

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-98 of 2026

[Sajid Rasheed v. XVIth Civil & Family Judge Central at Karachi and others]

DATE	ORDER WITH SIGNATURE OF JUDGE.
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Fresh Case

- 1. For orders on CMA No.609/2026.
- 2. For orders on office objection No.1 to 3 a/w reply of counter as at "A".
- 3. For orders on CMA No.610/2026.
- 4. For hearing of main case.

Mr. Ghulam Umar, Advocate for the Petitioner.

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Date of hearing : 30.01.2026
Date of Short Order : 30.01.2026

ORDER

Abdul Hamid Bhurgri, J.- Through the instant constitutional petition, the petitioner has challenged the ex-parte judgment and decree dated 23.09.2019 passed by the learned XVIth Family Judge, Karachi (Central), in Family Suit No.282 of 2019, whereby the suit was decreed against the petitioner/defendant. Being aggrieved, the petitioner has invoked the constitutional jurisdiction of this Court with the following prayers:-

- a. *Declare the ex-parte Judgment and Decree dated 23.09.2019 passed by the learned XVIth Civil/Family Judge, Karachi-Central, as illegal, unjust, and without lawful authority.*
- b. *Set aside and quash the ex-parte Judgment and Decree to the extent it awards maintenance to plaintiff No.1 and minor/plaintiff No.2 without proper inquiry into the financial condition of the petitioner.*
- c. *Direct the trial court to reopen the matter and provide the petitioner a full opportunity to present evidence regarding his financial capacity, assets, liabilities, and any other relevant circumstances.*
- d. *Restrain the plaintiffs from enforcing the Execution bearing No.27/2022 until the matter is properly adjudicated in accordance with law.*
- e. *Grant any other relief that this Honorable Court may deem just, proper, and equitable in the circumstances of the case.*

2. The case of the petitioner is that respondent No.2 instituted Family Suit No.282 of 2019 seeking maintenance for herself and her minor son/respondent No.3, asserting that she was married to the petitioner on 25.11.2011 and that one child, namely Muhammad

Ibrahim, was born out of the wedlock. It was further alleged in the suit that the minor was suffering from a congenital heart disease and that the petitioner failed to provide any maintenance or medical expenses. According to the petitioner, upon learning of the medical condition of the minor, he divorced respondent No.2. He further claims that despite repeated requests for medical assistance, no financial support was provided by him, which led to the filing of the suit.

3. The record reflects that notices/summons of the family suit were issued to the petitioner through all prescribed modes, including publication. Despite due service, the petitioner failed to appear before the Family Court. Consequently, vide order dated 02.08.2019, service was held sufficient and the matter proceeded ex-parte. Ultimately, vide judgment and decree dated 23.09.2019, the suit was decreed against the petitioner. Admittedly, no appeal was preferred by the petitioner against the said judgment and decree, despite availability of a statutory remedy.

4. Subsequently, respondent No.2 initiated Execution Application No.27 of 2022. During execution proceedings, the petitioner appeared before the Executing Court, whereupon both parties voluntarily filed a compromise application containing mutually agreed terms, which is available at Annexure C/1 page-59 of the petition. The learned Executing Court, vide order dated 11.12.2023, accepted the compromise and adjourned the execution proceedings sine-die in terms thereof.

5. The compromise application, duly signed by both parties, inter alia, provided that:

1. *That both parties agreed to compromise the matter and have agreed to abide by this compromise deed.*
2. *That the permanent custody of the minor Muhammad Ibrahim shall remain permanently with the decree holder No.1 and judgment debtor has agreed that he will never disturb the permanent custody of the minor Muhammad Ibrahim.*
3. *That both parties are agreed that within two years judgment debtor will pay the dower amount and decretal amount or purchase the house in the name of decree holders.*
4. *That the judgment debtor promises to the decree holder No.1 and his minor son/decreed holder No.2 that judgment debtor will fulfill all his responsibilities*

regarding maintenance of the decree holders and minor's medical and others expenses.

5. *That both parties are agreed that judgment debtor will continue the monthly maintenance according to the judgment dated 23.09.2019 from this month.*
6. *That both the parties are agreed to avoid the litigation in future.*
7. *That the both of the parties are agreed to sine-die the Family Execution 27/2022 as compromise.*
8. *That both parties have signed the compromise application.*

6. Heard learned counsel for the petitioner and perused the available material.

7. At the outset, the present petition is not maintainable. Under Section 14(3) of the West Pakistan Family Courts Act, 1964, a statutory remedy of appeal was available against the impugned judgment and decree, which the petitioner consciously failed to avail. It is well-settled that where a specific remedy is provided by statute, constitutional jurisdiction cannot be invoked to bypass such remedy, particularly after lapse of limitation and finality of proceedings.

8. Furthermore, the conduct of the petitioner disentitles him to any discretionary relief. Having voluntarily entered into a lawful compromise during execution proceedings and having derived benefit therefrom, the petitioner is estopped by his own conduct from challenging the original judgment and decree. The doctrine of approbation and reprobation squarely applies, and the petitioner cannot be permitted to resile from the compromise to reopen settled issues.

9. It is also settled law that an ex-parte decree, if not challenged through the prescribed legal remedies within time, attains finality and cannot be assailed collaterally in constitutional jurisdiction, particularly after execution proceedings have been compromised and adjourned sine-die. The present petition is thus nothing but an abuse of the process of Court, filed to avoid compliance with the compromise and to subject respondent No.2 and the minor child to unnecessary mental agony.

10. Although the petition is liable to be dismissed with exemplary costs, this Court, in the interest of judicial restraint, refrains

from imposing heavy costs at this stage. However, it is clarified that in the event of repetition of such conduct, the petitioner shall be exposed to penal costs without further notice.

11. In view of the foregoing reasons, the instant constitutional petition, being devoid of merit and not maintainable, was dismissed in *limine* along with all pending applications vide short order dated 30.01.2026. These are the reasons thereof.

JUDGE

Ayaz Gul