

**THE HIGH COURT OF SINDH, CIRCUIT COURT AT
LARKANA**

C.P. No.S-97 of 2026
(Ashfaque Ali v. Mst. Shaista Jabeen)

Petitioner: Ashfaque Ali through Mr. Zeb Hussain
Pathan, Advocate.

Respondent: Mst. Shaista Jabeen through Mr. Habibullah
G. Ghouri, Advocate.

Mr. Saeed Akbar Siyal, Assistant A.G. Sindh.

Date of hearing: 21.09.2026.

Date of decision: 09.10.2026.

ORDER

RIAZAT ALI SAHAR, J: - Through this constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called in question the order dated 18.08.2025 passed by the learned Judge, Civil/Family Court-I, Larkana, in Family Suit No.290/2025 (new Family Suit No.59/2025) and the order dated 16.01.2026 passed by the learned IVth Additional District Judge, Larkana, whereby the petitioner's family appeal was dismissed in *limine* on the ground of limitation. The controversy principally concerns the legal effect of a statement allegedly made during pre-trial proceedings, the recording of a compromise concerning maintenance, dower and dowry articles and the consequential enforcement proceedings.

2. Brief facts of the petition. Respondent No.1 instituted a family suit seeking maintenance for herself and her three children, together with recovery of dowry articles. On 18.08.2025, during pre-trial proceedings, the learned Family Court recorded terms concerning maintenance of two minor children at Rs.10,000/- per month each, five tolas of gold towards dower, and return of dowry articles. The petitioner subsequently disputed the scope and voluntary nature of the alleged settlement and challenged the order through Family Appeal No.06/2026, which was dismissed on 16.01.2026 as time-barred. Execution proceedings were thereafter pursued, including proceedings

affecting the petitioner's CNIC. This Court, by order dated 11.09.2026, called for a report regarding the legal basis for executing the order in the absence of a formally drawn judgment and decree.

3. Learned counsel for the petitioner contended that the impugned order dated 18.08.2025 was passed at the pre-trial stage without a clear, voluntary and unequivocal compromise covering all the reliefs subsequently recorded therein. He contended that the petitioner's statement did not expressly admit liability for all the dowry articles and that the terms concerning dower were insufficiently definite to constitute an enforceable settlement. Learned counsel further contended that the appellate Court dismissed the appeal solely on limitation without examining these material legal infirmities, while execution and consequential coercive measures were undertaken without the requisite judgment and decree.

4. Learned counsel for respondent supported the orders passed by the Courts below and stated that the petitioner consented to maintenance, acknowledged the unpaid dower and expressed willingness to return the dowry articles. He further contended that the trial Court adopted the procedure necessary to secure compliance with its order and that the petitioner cannot avoid obligations recorded during the settlement proceedings merely by subsequently disputing them.

5. Learned A.A.G. has assisted the Court in examining the statutory framework governing compromise, decrees and their execution under the Family Courts Act, 1964 and the West Pakistan Family Courts Rules, 1965.

6. Arguments heard and record perused. The material available on record has been examined in the light of the applicable statutory provisions.

7. The primary question is not whether a Family Court may encourage reconciliation or record a settlement at the pre-trial stage. Such proceedings are expressly contemplated by section 10 (3) of the Family Courts Act, 1964. The question is whether the material recorded on 18.08.2025 establishes a concluded compromise in sufficiently clear terms to justify treating every obligation subsequently incorporated in the order as admitted, final and enforceable.

8. Rule 11 of the West Pakistan Family Courts Rules, 1965 provides that where the parties agree to a compromise or conciliation effected under section 10 (3) or section 12 (1) of the Act, the Court shall pass a decree or give a decision in the suit in terms of the compromise or conciliation so agreed upon. The rule presupposes an agreement between the parties and requires the resulting decree or decision to reflect its actual terms. It does not dispense with the necessity of ascertaining the existence, scope and certainty of the agreement relied upon. In the present case, the order dated 18.08.2025 records maintenance of two minors at Rs.10,000/- per month each, a proposed arrangement concerning five tolas of gold and return of dowry articles according to the list supplied by the plaintiff. However, the statement and the order, read together, raise material questions as to the precise terms voluntarily accepted by the petitioner. In particular, the statement has been noted in the record as not containing a clear admission or undertaking regarding the dowry articles, although the operative order directs their return. The distinction between a term expressly agreed upon and a direction independently imposed by the Court cannot be overlooked.

9. Likewise, the arrangement concerning five tolas of gold requires examination in the context of the precise undertaking recorded, including the proposed cheque, the period mentioned and the determination of the amount payable thereafter. These matters cannot be treated as conclusively settled merely because they appear in the operative portion of the order. The petitioner's allegation of pressure and lack of informed consent is disputed by the respondent. Its truth or otherwise must therefore be determined on the relevant record and in accordance with law, rather than assumed in favour of either party.

10. The statutory scheme governing decrees is also material. Section 13 of the Family Courts Act, 1964 provides for the passing and enforcement of decrees, while Rules 16 and 17 of the West Pakistan Family Courts Rules, 1965 deal with the drawing up of decrees and maintenance of the relevant register. Section 2 (2) of the Code of Civil Procedure, 1908 defines a decree as the formal expression of an adjudication conclusively determining the rights of the parties concerning matters in controversy. These provisions demonstrate the importance of identifying the adjudication or compromise sought to be enforced and ensuring that the resulting instrument accurately reflects the rights and obligations thereby determined.

11. The principle discussed in *Muhammad Suqrat v. The Learned Additional District Judge, etc.*, W.P. No.2827 of 2016, decided by the Lahore High Court, Rawalpindi Bench, concerns the legal character and enforceability of a Family Court adjudication in the context of section 13 of the Act and the prescribed form of a decree. The decision supports examination of the substance and legal effect of the adjudication rather than treating the mere form of an order as conclusive. It does not, however, dispense with the requirement that the rights sought to be enforced must be established by the relevant adjudication or a valid compromise.

12. The trial Court, in its report, has also relied upon *2014 CLC 365* for the proposition that a Family Court may adopt procedures not specifically prohibited by the Act to secure substantial justice, and upon *2014 SCMR 1365* concerning the procedural autonomy of a quasi-judicial forum, subject to the principles of fair hearing and trial. These principles must be read together with Rule 11 and section 13 of the Act. Procedural flexibility enables a Court to address matters on which the special statute is silent; it does not authorize the Court to dispense with a fair determination of disputed consent or to enforce obligations whose foundation and scope remain materially uncertain.

13. The question of execution must accordingly be considered in the context of the nature of the instrument relied upon. Where a valid compromise has been reached and embodied in the requisite decree or decision, enforcement may proceed in accordance with the applicable law. Conversely, where the existence or extent of the compromise is genuinely disputed and the order contains obligations not clearly shown to have been accepted, the enforceability of each such obligation requires judicial examination. The report furnished by the trial Court, while explaining the procedure adopted, does not by itself resolve the underlying dispute concerning the scope and legal effect of the statement dated 18.08.2025. The appellate order dated 16.01.2026 dismissed the family appeal on limitation, holding that it had been filed beyond the prescribed period and that sufficient cause for condonation of delay had not been established. Limitation is a substantive procedural requirement and cannot be disregarded merely on a general plea that cases should be decided on merits. Nevertheless, the circumstances of the present case require consideration of the distinct question whether the impugned order validly recorded and embodied a concluded compromise and whether the obligations being enforced correspond to the terms actually agreed

upon. The constitutional challenge raises issues concerning the legal foundation and enforceability of the order which warrant examination within the lawful scope of this Court's jurisdiction.

14. The Court must equally remain mindful that the proceedings concern the maintenance of minor children, whose interests cannot be left unattended while the dispute between the parties is reconsidered. Setting aside the impugned orders for fresh adjudication shall not be construed as extinguishing or finally determining any lawful claim for maintenance, dower or return of dowry articles. The learned Family Court shall address the claims expeditiously, preserve such lawful interim arrangements as may be necessary and determine the parties' respective rights on the basis of the record and applicable law.

15. For what has been discussed above, I am of the view that the impugned orders cannot be sustained in their present form insofar as they leave unresolved the material questions concerning the alleged compromise and the legal basis for enforcing the obligations recorded therein. The interests of justice require that the controversy be considered afresh by the learned Family Court, with due regard to the statutory framework and without prejudging the merits of the respective claims. Consequently, this constitutional petition is **allowed**. The order dated 16.01.2026 passed by the learned IVth Additional District Judge, Larkana and the order dated 18.08.2025 passed by the learned Judge, Family Court-I, Larkana, are hereby set aside. The matter is remanded to the learned Family Court, Larkana, for decision afresh in accordance with law, after affording both parties a proper opportunity of hearing and, where necessary, producing evidence. The learned Family Court shall determine whether a voluntary, conscious and unequivocal compromise was concluded; identify the precise terms, if any, accepted by the parties; and pass an appropriate judgment and decree or decision in accordance with Rule 11 and Rules 16 and 17 of the West Pakistan Family Courts Rules, 1965, read with section 13 of the Family Courts Act, 1964. If no valid compromise is established, the suit shall be decided on its merits after recording such evidence as may be required by law. The learned Family Court shall also examine the legal basis and permissible extent of any consequential execution proceedings in the light of the decision rendered afresh. The claims concerning maintenance, dower and dowry articles shall remain open for determination and nothing in this judgment shall be construed as a final finding on the merits of those

claims. The proceedings shall be concluded expeditiously, preferably without unnecessary adjournments. There shall be no order as to costs.

JUDGE

Approved for reporting