

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-93 of 2025

(Asif Ali Vs. Mst. Erum and others)

Petitioner: Asif Ali **through** Mr. Ghulam Mustafa Abbasi, Advocate.

Respondent No.1: Mst. Erum through Mr. Akshay Kumar, Advocate, who is holding brief for Mr. Irfan Khaskheli, Advocate.

Respondent No.2&3: Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Date of hearing: 25.02.2026.

Date of decision: 25.02.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J.- Through the instant Petition, the Petitioner has impugned the Judgment dated 10.02.2025 passed by the learned District Judge, Jamshoro in Family Appeal No.01 of 2025, whereby the Appeal filed by the Petitioner was dismissed with no order as to costs.

2. In short, the facts of the case are that the Respondent No.1 (Mst. Erum) filed Family Suit No.22 of 2023 before learned Family Judge, Jamshoro with following prayers;

- a) *That this Honourable Court may be pleased to direct the defendant to pay past, present and future maintenance of Rs.20,000/- per month since ousted her and same was increased 20% per annum till her legal entitlement and also pay the present, past and future maintenance at the rate of Rs.10,000/- per month since ousted till their legal entitlement / major and same was increased 20% per annum.*

- b) *That this Honorable Court may kindly be pleased to direct the defendant to return the dowry articles of plaintiff as per list value of worth Rs.300,000/-, in case of failure he shall bound to pay the amount of Rs.300,000/- of dowry articles without delay and excuse.*
- c) *That this Honourable Court may kindly be pleased to pay the dower amount of Rs.50,000/- one house area 1800 fts situated at Manzoor Brohi Chowk Kotri and one gold set without delay and excuse.*
- d) *To grant any other relief which this Honourable Court deems fit and proper in the circumstances of the matter.*

3. The ex-parte Judgment was passed by the learned Family Judge, whereby the Family Suit filed by Respondent No.1/plaintiff was decreed in the following terms:

- i. *Plaintiff is entitled for maintenance of herself as well as maintenance of minors at the rate of Rs.10,000/- each from filing of the Suit till legal entitlement.*
- ii. *Plaintiff is also entitled to receive her dowry articles as per list. The defendant is directed to return the dowry articles or pay the alternate value.*
- iii. *Plaintiff is also held entitled to receive her dower amount as prayed.*
- iv. *There is no order as to costs.*

4. The Petitioner challenged the above ex-parte Judgment passed by the learned Family Court by filing Family Appeal No.01 of 2025; however, he remained unsuccessful, hence preferred the present Petition.

5. Learned counsel for the Petitioner contended that after the ex-parte Judgment, the Petitioner filed an application under Order IX Rule 13 C.P.C., accompanied by an application under Section 5 of the Limitation Act; however, the learned Family Judge dismissed the said application without recording proper observations. He further contended that the ex-parte

Judgment passed by the learned Family Judge, as well as the Judgment passed by the learned Appellate Court, are illegal and contrary to law. He further submitted that the Respondent filed Family Suit No.36 of 2023 for recovery of dowry articles and maintenance, wherein the Petitioner appeared and filed his written statement. Thereafter, the Respondent filed an application for amendment of the plaint, which was allowed, and the Respondent filed the amended plaint; however, the learned Trial Court did not issue notice to the Petitioner for filing a fresh written statement. Subsequently, the ex-parte Judgment and Decree were passed without affording an opportunity of hearing to the Petitioner. Learned counsel further contended that the learned Family Court did not provide the Petitioner an opportunity to file a written statement to the amended plaint filed by the Respondent. He also submitted that the learned Family Judge awarded maintenance to each minor at the rate of Rs.10,000/- per month and Rs.10,000/- per month to the Respondent/plaintiff, which is against the principles of natural justice and was awarded without properly considering the salary of the Petitioner. According to him, such a huge amount has been awarded in the shape of maintenance and the Petitioner's survival has become very difficult from the remaining meager portion of his salary.

6. Mr. Akshay Kumar, Advocate, holding brief for Mr. Irfan Khaskheli, Advocate for Respondent No.1, submitted that the latter is out of station; however, as per his instructions, he supported the impugned order(s) and prayed for dismissal of the Petition. While Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh, being a formal party, did not advance arguments and submitted that the matter may be decided on merits.

7. In view of the above facts and the available record, it appears that the Petitioner was fully aware of the proceedings before the learned Family Court, as he had earlier appeared in the Family Suit and participated in the proceedings. Subsequently, the Respondent No.1/plaintiff moved an application for amendment of the plaint, which was allowed by the learned Trial Court, and the suit itself was not withdrawn or filed afresh. It is an admitted fact, as stated by the petitioner in ground "d" of the instant petition, that the respondent filed Family Suit No. 36 of 2023 for recovery of

dowry articles and maintenance. The petitioner/defendant filed his written statement, but subsequent to this, the respondent/plaintiff filed an amended application, which was allowed, permitting the plaintiff/respondent to file an amended plaint. However, the trial court did not issue notices to the petitioner to file a fresh written statement, and an ex-parte judgment was passed. Despite having knowledge of the pendency of the suit, the Petitioner failed to appear before the learned Trial Court thereafter and allowed the matter to proceed ex-parte. Furthermore, the application filed by the Petitioner under Order IX Rule 13 C.P.C., along with an application under Section 5 of the Limitation Act, was admittedly moved with delay and no sufficient cause was shown to justify such delay. It is a settled principle of law that the law assists the vigilant and not those who sleep over their rights.

8. Moreover, the learned Family Court, after examining the material available on record, awarded maintenance to the Respondent No.1/plaintiff and the minors at the rate of Rs.10,000/- each per month from the date of filing of the suit till their legal entitlement. Considering the prevailing inflation and the rising cost of living, the amount awarded by the learned Trial Court cannot be termed excessive or unreasonable. Therefore, the impugned judgments passed by the learned Trial Court dated 30.04.2024 as well as the learned Appellate Court dated 10.02.2025 do not suffer from any legal infirmity or jurisdictional defect warranting interference by this Court. However, by considering the prevailing inflation and rising cost of living, the amount decided by the trial court would be enhanced at the rate of 10% annually. Consequently, the present Petition, being devoid of merit, is **dismissed** with no order as to costs.

9. Let a copy of this order be transmitted to the trial Court for compliance.

JUDGE