

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

C.P. No.S-145 of 2025

Petitioner: Mst. Aqsa Abdul Ghaffar, through Mr. Farhan Ahmed Bozdar Advocate.

Respondent: Irfan Muhammad Saleem, through Mr. Hassan Qaiser Advocate.

Mr. Muhammad Shareef Solangi, Assistant A.G Sindh.

Date of Hearing: 11.2.2026 and 19.02.2026

Date of Decision: 19.02.2026

**J U D G M E N T**

**MUHAMMAD HASAN (AKBER), J.-** The Petitioner (**wife/ mother**) and the Respondent No.1 (**husband/ father**) were married on 21.04.2015 under the Sunni Muslim law, while the prompt dower amount was agreed at Rs.5,500/-. The couple was blessed with Muskan, presently aged around 9 years [**daughter**], and Abdul Hadi, presently aged around 5 years [**son**] (henceforth both 'daughter' and 'son' are collectively referred to as "**Children**").

02. The petitioner claims that she was ousted by the husband in around 2021, resulting in the filing of Family Suit No.114 of 2023, which was disposed of, vide compromise dated 06.09.2023. Unfortunately, social complexities amplified between the parties, which further complicated the already fragile matrimony. Subsequently, the Husband pronounced divorce on 28.12.2023, followed by initiation of the present Family Suit No.17 of 2024 ('*Aqsa Vs. Irfan*') by the wife, for the monthly maintenance of both Children @ 15,000/- each, recovery of the dower amount, maintenance of the wife till *iddah* period and dowry articles etc. The husband, in his written statement, admitted the children, partly admitted the dowry articles, but denied the dower amount and claimed compliance with the compromise in the earlier suit.

03. Five Issues were framed whereon evidence from both sides was recorded, whereafter the learned Family Judge Mirpurkhas passed Judgment and Decree dated 03.09.2024 in Family Suit No.17 of 2024 (**impugned original decree**), decreeing the Wife's claim for dower amount @ Rs.5,500/-; for the return of dowry articles OR payment of Rs.350,000/-; for wife's monthly maintenance @ Rs.2000/- for *iddah* period; for monthly maintenance of each child @ Rs.2,500/- from the date of filing of suit; and also for future maintenance at the same rate with 10% increment.

04. Both parties assailed the original decree in Family Appeals No.70 of 2024 (*Irfan Vs. Aqsa*) and 71 of 2024 (*Aqsa Vs. Irfan*) before the learned 1<sup>st</sup> Additional District Judge Mirpurkhas which passed consolidated Judgment and Decree dated 05.04.2025 and 10.04.2025 respectively (**impugned appellate decree**), thereby maintaining the original decree to the extent of dower amount; but modifying the decree of dowry articles by ordering the husband to return the Honda CG-125 OR equivalent Rs.100,000/-; and increased the monthly maintenance of daughter @ Rs.4,000/- and that of the son @ Rs.3,000/-. As for the husband, the appellate decree has attained finality, whereas only the wife has assailed the appellate decree through the instant petition.

05. Heard learned counsel for the parties and meticulously perused the record with their able assistance. As held in **Arif Fareed's case**<sup>1</sup> by Justice Aminuddin Khan of the Honourable Supreme Court of Pakistan, writ jurisdiction may not be exercised routinely, since the legislature, with the intent to curtail family litigation and expeditious disposal of family disputes, has consciously withheld a second appeal under the Family Courts Act, 1964 (**Act 1964**). The instant petition was therefore heard and decided on priority.

06. Arguments were heard, and the record perused. For dowry articles, the trial Court decreed Rs.350,000/- whereas the appellate Court modified the decree by ordering the husband to return the Honda CG-125 OR equivalent Rs.100,000/-. After hearing, this issue has been concluded between the parties, as recorded in the latter part of this Order. For (i) the maintenance of the wife until *iddah* period, the husband has agreed to pay the same. (ii) Regarding the petitioner's claim of gold, as

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1. 'Arif Fareed v. Bibi Sara and others' 2023 SCMR 413

disallowed by both the Courts below, evidence was perused with the able assistance of both learned counsel, which reveals absence of evidence and deficiencies in establishing the purchase and the delivery of gold. The decrees on this point are therefore upheld.

(iii) As regards the monthly maintenance of the children as fixed by the appellate Court, the Petitioner is dissatisfied, but during the course of hearing, this issue was also concluded between the parties, as recorded in the latter part of this Order. (iv) On the other hand, as a bona fide gesture to comply with the decree and the Order dated 11.02.2026, the husband has filed a receipt with a Statement today to show that out of total sum of Rs.2,95,500/- as decreed by the learned Appellate Court, the husband/ father has deposited a sum of Rs.1,33,500/- leaving an outstanding sum of Rs.1,62,000/-, which the Respondent undertakes to deposit within a period of 30 days. In addition to the above, the Respondent has also committed to regularly depositing the future monthly maintenance of both minors from March 2026 onwards. The Petitioner has expressed satisfaction with such an arrangement. Order accordingly. Let all the amounts deposited by the Respondent be released to the Petitioner after due verification.

07. During the course of the hearing, a crucial aspect surfaced *qua* mental health of the children, whereby it transpired that the Children did not have any opportunity of meeting their father/ Respondent No.1. Without dilating upon the factual controversy as to who was responsible for this loss, I would endeavour to focus on the larger issue of the future welfare, mental health and rights of the children. The Constitution of the Islamic Republic of Pakistan 1973 [**Constitution**] while guaranteeing rights of a child, impose certain duties upon the State, in the terms, that “The State shall protect the marriage, the family, the mother and the child” [**Article 35**]; “The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law” [**Article 25A**]; No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment” [**Article 11(3)**]; the State shall ensure that children “are not employed in vocations unsuited to their age or sex” [**Article 37(e)**]. The Constitution even permits the State to make exceptions through “any special provision for women and children” while dealing with issue of Equality of citizens. [**Article 25**]. The above Constitutional scheme, therefore, reflects its special focus and even extraordinary measures to protect the rights of the child and woman.

8. In the case of *Dr. Muhammad Asif*<sup>2</sup>, the guidelines provided by Justice Mansoor Ali Shah of the Honourable Supreme Court of Pakistan suggest harmonisation and transformation of the Guardian & Wards Act 1890 [**G&W Act**] and other child-related laws with the United Nation's Convention on the Rights of the Child 1989 [**CRC**], which as observed, enunciates a fundamental shift in philosophical approach while dealing with child laws, from the "welfare of the child" to "rights of the child". The guidelines also point towards judicial obligation to construct and interpret child-related laws, from the dedicated lens of the CRC; the need for a child-centred justice system; the child's participation during court proceedings; the child's voice to be heard during court proceedings; and the need to promote ADR and Child Justice in child-related matters.

9. Recognising the sensitivity and importance of the issue, the European Union has also implemented Principles of Parental Responsibilities<sup>3</sup> which imposes duties upon the parents to safeguard rights of their child, (a) for care, protection and education; (b) maintenance of personal relationships; (c) determination of residence; (d) administration of property, and (e) legal representation for the child [principle 3:1]. That the primary consideration in parental responsibilities shall be the best interests of the child [3:3]. That child's autonomy should be respected as per the developing ability and need of the child, to act independently [3:4]. Children should not be discriminated against on any grounds, including sex, disability, gender etc. [3:5]. Having regard to the child's age and maturity, the child should have the right to be informed, consulted and to express opinion in all matters concerning the child, with due weight given to the child's views [3:6]. In case of conflict of interests with the holders of parental responsibilities, the child's interests be protected [3:7]. That parental responsibilities should neither be affected by dissolution of marriage or separation [3:10]. Parents having joint parental responsibilities should.... exercise them jointly [3:11]. In daily important decisions such as education, medical treatment, child's residence, or the administration of a child's property, should be taken jointly, whereas in urgent cases, the parent in custody should have the right to act alone, with information to the other parent without undue delay [3:12]. Parental responsibilities to be provided with care, protection and education in accordance with

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2. 'Dr. Muhammad Asif Vs. Dr. Sana Sattar and others' in CRP No.458/2024 in CPLA No.2514/2024

3. "Principles of European Law Regarding Parental Responsibilities" by the Commission on European Family Law (CEFL).

the child's distinctive character and developmental needs; and the child should not be subjected to corporal punishment or humiliating treatment [3:19]. While deciding the residence of the child, the age, opinion of the child, the ability and willingness of the parents, cooperation between parents on the child's issues, the distance between the residences of the parents, and distance to the child's school, *inter alia* should be considered [3:20]. In case of shared custody, the change in the child's residence should be informed to the other parent, and objections, if any, should be decided by the competent authority [3:21]; and while deciding, the competent authority should consider various factors [3:21]. The child's property is to be administered with due care and diligence by the parent, to preserve and increase its value [3:22]. The child should have the right to maintain regular contact with parents; with close relatives; and with persons with whom the child has close personal relations.... [3:25], and such contact should be in the best interests of the child. [3:26]. A special representative for the child should be appointed in proceedings where there could either be a serious conflict of interests between the child and the holders of parental responsibilities, or in which the welfare of the child is otherwise at risk [3:38].

10. Parents need to understand the adverse impact of their inter-parental conflicts on their children. Numerous **Studies**<sup>4</sup> conducted on this subject around the world clearly suggest that if parental conflicts are not resolved privately and within a shorter period, the children suffer psychological distress with increased risk of developing fear, anxiety, sadness, depression, insecurity, instability, emotional dysregulation, mood swings and impulsivity. This ultimately hampers the overall psychological adaptation and brain development of the child. Studies further confirm that a parental conflict, culminating in divorce, has a direct adverse impact on their child's mental health in multiple ways. When such a dispute enters the litigation phase, the trauma leaves permanent scars on the psychological health and personality of the child. In such a toxic and confrontational atmosphere, the child needs to be provided with a secure and protected environment, from direct exposure to such hostilities between the parents. Section 12 of the G&W Act, to some extent, caters to this situation and

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4. Mediation Role of Parenting Behavior: By Dr. Stephanie Hess; Impact of Parental Conflict on Children's Mental Health: Rocky Maharjan; Parental Conflict: Outcomes and Interventions for Children and Families, by Reynolds, Jenny, and others; In the Name of the Child: A Developmental Approach to Understanding and Helping Children of Conflicted and Violent Divorce. Johnston, Janet, et al.; 7 Rules to Protect Your Children from Marital Conflict, by, Athena Staik; Institute for Family Studies;

empowers the Court to pass any appropriate orders for production, protection and interim measures *qua* custody of the person and property of a minor. Such powers, however, are without any regulated guidelines, leaving the entire exercise at the discretion, understanding and capacity of each individual Court, often resulting in added difficulties for the litigant parents and the child. Piecemeal and incomplete orders/ interim arrangements, without a holistic view, and in the absence of a simultaneous, synchronous and overall scheme for all possible relevant issues concerning the child, not only adds to the financial burdens, logistical issues, multiplicity of litigation and consumption of precious time of the Courts and the parents, but it also fuels adversity, hatred and uncertainty amongst the litigant parents. All this ultimately affects the child, in physical and psychological terms.

11. This could easily be resolved by introducing formalised and regulated guidelines and rules, applicable to every family or custody case across the board without distinction, while the exercise of discretion can be narrowed to the extent of certain variables only, depending upon the age, gender, mental maturity, health and opinion of the minor, and the meeting schedules and venues etc. could be moulded accordingly for toddlers and other categories of children. For instance, in every family/ custody case at the initial stage, a mandatory preliminary hearing can be fixed by the Courts, to tentatively decide ALL issues concerning the child, including the interim custody, education, health and property of the minor, interim meeting arrangements with non-custodial parent, monthly maintenance, frequency of meetings, timings, venue, logistical issues regarding pick and drop of the child, expense of each meetings, meetings on other important occasions, religious and cultural festivities, birthdays and school vacations etc., with directions to the parents to cooperate on all other issues concerning the child etc. The order should consider the gender, age and mental maturity of the child and should include the voice and opinion of the minor. Seeking periodic reports to monitor the education and health of the child should also be part of this exercise. Such an exercise at a preliminary stage as a matter of rule, will give a sense of certainty among litigating parents and the child; will save precious time of the Courts and that of the parties; will discourage multiplicity of litigation and Court burden; will reduce litigation expenses; protect rights of the child and the parents; reduce adversity among litigating parents; and may also induce harmony within the family. As for the child, this entire exercise will help create a more conducive atmosphere for during the interim period; and will

certainly improve peace of mind, boost confidence, mental health and certainty in the child's life; and will ensure continued facilitation for the interim period. The above suggestions are strongly recommended for consideration by all concerned, for improvement in the Guardian and Wards Act, the Family Courts Act and the Rules thereunder, for the sake of child rights and for the ultimate benefit of thousands of children in our country. The exercise and procedure under section 12 of the Act and rules are, therefore, required to be improved and aligned in consonance with the Constitution of Pakistan, the guidelines enunciated in *Dr. Muhammad Asif's case*<sup>2</sup> *supra*, the UN's CRC, and the recommendations in the preceding paragraphs.

12. In the present case, not only the father and mother of the children but their learned advocates also expressed genuine interest in playing their respective roles to conduct the above exercise for the best interests of the children, and for which, they also willingly cooperated with the Court's efforts. In this regard, minutest details of the children were also discussed, which included their physical, mental and spiritual upbringing, their education, physical and mental health, their financials and their right to meet both parents, grandparents, relatives, cousins, friends etc. The responsibilities of both parents also came under discussion, and the arrangements approved by the Honourable Supreme Court of Pakistan in **Madiha Younus case**<sup>5</sup> and **Muhammad Riaz case**<sup>6</sup> were also considered for guidance.

13. Finally, acting in a highly prudent and sensible manner and after fully considering all the above aspects in the best interests of the Children, the Father and Mother of the children willingly cooperated with the Court's efforts with the good offices of their respective counsel, and came up with the following formula/ Schedule of meetings in the following terms:

A. That the instant petition be partly allowed and the impugned Judgments and Decrees be modified in the terms recorded in the following paragraphs 13-B to 13-D.

B. That with respect to the total amount of five items i.e. **(a)** dower amount 5500/-, **(b)** wife's maintenance 15,000/-, **(c.i)** monthly maintenance of daughter 'Muskan' 4000/- from the date of appellate decree dated 10.04.2025 till 19.02.2026 with 10% annual increment, **(c.ii)** monthly maintenance of son 'Abdul Hadi' 3000/- from the date of appellate decree dated 10.04.2025 till 28.02.2026 with 10% annual increment, and **(d)** Rs.100,000/- on account of motorcycle Honda CG-125 [**Grand Total Rs.2,95,500/-**], the Respondent No.1 has already deposited Rs.1,33,500/- (as shown from the receipts filed by him), whereas the balance of Rs.162,000/- shall be deposited by the Respondent No.1 one within a period of one month; and he shall also regularly deposit future monthly maintenance of the minors at the same rate from March 2026 onwards.

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5. 'Mst. Madiha Younus v. Imran Ahmed' (2018 SCMR 1991)

6. 'Muhammad Riaz and others v. Mst. Surriya Jabeen and others' (1985 SCMR 2066)

C. That the Mother shall hold the **permanent physical care and custody** of both the Children, with freedom to travel. In case of Mother's remarriage, the Father would be entitled to review this decision before the concerned family Court, and depending upon the welfare, rights and opinion of the minors, the same may be reassessed at that time.

D. That the maintenance and Schedule of Meetings between the Children and the Father shall, by consent, be conducted in the following manner:

- i. **Regular Meetings:** On the 2<sup>nd</sup> and 4<sup>th</sup> Saturday of every month, from 11 am to 12 pm.
- ii. **Each Child's Birthday:** from 12 pm till 1 pm.
- iii. **Father's Birthday:** from 12 pm to 1 pm.
- iv. **Eid-ul-Fitr:** The first working day after Eid, from 10 am till 12 pm.
- v. **Eid-ul-Azha:** The first working day after Eid, from 10 am till 12 pm.
- vi. **Costs:** For each of the above meetings, the father shall deposit Rs.1,000/- with the Court for disbursement to the mother.
- vii. **Venue:** All Regular Meetings [para (i) to (v)] shall be conducted within the premises and under the monitoring and supervision of the family Court.
- viii. **Summer vacations:** On the 2<sup>nd</sup> and 4<sup>th</sup> Friday of the 1<sup>st</sup> month of summer vacations, the father shall pick up the minors at 11 am, under the supervision of the Family Court, and shall return the minors the next day at 11 am in Court.
- ix. **Winter vacations:** In the 1<sup>st</sup> week of winter vacations, on Friday, the father may pick up the minors at 11 am under the supervision of the Family Court and shall return the minors the next day at 11 am in Court.
- x. **Exceptions:** Notwithstanding the above schedule, the meeting arrangement shall be implemented strictly considering the health and education of the minors individually, and subject to the ruling by the learned Court.
- xi. **Alterations:** The above days, timings, venue or occasions etc. can be altered only with the express mutual consent of both parents. The educational or health expenses of the minors shall be individually decided by the Guardian Court.
- xii. **Education:** Mother shall be at liberty to look after the health and education of the minors, in the school(s) of her choice and other day-to-day needs of the children. Both parents may attend important school meetings and other school functions as required, only to build the confidence and better personality of the Children.
- xiii. **Maintenance:** Starting from 1<sup>st</sup> March 2026, on or before the 1<sup>st</sup> day of each month, the father shall continue to deposit future maintenance of both minors with the Family Court, along with 10% increments, if any, as decided by the learned appellate court.
- xiv. **Mutual Cooperation:** The minors are of impressionable age, and both the parents are required to act sensibly, being conscious of their serious responsibility towards the children, and they shall not do any act which may prejudice the mind of the children towards the other parent [2018 SCMR 1991]. Hence, in the best interests of the Children, both parents shall fully cooperate with each other on all matters and documentation(s), etc., as, when and wherever required by a Child's school or NADRA or Union Council or Immigration or any forum/ department/ authority.

- xv. **Implementation:** For the implementation of this Order, as well as for all matters and guidance concerning the rights and welfare of the Children, the parties shall approach the Court.
- xvi. **Court:** wherever used in this paragraph, shall mean the concerned learned Family Judge, Mirpurkhas at present, and for the future, shall also include the Family Court having jurisdiction under the Family Courts Act 1964 and the Rules thereunder.

14. Order accordingly. In view of the above, this petition is therefore partly allowed; and both the impugned Judgments and Decrees stand modified with the conditions, as recorded in the preceding paragraph 13. These are the reasons for my short order dated 19.02.2026.

15. The office is directed to send copies of this Order to the learned trial Court for compliance; and to the learned Minister for Law, Chief Secretary and Secretary Social Welfare Province of Sindh, for information and consideration to improve and align the provision of section 12 of the Act, and the Rules thereunder, considering the guidelines in **Dr. Muhammad Asif case**;<sup>2</sup> the UN's Convention on the Rights of the Child 1989 [**CRC**]; and the discussion and recommendations at paragraphs 7 to 13 *ibid*

16. Before parting with this Order, I commend the quality of legal assistance rendered by Mr. Farhan Ahmad Bozdar, learned counsel for the Petitioner, Mr. Hassan Qaiser, learned Advocate for Respondent No.1; and also commend the prudence and cooperation displayed by Ms. Aqsa/ mother and M. Irfan/ father while considering the best interests of their Children.

**JUDGE**