- at hospital and lastly the petitioner himself admitted that he used to maltreat the respondent No.3 then his brother brought back to her at Hyderabad thereafter petitioner sent her divorced deed.

7. Mr. Nabeel Ahmed, who held brief on behalf of respondent No.3's counsel supported the impugned judgments and decrees of the Courts below.

8. Heard the arguments advanced by the learned counsel for the parties and minutely perused the record available before the Court.

9. At this juncture, it may be observed that the constitutional jurisdiction is neither intended nor designed to function as a parallel or substitute appellate forum. It is further well-settled that the extraordinary jurisdiction under Article 199 cannot be invoked to overcome an express or implied statutory bar, nor can it be exercised to compensate for the absence of a further right of appeal, as held in *Syed Saghir Ahmed v. Province of Sindh* (1996 SCMR 1165). More recently, in *Arif Fareed v. Bibi Sara* (2023 SCMR 413), the Honourable Supreme Court categorically held that the Family Courts Act, 1964 deliberately places a legislative finality after the appellate stage and that constitutional jurisdiction cannot be

employed as a substitute for a second appeal. This position has been reiterated in *M. Hamad Hassan v. Mst. Isma Bukhari* (2023 SCMR 1434), wherein routine recourse to Article 199 in family disputes was expressly deprecated as being contrary to the object of ensuring expeditious and effective family justice.

10. It is reiterated that this Court, while exercising jurisdiction under Article 199 of the Constitution, does not sit as a Court of further appeal to re-appraise evidence or to substitute its own conclusions for those concurrently reached by the Courts below. The constitutional jurisdiction is supervisory and corrective in nature, meant to ensure that subordinate Courts act within the bounds of law, jurisdiction and settled legal principles. Ordinarily, concurrent findings of fact recorded by the Family Court and affirmed by the Appellate Court are immune from interference. However, it is equally settled that this self-imposed restraint is not absolute. Where it is demonstrated that the findings recorded by the Courts below are founded upon misreading or non-reading of material evidence, are based on assumptions alien to the record, or result in manifest injustice, this Court is not powerless. Such cases fall within the well-recognized exception to the rule of non-interference, thereby attracting the limited constitutional jurisdiction of this Court. The present petition, therefore, requires examination strictly within this narrow compass.

11. A careful examination of the impugned judgments reveals that both the learned Family Court as well as the learned Appellate Court have concurrently recorded categorical findings. The learned Appellate Court has specifically dealt with the plea of being "condemned unheard" and found the same to be contrary to the record. The relevant excerpt reads as under:

> *"It is pertinent to note that respondent had not filed any appeal against the finding of trial Court. However, appellant has assailed the same judgment through this appeal. During the arguments before this forum, learned counsel for appellant had taken plea that he was condemned unheard at the time of announcement of impugned judgment, therefore, I have carefully gone through the Record and Proceedings of trial court and found that two separate Vakalatnama of same firm and same office address have been filed on 30-07-2024 & 21-08-2024 respectively and in both vakalatnamas, name of Mr.*

> *Sahir Ayaz Palejo Advocate is mentioned, who has filed written statement of appellant. According to National Judicial Policy, a family suit is to be decided within three months but in the case in hand, after closing of respondent's side on 05-11-2024, on two dates of hearing viz 12-11-2024 & 18-11-2024, appellant and his learned counsel were absent and on 26-11-2024, learned counsel for appellant was again absent and the adjournment was sought by the appellant and last and final chance was given by the trial court as reflects from diary and the case was adjourned to 30-11-2024, but on said date, the position was remained same as learned counsel for appellant was called absent but his junior was present. However, evidence of appellant was recorded on 30-11-2024 and on the same date, he himself filed statement at Exh.18, whereby he has stated that "he do not want to produce other witness, therefore, he closed his side of evidence". Trial court after hearing passed the judgment and the diary dated 30-11-2024 does not show that only learned counsel for the respondent was heard. The presence of advocate Mr. Sahir Ayaz Pallijo, whose Vakalatnama was intact is mentioned in the judgment, which further reflects that leanred counsel for both sides were heard. The above discussion does not favour the appellant's version, therefore, his plea with regard to condemned unheard is contrary to the record, thus not considerable."*

12. Coming to the merits of the case, it is established from the averments made in the plaint as well as the evidence adduced at trial that respondent No.3 herself left the matrimonial home. Consequently, she was rightly declined past maintenance amounting to Rs.50,000/- by the Courts below. It has further come on record that respondent No.3 left the house of the petitioner during her pregnancy. According to the injunctions of Islam, a divorce does not take effect during the period of pregnancy. The factum of pregnancy was never disputed by the petitioner during the course of proceedings. Therefore, respondent No.3 was rightly granted maintenance at the rate of Rs.5,000/- per month from 27.05.2024 till the birth of the child and during her Iddat period, as during such period the husband is legally as well as religiously bound to maintain the divorced wife in accordance with law.

13. Admittedly, the marriage is admitted between the petitioner and respondent No.3 who in her cross stated that *"My father is government teacher and he obtains salary more than one lac. It is correct to suggest that my father can afford all dowry articles which were given by him at the time of marriage."* The petitioner has not disputed the financial status of the respondent's side; contrary to it he admitted that *"It is correct*

to suggest that plaintiff side is financially strong other than us. It is correct to suggest that parents of the girls used to try to give all articles to their daughters at the time of their marriages." If the above pieces of evidence of the petitioner and respondent No.3 are considered in juxtaposition, it can safely be concluded that the petitioner never disputed the factum of giving dowry articles to respondent No.3. During the course of trial, respondent No.3 produced a list of dowry articles, which was also confirmed by the bailiff of the Executing Court, who reported that the articles were lying in the petitioner's house. However, the petitioner failed to produce any substantive evidence to controvert the documentary as well as oral evidence brought on record and merely denied having received the dowry articles, which is not sufficient in the eyes of law. The petitioner claims that he is not financially sound and earns Rs.12,000/- per month. Suffice it to say that the learned Trial Court awarded maintenance at the rate of Rs.5,000/- per month, which is itself a meager amount considering the prevailing price hike

14. The Court under constitutional jurisdiction has to see whether any illegality has been committed or the findings of the fact are based on material extraneous to the pleadings of the parties to justify interference on its part. The learned counsel for the petitioner too failed to point out any illegality or irregularity and/or jurisdictional defect in the impugned judgment warranting interference by this Court while exercising extra ordinary constitutional jurisdiction. The impugned judgments and decrees passed by the Courts below are well reasoned and according to law, therefore, there is no reason to interfere more particularly when the same are outcome a proper application of judicial mind to the facts and circumstances of the case. Thus, this Court is hesitant to interfere. Resultantly, the instant petition is bereft of merit stands **dismissed** and the judgments and decrees passed by the learned Trial as well as Appellate Courts are upheld. There shall be **no order as to costs**.

JUDGE

Muhammad Danish