

IN THE HIGH COURT OF SINDH CIRCUIT COURT AT MIRPURKHAS

Constitution Petition No.S-57 of 2026

Petitioner: Mr. Abid Imam Baloch advocate for the petitioner along with the petitioner.

Respondents: Mr. Nabi Bux Narejo, Advocate for Respondent No.1 along with Respondent No.1.
M. Muhammad Shareef Solangi, Assistant A.G Sindh.

Date of Hearing & Order: 03.03.2026

ORDER

MUHAMMAD HASAN (AKBER), J.- Impugned in this petition is the Judgment and the Decree dated 14-01-2026 and 20-01-2026 respectively passed by the learned Additional District Judge-II, Tando Adam in Family Appeal No.30/ 2025 (Zubair Ahmed Vs. Mst. Naghma Rani), was dismissed with modification that the respondent/ plaintiff is entitled for medical expenses of Rs. 50,000/=, which arose out of the Judgment and Decree dated 22-07-2025 in Family Suit No. 70/ 2024 (Mst. Naghma Rani vs. Zubair Ahmed) passed by the learned Family Judge-I, Tando Adam.

2. Succinct facts of the case are that the Petitioner (**husband/ father**) and the Respondent No.1 (**wife/ mother**) were married on 15-04-2023 under *Fiqhe Hanafia*, with prompt dower of Rs.10,000/=, which remained unpaid. The couple was blessed with a daughter, '**Aiman**', on 19.06.2024 [**Minor**]. Social complexities amplified between the parties, further complicating their disturbed matrimonial relationship. Subsequently, the wife's claim for khula was decreed on 22-07-2025, followed by filing of Family Suit No.70 of 2024 by wife, for dowry articles, maintenance and other reliefs. In his written statement, the Husband admitted the marriage and the child, but the rest of the claims were denied. The suit was decreed, which was assailed by the husband in Family Appeal No.30/ 2025, wherein the original decree was upheld, but the relief of medical expenses in the wife's favour was added, which has been assailed in this petition.

3. Heard learned counsel for the parties and meticulously perused the record with their able assistance. The petition was heard and decided on a priority basis, considering the observations by Justice Aminuddin Khan of the Honourable Supreme Court in **Arif Fareed case**¹, that writ jurisdiction may not be exercised routinely, since the legislature intends expeditious disposal of the family disputes, and for which it has consciously not provided a second appeal under the Family Courts Act, 1964.

4. During the course of arguments from both sides, a crucial aspect surfaced *qua* the mental health of the Minor, when it transpired that despite being an 18-months-old female, the minor never had the opportunity of being in the physical care of her real mother, but since her birth, the second wife of the husband was looking after the minor. As per the petitioner, the Minor was removed from the hospital after delivery, while as per the Respondent, the petitioner left the minor.

5. Without dilating upon the factual contentions between the parties on this aspect, I would endeavour to focus on the larger issue of future welfare, mental health and rights of the minor. 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)**]; and it permits the State to make “any special provision for women and children” while dealing with Equality of citizens. [**Article 25**];

6. In the case of **Dr. Muhammad Asif**² 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 in line with the United Nation’s Convention on the Rights of the Child 1989 [**CRC**], which 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.

7. Recognizing the sensitivity and importance of the issue, the European Union has also implemented Principles of Parental Responsibilities³ 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 [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 be provided with care, protection and education in accordance with 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 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

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).

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].

8. All parents need to understand that their inter-parental conflicts badly affect their children. Numerous **Studies**⁴ conducted on this subject around the world conclude that if parental conflicts are not resolved privately, and within a shorter period, their children suffer psychological distress which raises high chances of developing fear, anxiety, sadness, depression, insecurity, instability, emotional dysregulation, mood swings and impulsivity, which ultimately affects the overall psychological adaptation and brain development of the child. Studies further confirm that a parental conflict, ending in a divorce, adversely impacts their child's mental health in multiple ways. When an inter-parental dispute enters the litigation phase, the trauma that the child passes through leaves deep scars on the psychological health and personality of the child. In such a situation of confrontation, the child needs a secure and protected environment to prevent the child from direct exposure to inter-parent confrontation. The only protection available under the law in such a situation is provided under section 12 of the G&W Act, which 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 of each individual Court, often resulting in added difficulties for the litigating parents and for the child. Piecemeal and incomplete orders regarding interim arrangements, without a holistic view and an overall arrangement for the child at one time, not only add to the financial burdens, logistical issues, multiplicity of litigation and consumption of precious time of the Courts and the litigating parents, but it also fuels adversity, hatred and uncertainty amongst the litigating parents. Ultimately, all this adversely affects the child, in physical and psychological terms.

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;

9. This could easily be resolved with the introduction of formalised and regulated specific guidelines and rules, applicable to every family 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 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 like religious or cultural festivities, birthdays and school vacations, and 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, would give a sense of certainty among litigating parents and the child; save precious time of the Court; precious time of the parties; discourage multiplicity of litigation and court burden; would reduce litigation expenses; protect rights of the child and the parents; reduce adversity among litigating parents; and may add s harmony within the family, which an entire exercise would help create a more conducive atmosphere for the child during interim period. For the child, this will certainly improve peace of mind, boost confidence and mental health, and bring certainty to the child's life and would ensure continued facilitation for the interim period. The above suggestions are strongly recommended for consideration by all concerned, for improvement in the Family Courts Rules under the Act, for the sake of child rights and for the ultimate benefit of millions 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 guidelines in **Dr. Muhammad Asif's case**², the UN's Convention on the Rights of the Child 1989 [CRC], and the recommendations in the preceding paragraphs.

10. In the present case, not only the father and mother of the child but their learned counsel expressed genuine interest in playing their respective roles to conduct the above exercise for the best interests of the minor, and for which, they

also willingly cooperated with the Court's efforts. In this regard, minute details of the children were also discussed, which included the child's religious and moral upbringing, education, physical, spiritual & psychological health, her financials and her rights to meet both parents, grandparents and relatives 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**⁵ and **Muhammad Riaz case**⁶ were also considered as guidance.

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

- A. That the **impugned Judgment and Decree** dated 14-01-2026 and 20-01-2026 passed by the learned Additional District Judge-II, Tando Adam, in Family Appeal No.30/ 2025 be set aside, only to the extent of decree of medical expenses of Rs.50,000/= (Rupees Fifty Thousand Only), whereas the rest of the reliefs allowed in the original Decree passed by the learned trial Court, shall remain intact.
- B. That with respect to: **(a) the maintenance** amount of the respondent No.1 from March 2024 till Iddat period Rs.91,000/-, and **(b) Rs.100,000/=** (Rupees One Hundred Thousand only) on account of certain dowry articles [**Grand total Rs.1,91,000/-**], the petitioner/ husband shall deposit 50% of the said amount with the Additional Registrar of this Court on or before 18-03-2026, whereas the remaining 50% shall be deposited on or before 03-04-2026. These amounts shall be released to the wife/ Respondent No.1 after due verification.
- C. That the **permanent physical care and custody** of the minor daughter 'Aimen' is handed over by the father to the mother in the Court by consent, with complete freedom to travel. However, in case of remarriage by the Mother, the Father would be entitled to review this decision before the concerned Guardian Court, and the welfare and opinion of the minor would be reassessed at that time.
- D. That the maintenance and Schedule of Meetings between the Child and the Father shall, by consent, be conducted in the following manner:
 - i. **Regular Meetings:** On the 2nd and 4th Saturday of every month, from 11 am to 12 pm.
 - ii. **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.

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

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

- 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 2nd and 4th Friday of the 1st month of summer vacations, the father shall pick up the minor at 11 am, under the supervision of the Family Court, and shall return the minor the next day at 11 am in Court.
- ix. **Winter vacations:** In the 1st week of winter vacations, on Friday, the father may pick up the minor at 11 am under the supervision of the Family Court and shall return the minor 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 minor shall be individually decided by the Guardian Court.
- xii. **Education:** Mother shall be at liberty to look after the health and education of the minor, 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 Child.
- xiii. **Maintenance:** Starting from 1st March 2026, on or before the 1st day of each month, the father shall continue to deposit future maintenance of the minor with the Family Court, along with 10% annual increment.
- xiv. **Mutual Cooperation:** The minor is of impressionable age, and both the parents are required to act sensibly, being conscious of their serious responsibility towards the child, and they shall not do any act which may prejudice the mind of the child towards the other parent [2018 SCMR 1991]. Hence, in the best interests of the Child, both parents shall fully cooperate with each other on all matters and documentation(s), etc., as, when and wherever required by the 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 Child, the parties shall approach the Court.
- xvi. **Court:** wherever used in this paragraph, shall mean the concerned learned Family Judge, Tando Adam at present, and for the future, shall also include the Family Court having jurisdiction under the Family Courts Act 1964 and the Rules thereunder.

12. Order accordingly. In view of the above, the petition is partly allowed to the extent of appellate decree of medical expenses of Rs.50,000/= (Rupees Fifty Thousand Only) which is set-aside; whereas, the rest of the reliefs as allowed in the original Decree passed by the learned trial Court, shall remain intact; with the

addition of the terms and conditions as recorded at paragraph 11 *ibid*. The instant petition, along with the listed application, is therefore disposed of in the above terms.

13. Before parting with this Order, I must appreciate the quality of assistance rendered by Mr. Abid Imam Baloch, learned counsel for the Petitioner, Mr. Nabi Bux Narejo, learned Advocate for Respondent No.1; learned AAG; so also, the prudence and cooperation displayed by Mr. Zubair Ahmed/ father and Mst. Naghma Rani/ mother, for sacrificing their personal likes and conveniences for the sake of the rights and welfare of their child.

14. A copy of this Order be placed before the Honourable Chief Justice, High Court of Sindh, for kind information and consideration.

Announced in the presence of the Parties on this 03rd day of March 2026.

JUDGE