

THE HIGH COURT OF SINDH KARACHI

C.P. No. S-1245 of 2025

[Sofia Awan & another vs. Ammad Bakhsh Awan & another]

Petitioners : Sofia Awan & Azlan Awan (Minor)
through Mr. Saadat Yar Khan, Advocate.
Respondent No.1 : Ammad Bakash Awan
through Mr. Aijaz Ali Tunio, Advocate.
Respondent No.2 : NEMO.
Date of hearing : 26.10.2026.
Date of decision : 26.10.2026.

ORDER

Zulfiqar Ali Sangi J.- Through the instant constitutional petition, instituted under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called into question the consolidated judgment and decree dated 14.10.2025, passed by the learned VIIth Additional District Judge (Model Civil Appellate Court), Karachi South, in Family Appeals Nos.106 and 128 of 2025, arising out of Family Suit No.1939 of 2022, decided by the learned XXth Family Judge, Karachi South, vide judgment and decree dated 07.05.2025. The petitioner seeks interference with the impugned consolidated judgment and decree to the extent that her claims for recovery of the remaining 20 tolas of gold ornaments, maintenance for herself, and enforcement of the condition relating to immovable property incorporated in the Nikahnama were declined. She has further assailed the findings concerning the return of gold ornaments and the appointment of a guardian in respect of the minor son born out of the wedlock.

2. Learned counsel for the petitioner contended that the impugned consolidated judgment and decree dated 14.10.2025 suffers from material errors of law and misappreciation of the evidence, as the learned appellate Court failed to properly appreciate the documentary evidence, the terms and conditions recorded in the Nikahnama, and the attending circumstances brought on record by the petitioner. He submitted that the petitioner had instituted the family proceedings seeking maintenance for herself and the minor, recovery of 35 tolas of gold ornaments, enforcement of the agreed dower, and appointment as guardian of the minor. However, according to learned

counsel, the relief granted by the learned trial Court was either inadequate or subsequently set aside by the learned appellate Court. He particularly assailed the decision of the learned appellate Court whereby the decree passed by the learned trial Court for recovery of 15 tolas of gold ornaments in favour of the petitioner was set aside. Learned counsel maintained that the petitioner had consistently asserted that 35 tolas of gold ornaments, comprising 20 tolas recorded in the Nikahnama and 15 tolas given by her family as dowry, had been entrusted to the mother of respondent No.1, namely Mst. Tahira Jabeen, for safe custody in a bank locker at Islamabad. He argued that the stance adopted by respondent No.1 regarding the alleged return or dispatch of the ornaments was not substantiated by reliable documentary evidence. According to him, the learned appellate Court failed to properly examine the inconsistencies in the version of respondent No.1 and the non-production of the best available evidence concerning the alleged return of the ornaments.

3. Learned counsel for the petitioner further submitted that the petitioner had repeatedly expressed her willingness to relinquish her claim for recovery of the gold ornaments, provided respondent No.1 and his mother, Mst. Tahira Jabeen, took a special oath affirming that the ornaments were neither in their possession nor had been retained by them and that the same had already been returned to the petitioner or her family. He contended that the said offer was material to the controversy and ought to have been duly considered by the learned appellate Court in accordance with law. He, therefore, prayed that the petitioner's plea concerning the special oath be considered in the light of the applicable legal principles and the requirements of justice. With regard to maintenance, learned counsel for the petitioner argued that the financial means and earning capacity of respondent No.1 had not been properly assessed while determining the maintenance payable for the minor. He submitted that respondent No.1, being a qualified dentist residing and practicing in the United Kingdom, was legally bound to provide maintenance commensurate with his financial capacity and the reasonable requirements of his minor son, including expenses relating to upbringing, education, healthcare, transportation and other necessities. He maintained that the amount awarded by the learned trial Court was inadequate in the circumstances of the case, particularly when the petitioner had claimed maintenance at the rate of Rs.200,000/- per month, subject to an annual increase of 10%. Learned counsel further submitted that the petitioner had been compelled to return to Pakistan with the minor after allegedly being left without adequate financial support and the requisite

documents, including her British Residence Permit card, necessary to facilitate her return to the United Kingdom. He contended that the petitioner had been meeting the day-to-day expenses and attending to the needs of the minor with the assistance of her family, whereas respondent No.1 had failed to discharge his marital and paternal obligations in proportion to his financial means. On these grounds, he urged that the claim for maintenance be considered in the light of the evidence on record and the prevailing circumstances of the parties. Regarding the claim for dower, learned counsel submitted that the condition recorded in Column No.16 of the Nikahnama, whereby the petitioner was allegedly entitled to a 50% share in the specified portion of House No.B-369, Street No.37, Sector F-11/3, Islamabad, constituted a binding term of the marriage contract and could not lawfully be disregarded merely because the other columns of the Nikahnama recorded payment of the cash component of dower and 20 tolas of gold. He argued that the relevant entry had neither been declared forged nor invalidated by any competent Court and that the learned Courts below had failed to give due legal effect to the contractual commitment recorded therein. He, accordingly, sought enforcement of the agreed dower, together with all consequential reliefs permissible under the law.

4. Addressing the issue of guardianship, learned counsel for the petitioner submitted that the minor was residing in the custody and care of the petitioner, who was attending to his educational, medical and day-to-day needs. He contended that the petitioner required appropriate legal authority to deal with the minor's official documentation and other matters affecting his welfare, including foreign travel, and that compelling her to approach the Court on each occasion would cause unnecessary expense, inconvenience and hardship. He, therefore, prayed that the impugned refusal to appoint the petitioner as guardian be set aside and that she be appointed guardian of the minor without the requirement of furnishing a surety bond. Concluding his submissions, learned counsel maintained that the impugned consolidated judgment and decree, to the extent of the grievances raised in the instant petition, were unsustainable in law. He prayed that the record of Family Suit No.1939 of 2022, along with the connected Family Appeals Nos.106 and 128 of 2025, be examined; that the impugned judgment and decree be set aside or suitably modified to the extent of the reliefs declined or withdrawn; and that the reliefs claimed in the constitutional petition be granted in accordance with law.

5. Conversely, learned counsel appearing on behalf of respondent No.1 opposed the instant constitutional petition and supported the impugned consolidated judgment and decree dated 14.10.2025, passed by the learned VIIth Additional District Judge (Model Civil Appellate Court), Karachi South. He contended that the learned appellate Court had duly examined the pleadings of the parties, the evidence available on record, and the findings recorded by the learned Family Court before arriving at its conclusions. According to learned counsel, the impugned judgment was passed after due consideration of the controversy and did not suffer from any jurisdictional defect, material illegality or perversity warranting interference by this Court in the exercise of its constitutional jurisdiction. With regard to the claim for recovery of gold ornaments, learned counsel submitted that the petitioner could not establish an enforceable right to recovery merely on the basis of her assertions, particularly when the facts concerning the delivery, possession and subsequent custody of the ornaments were disputed. He maintained that the findings recorded by the learned Courts below were based upon appreciation of the evidence and could not be reopened in constitutional jurisdiction in the absence of any patent illegality, manifest error or violation of law. Concerning the claim founded upon Column No.16 of the Nikahnama, relating to the alleged entitlement to a 50% share in the specified immovable property situated at Islamabad, learned counsel argued that the petitioner had failed to establish an enforceable right capable of being granted in the family proceedings as framed. He contended that any declaration or transfer of rights in immovable property would require the petitioner to establish the nature and legal basis of her alleged entitlement before the competent forum.

6. As regards the appointment of the petitioner as guardian of the minor, learned counsel submitted that the directions issued by the learned appellate Court were confined to facilitating specified documentation and allied matters relating to the minor. He argued that such directions did not confer unrestricted authority upon the petitioner to remove the minor from the jurisdiction or to exercise powers beyond those expressly permitted under the impugned judgment. He, therefore, maintained that the safeguards imposed by the learned appellate Court were justified and ought not to be disturbed. On the foregoing premises, learned counsel prayed that the instant constitutional petition, being devoid of merit and disclosing no ground for interference under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, be dismissed.

7. Perusal of the impugned consolidated judgment and decree reveals that both parties had preferred appeals against the judgment and decree passed by the learned Family Court. The learned appellate Court considered the rival submissions, reappraised the evidence available on record, and recorded its conclusions on the disputed claims. The principal question requiring determination is whether the impugned judgment and decree suffer from any jurisdictional infirmity, material illegality, perversity, or misreading or non-reading of evidence so as to warrant interference by this Court in the exercise of its constitutional jurisdiction.

8. I have heard learned counsel for the petitioner and examined the available record with their assistance.

9. It is a settled principle of law that the constitutional jurisdiction of this Court is not intended to provide an additional appellate forum for a fresh appraisal of evidence merely because a party is dissatisfied with the conclusions reached by the Courts below. Interference under Article 199 of the Constitution may, however, be warranted where the impugned decision suffers from patent illegality, jurisdictional infirmity, arbitrary exercise of authority, or material misreading or non-reading of evidence resulting in an unsustainable conclusion. The mere possibility of arriving at a different view on the basis of the same evidence does not, by itself, constitute sufficient ground for interference in constitutional jurisdiction.

10. In the present case, the record indicates that the learned appellate Court considered the rival claims concerning the gold ornaments and examined the evidence relating to their alleged entrustment, subsequent retention and purported dispatch through cargo. The petitioner was required to establish, through legally admissible and confidence-inspiring evidence, the material facts constituting the foundation of her claim. The assertion that the ornaments had been retained by the mother of respondent No.1, without sufficient corroborative evidence establishing such retention, could not, by itself, establish an enforceable entitlement to their recovery. The learned appellate Court recorded reasons for setting aside the decree passed by the learned trial Court in favour of the petitioner regarding 15 tolas of gold ornaments and for declining the claim for recovery of the ornaments. Upon examination of the material placed before this Court, no sufficient ground has been demonstrated

to establish that the conclusions so reached suffer from such material illegality, perversity or misreading or non-reading of evidence as would justify interference under Article 199 of the Constitution.

11. So far as the petitioner's claim for maintenance for herself is concerned, the learned appellate Court examined the circumstances surrounding the separation of the parties, the evidence recorded during trial, and the petitioner's failure to establish the circumstances relied upon in support of her claim. The question of entitlement to maintenance was thus considered in the context of the evidence available on record. No independent material has been identified before this Court to demonstrate that the findings recorded by the learned Courts below are so perverse or legally untenable as to warrant constitutional interference. Likewise, the claim for enhancement of maintenance for the minor is required to be assessed with reference to the reasonable needs of the child, the financial capacity of the father, and the evidence available before the competent Court. The mere assertion that respondent No.1 earns in foreign currency, without establishing a legally sustainable defect in the assessment made by the Courts below, is insufficient to justify the relief sought in the instant petition.

12. With regard to the condition relating to the immovable property situated at House No.B-369, Street No.37, Sector F-11/3, Islamabad, the learned appellate Court examined the relevant entries in the Nikahnama and the nature of the entitlement asserted by the petitioner. It declined to treat the condition recorded in Column No.16 as an enforceable component of dower in the circumstances of the case, observing that the claim, as framed, fell within the domain of the competent civil Court. The petitioner has failed to demonstrate any jurisdictional infirmity or material error in the aforesaid determination that would justify substitution of this Court's view for that of the learned appellate Court in the present proceedings. It is, however, clarified that the foregoing observations shall not be construed as an adjudication upon the merits of any independent civil claim that may lawfully be maintainable before the competent forum, subject to all objections available to the parties under the law.

13. The question of guardianship, however, requires consideration in the distinct context of the welfare of the minor, which remains the paramount consideration in matters concerning the appointment of a guardian. The learned appellate Court, having taken into account the existing custody of the minor

with the petitioner and the fact that respondent No.1 resides abroad, appointed the petitioner as guardian of the person of the minor for limited purposes relating to documentation and allied matters. The appointment was made subject to the conditions specified in the impugned judgment, including the furnishing of a personal recognizance bond in the sum of Rs.1,000,000/- and the deposit of the minor's original passport with the learned trial Court. The guardianship so granted is expressly limited in scope and does not confer upon the petitioner unrestricted authority to remove the minor from the jurisdiction of the Guardian Court or to exercise powers beyond those permitted under the impugned judgment. The conditions imposed by the learned appellate Court are required to be considered in the context of the limited guardianship granted and the necessity of safeguarding the welfare and interests of the minor. The petitioner has not established sufficient grounds to warrant setting aside the impugned judgment on this account. Nevertheless, the competent Guardian Court shall remain at liberty to consider any application seeking appropriate modification of the conditions imposed, should the circumstances so warrant in the interest of the minor's welfare and in accordance with law. Any such application shall be decided independently, on its own merits, after affording the concerned parties an opportunity of hearing.

14. Adverting to the contention advanced by learned counsel for the petitioner regarding the offer of a special oath, it was argued that the petitioner had repeatedly expressed her willingness to relinquish her claim for recovery of 35 tolas of gold ornaments if respondent No.1 and his mother, Mst. Tahira Jabeen, affirmed on a special oath that the ornaments were neither in their possession nor had been retained by them and that the same had already been returned to the petitioner or her family. In this regard, it may be observed that an offer to submit a dispute to a special oath does not, by itself, constitute proof of the claim advanced by the party making such an offer, nor can it automatically be construed as an admission against the opposing party. The legal effect of such a proposal must be determined in accordance with the applicable law and the circumstances in which it was made. A perusal of the available record indicates that the petitioner had raised the plea of special oath and expressed her willingness to relinquish her claim subject to the proposed oath being administered. Nevertheless, the unilateral expression of willingness by one party does not, without more, impose a legal obligation upon the other party to accept the proposal. Similarly, the alleged refusal of the opposing party to take such an oath cannot, in itself, be treated as conclusive proof of the claim

asserted by the party making the offer. The controversy concerning the gold ornaments involved disputed questions of fact, including their alleged entrustment to the mother of respondent No.1, their purported placement in a bank locker, and the circumstances surrounding their alleged return or dispatch. These matters were required to be established through legally admissible evidence and assessed in accordance with the applicable legal principles. Accordingly, the plea concerning the special oath could not, in the absence of any further legally sustainable basis, substitute for the requisite proof of the petitioner's claim or independently warrant the relief sought in the instant constitutional petition. In these circumstances, the mere fact that the petitioner's proposal for a special oath was not accepted or acted upon does not, by itself, establish any jurisdictional defect or material illegality in the impugned judgment. The contention advanced by learned counsel for the petitioner, therefore, does not furnish a sufficient ground for interference under Article 199 of the Constitution. It is clarified that this finding is confined to the plea raised in the instant proceedings and shall not be construed as an independent or conclusive determination of any question concerning the admissibility, procedure or legal effect of a special oath under the applicable law.

15. For the foregoing reasons, the petitioner has failed to establish any jurisdictional infirmity, material illegality, perversity, or misreading or non-reading of evidence warranting interference with the impugned consolidated judgment and decree dated 14.10.2025. Consequently, the instant constitutional petition, being devoid of merit, is hereby **dismissed**.

16. It is clarified that the observations made herein are confined to the controversy raised in the instant constitutional petition and shall not prejudice the adjudication of any independent remedy that may lawfully be available to either party before the competent forum, in accordance with law.