

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-378 of 2023

Dated: Order with signature of Judge(s)

- 1.For orders on office objections No.11 & 18 a/w. reply as at 'A'.
- 2.For orders on CMA No.3019/2023.
- 3.For hearing of Main Case.

Date of Hearing : 22 May 2023

Petitioner : Asif Ali through Mr. Gul Sher Baloch,
Advocate.

Respondents : VIIIth Additional Distirct Judge Karachi
(South) & Others.

ORDER

Mohammad Abdur Rahman, J. This Petition has been maintained by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, as against the Judgment and Decree each dated 17 March 2023 passed by the VIIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 which upheld the Judgment and Decree each dated 12 January 2023 passed by XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No.1295 of 2022.

2. The facts on the basis of which this Petition has been filed relate to the marriage of the Petitioner and the Respondent No. 2 and the conformant of various personal obligations owed by the Petitioner to the Respondent No. 2 on account of that relationship. It is admitted that the Petitioner was married to the Respondent No. 2 at Karachi on 26 January 2020. The Dower that was admittedly settled at the time of the marriage was 100 Miskal of Gold. Regrettably, the marriage as between the Petitioner and the Respondent No. 2 was a difficult one and which

resulted in the Respondent No. 2 being estranged from the Petitioner from 5 June 2022 where after she has been residing at her parents' residence.

3. The Respondent No. 2 has thereafter instituted Family Suit No. 1295 of 2022 before the XVII Civil Judge & Judicial Magistrate Karachi (South) praying to the court:

- “
- a. To Direct the defendant to pay dower amount in shape of 100 Miskal Gold equal to 29 Tola Gold to the plaintiff which was paid by the defendant after the marriage.
 - b. To direct the defendant to pay maintenance to the plaintiff at the rate of Rs. 40,000/- per month since 05.06.2022 till Idaadt period.
 - c. To direct the defendant to return the dowry articles of the plaintiff as per annexure P/2 annexed with the plaint or alternate its value in the sum of Rs. 200,000
 - d. To confirm the Talaq of the plaintiff as pronounced by the defendant verbally in the presence of his parents.
 - e. Costs of the suit
 - f. Any other relief, which this Hon'ble Court deems fit and proper in the circumstances of the case.”

4. The XVII Civil Judge & Judicial Magistrate Karachi (South) partially decreed Family Suit No. 1295 of 2022 by holding that:

- (i) the marriage of the Petitioner with the Respondent No. 2 had not been terminated by Talak and as such they continued to be married to each other;
- (ii) the Petitioner was liable to pay to the Respondent No. 2 a sum of Rs. 4,000 per month as maintenance from the date of the institution of Family Suit No. 1295 of 2022 with an annual increment of 10% per annum; and
- (iii) that the Petitioner was liable to pay 85 Miskal of Gold to the Respondent No. 2 representing the “Ghair Mu'ajjal” or

deferred amount of “Dower” that remained payable by him as indicated in Column 15 of the Nikahnama.

5. Aggrieved by the Judgment and Decree passed by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022, the Petitioner unsuccessfully preferred an appeal before the VIIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South bearing Family Appeal No. 15 of 2023 and which was dismissed by that Court on 12 January 2023 upholding the Judgment and Decree passed by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022.

6. The Counsel for the Petitioner appeared before this Court and has averred that both the XVII Civil Judge & Judicial Magistrate Karachi (South) who heard Family Suit No. 1295 of 2022 and the VIIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South who heard Family Appeal No. 15 of 2023 have not correctly appreciated the evidence that was led by the Petitioner and states that:

- (i) while he accepts that the Petitioner and the Respondent No. 2 are not divorced, keeping in mind that his salary is Rs. 23,215, the payment of a monthly maintenance of Rs. 4,000 with an annual increment of 10%, to the Respondent No. 2 is excessive;
- (ii) on the basis of the evidence it is clear that the entire “Dower” amount has been paid by the Petitioner to the Respondent No. 2.

The Counsel for the Petitioner did not rely on any legal citations during the course of his arguments.

7. I have heard the Counsel for the Petitioner and perused the record. The jurisdiction of this Court to examine matters emanating from the Family Courts under Article 199 of the Constitution of the Islamic Republic of Pakistan has recently been reiterated by the Supreme Court of Pakistan in **Arif Fareed vs. Bibi Sara**¹ wherein it was held that:²

“ ... 7. Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. **The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied.** No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception.”

(Emphasis is added)

8. The sole ground that has been pressed by the Counsel for the Petitioner is that both the XVII Civil Judge & Judicial Magistrate Karachi (South) who heard Family Suit No. 1295 of 2022 and the VIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South who heard Family Appeal No. 15 of 2023 have not properly appreciated the evidence that was adduced and as such the judgment and decree of both the courts below are flawed. While they are concurrent findings, I have nevertheless reviewed the evidence that was placed before those courts to satisfy myself as to whether any illegality or material irregularity was committed by either the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 or by the VIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi (South) in Family Appeal No. 15 of 2023 in appreciating the evidence adduced.

¹ 2023 SCMR 413

² *Ibid* at pg. 417

A. DOWER

9. The first issue that has been raised by the Petitioner and the Respondent No. 2 in Family Suit No. 1295 of 2022 is in respect of the Dower amount payable by the Petitioner to the Respondent No. 2. What is common ground as between the Petitioner and the Respondent No. 2 is that 100 Miskal of Gold had been indicated in the Nikahnama as the Dower to be paid by the Petitioner to the Respondent No. 2. It is also accepted by both the Petitioner and the Respondent No. 2 that out of the 100 Miskal Gold, 15 Miskal had been **recorded in the Nikahanama** as “Mu'ajjal” i.e. having been paid by the Petitioner to the Respondent No. 2 at the time of the Nikahnama being executed and that the balance 85 Miskal of Gold was **recorded in the Nikahanama** as “Ghair Mu'ajjal” i.e. that remained payable by the Petitioner to the Respondent No. 2.

10. The remaining facts regarding the payment of the Dower are disputed as between the Petitioner and the Respondent No. 2:

- (a) that despite the Nikahanmah stating that she had been given 15 Miskal of Gold, in fact it was only 10 Miskal of Gold; and
- (b) that whatever amount that was received by the Respondent No. 2 was immediately after the marriage retained by the Petitioner in his custody.

11. Conversely, the Petitioner 2 has averred that:

- (a) he had paid 15 Miskal of Gold as Dower at the time of the Nikahnama being executed and which, having been recorded in the Nikahnama, confirms and discharges his liability in respect of the payment of that amounts towards Dower rendering a balance 85 Miskal of Gold as to be paid by the Petitioner to the Respondent No. 2 at that time;

- (b) the balance out of the dower i.e. 85 Miskal of Gold had been settled by the Petitioner by payment to the Respondent No. 2 of an amount in cash equivalent to 85 Miskal of Gold.

To summarise his contentions, he has now no further obligation to pay any amount in respect of his obligation to pay Dower to the Respondent No. 2.

12. It was held by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 that:

- (i) a Dower amount of 100 Miskal of Gold had been indicated in Column 13 of the Nikahnama as being payable by the Petitioner to the Respondent;
- (ii) Out of the Dower amount 15 Miskal of Gold has been indicated in Column 14 of the Nikahnama as "Mu'ajjal" i.e. having been paid by Respondent No. 2 and 85 Miskal of Gold as indicated in Column 15 of the Nikahnama as "Ghair Mu'ajjal" i.e. which remains payable by the Petitioner to the Respondent No. 2 on her demand;
- (iii) the contention of the Respondent No. 2 that she only received 10 Miskal of Gold at the time of the execution of the Nikahnama remains unproven;
- (iv) the contention of the Respondent No. 2 that whatever amount she received from the Petitioner i.e. either 15 Miskal of Gold or 10 Miskal of Gold after the marriage having been retained by the Petitioner remains unproven;
- (v) that the contention of the Petitioner that he had settled his liability in respect of the "Ghair Mu'ajjal" Dower of 85 Miskal

of Gold by paying the Respondent No. 2 cash in lieu thereof remains unproven as:

- (a) the Petitioner had failed to state such a contention in his affidavit in evidence and which fact had been admitted by the Petitioner in his deposition;
- (b) the Petitioner had failed to indicate the date which he had paid such amount to the Respondent No. 2;
- (c) the Petitioner had failed to produce any witness to corroborate as to whether he had paid such amount to the Respondent No. 2

13. The obligation of a husband to pay Dower has been considered by the Supreme Court of Pakistan in **Haseen Ullah vs. Mst. Naheed Begum**³ wherein it was held that:

“ ... 8. As per Section 2 of the West Pakistan Muslim Personal Law (Shariat) Application Act 1962, the questions regarding dower are to be decided, subject to the provisions of any enactment for the time being in force, in accordance with Muslim Personal Law (Shariat) in cases where the parties are Muslims. It hardly needs reiterating that the Holy Quran and the Sunnah of the Prophet of Islam (PBUH) are the primary sources of Muslim Personal Law (Shariat) in Islam. The payment of dower (mahr) at the time of marriage was a customary practice in Arabia before the advent of Islam, but it was paid to the guardians of the bride, such as, her father or other male relative, as bride-price and the bride herself did not receive a penny of it. This practice of paying dower as bride-price to the male guardians of the bride was reformed by the Islam through the Quranic commands of paying dower as the bride-wealth to the bride herself, who becomes the sole owner of it. The Holy Quran also forbids the Believers to take back anything from their wives out of the paid dower even it be a great sum. In Islam, the payment of dower to bride at marriage is an obligation that is imposed by the God Almighty, and is thus an intrinsic and integral part of a Muslim marriage. It is considered an obligatory bridal gift offered by the bridegroom to the bride graciously as a manifestation of his love and respect for her. Some Muslim men compliment the obligatory bridal gift, dower, with other gifts and presents as per their financial capacity.

9. Under the Islamic law a wife's right to be maintained by her husband is absolute so long as she remains faithful to him and discharges, or is willing to discharge, her own matrimonial obligations. A Muslim husband is bound to maintain his wife

³ PLD 2022 SC 686

even if no term in this regard is agreed to between them at the time of marriage or she can maintain herself out of her own resources. The Holy Quran enunciates that men are the protectors and maintainers of women because the God Almighty has given the one more strength than the other and because they support them from their money. And the Holy Prophet of Islam (PBUH) has instructed Muslim men to provide their wives with maintenance in a fitting manner¹¹ and declared it to be the right of the women.”

14. While noting that Section 17 of the Muslim Family Courts Act, 1964 excludes the application of the principles of Qanun-e-Shahdat Order, 1984; it follows that the rules contained in Chapter IX of Part III of the Qanun-e-Shahdat Order, 1984 regarding the production and effect of evidence are not binding on the Family Court, rendering it free to ascertain on whom the burden is to prove a fact. Following the general principles of equity as per the maxim “Secundum allegata et probate” or “he who alleges must prove” and as per the decision in **Abdul Sattar vs. Mst. Kalsoom**,⁴ I do consider that the burden of proving:

- (a) the receipt of 10 Miskal of Gold as opposed to 15 Miskal of Gold, contrary to the recorded terms of the Nikahnama, is on the Respondent No. 2
- (b) the allegation that the amount of Gold that was paid at the time of the Nikahnama, by the Petitioner to Respondent No. 2 was taken by the Petitioner into his own custody vests on the Respondent No. 2
- (c) the discharge of the liability of the balance amount of 85 Miskal of Gold as “Ghair Mu'ajjal” Dower vests on the Petitioner as he is alleging that he has in fact discharged his liability.

⁴ PLD 2006 Karachi 272

15. The evidence as considered by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 can be summarised as under:

- (i) the Respondent No. 2 failed to prove that she only received 10 Miskal of Gold as the Nikahnama executed by her clearly states that she has received 15 Miskal of Gold and she had not been able to produce any evidence to contradict the document.
- (ii) the Respondent No. 2 failed to prove that whatever amount of Gold she received was taken away by the Petitioner as aside from the statement nothing else has been brought on record to confirm this fact
- (iii) the Petitioner failed to prove that the 85 Miskal of Gold that was "Ghair Mu'ajjal" had been settled as he was unable to show any payment of that amount to the Respondent No. 2.

16. I do not see any misreading of evidence on the part of the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022. The bare statements of both the Petitioner and the Respondent No. 2 were not corroborated by any witness to each of their averments and in the absence of any corroborating evidence the XVII Civil Judge & Judicial Magistrate Karachi (South) relied on the one document that remained as admitted as between the parties i.e. the Nikahnama. I therefore hold that the findings of the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 as upheld by VIIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 are on the basis of the evidence led and in

consonance with law. The Petitioner is and continues to be liable to pay to the Respondent No. 2, the "Ghair Mu'ajjal" dower of 85 Miskal of Gold in accordance with his obligations as recorded in the Nikahnama.

17. The remaining issues as raised in Family Suit No. 1295 of 2022 are related i.e. as to whether the Petitioner and the Respondent No. 2 continue to remain married to each other and on the basis of their status as married or unmarried what are the obligations regarding the payment of the maintenance by the Petitioner to the Respondent No. 2. In this regard the Respondent No. 2 has contended that:

- (i) The Petitioner had orally divorced the Respondent No. 2 by pronouncing in her presence the expression "Talak" three times; as such the Petitioner and the Respondent No. 2 should be declared as divorced;
- (ii) during the course of her marriage to the Petitioner he used to physically assault her which caused her seek shelter in the residence of a friend/neighbour and which eventually resulted in her relocating to her parents residence.

18. Conversely the Respondent No. 2 has contended that:

- (i) he has never orally divorced the Respondent No. 2 by pronouncing the expression "Talak" three times; as such the Petitioner and the Respondent No. 2 continue to be married;
- (ii) That he earns a salary of Rs. 23, 215 and he should not be liable to pay maintenance as he is ready and willing to reside with the Plaintiff as "husband" and "wife".

19. Under Section 7 of the Muslim Family Law Ordinance, 1961:

“ ... 7. Talaq.

(1) Any man who wishes to divorce his wife shall, as soon as may be after the pronouncement of talaq in any form whatsoever, give the chairman a notice in writing of his having done so, and shall supply a copy thereof to the wife.

(2) Whoever, contravenes the provisions of sub-section (1) shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) Save as provided in sub-section (5) talaq, unless revoked earlier, expressly or otherwise, shall not be effective until the expiration of ninety days from day on which notice under sub-section (1) is delivered to the Chairman.

(4) Within thirty days of the receipt of notice under Sub-section (1), the Chairman shall constitute an Arbitration Council for the purpose of bringing about a reconciliation between the parties, and the Arbitration Council shall take all steps necessary to bring about such reconciliation.

(5) If the wife be pregnant at the time talaq is pronounced, talaq shall not be effective until the period mentioned in Sub-section (3) or the pregnancy, whichever later, ends.

(6) Nothing shall debar a wife whose marriage has been terminated by talaq effective under his section from remarrying the same husband, without an intervening marriage with a third person, unless such termination is for the third time so effective.”

(Emphasis is added)

The provisions of this Section have been interpreted by the Supreme Court of Pakistan to state that the simpliciter pronouncement of “Talak” in “any manner whatsoever” by a person to his spouse would not immediately entitle any person to terminate the marriage. Rather under Sub-Section (1) of Section 7 of the Muslim Family Law Ordinance, 1961 it is mandatory that a notice recording such a contention would be communicated to the Chairman of the relevant Union Council, if the wife resides in Pakistan, the Union Council within whose jurisdiction the wife resides or if she doesn’t reside in Pakistan within the jurisdiction of that Union Council where she last resided with such person or in any other case in the jurisdiction of the Union Council where the person who has

pronounced the Talak is residing.⁵ Thereafter under Sub-Section (4) of Section 7 of the Muslim Family Law Ordinance, 1961, it is mandatory for the Chairman of the relevant Union Council within a period of 30 days to constitute an Arbitration Council in an attempt to get the parties to reconcile. In the event that a period of 90 days lapses, from the date when the notice is presented in the office of the Chairman of the relevant Union Council, it is mandatory on the Chairman of the relevant Union Council to declare that the proceedings for reconciliation before the Arbitration Council as having failed and thereafter to issue a certificate to both the parties confirming that the Divorce has become effective. The Chairman of the Union Council has no discretion to either delay the Arbitration Proceedings or to delay the issuance of the Certificate confirming that the Divorce has become effective.⁶ The evidential value of the certificate confirming the affection of a divorce was considered by the Supreme Court of Pakistan in the decision reported as **Sardar Bibi vs. Muhammad Khan**⁷ and has clarified that:

“ ... We called upon the learned council for petitioners to show us the notice issued by Hussaina in terms of Section 7 of the Muslim Family Law Ordinance, 1961 to his wife jewni but he failed to do so and stated that in fact he has relied upon the decision of the Union Council dated 3rd march 1976. It is also an admitted fact that this document was also not proved according to law as according to learned counsel same was tendered by the counsel. It may be noted that Issue No. 5 was framed in order to resolve the controversy with regard to divorce therefore, it was incumbent on the petitioners to have produced the decision of the Union Council in accordance with law otherwise it is no evidentiary value.”

While the Respondent No. 2 has contended that the Petitioner has divorced her by orally pronouncing in her presence the expression Talak on her, this would not automatically terminate the marriage. As has been held by the Supreme Court of Pakistan it would be incumbent on the

⁵ See Clause (b) Rule 3 of the Rules under the Sindh Muslim Family Law Ordinance, 1961

⁶ See **Syed Ali Nawaz Gardezi vs. Lt.Col. Muhammad Yousuf** PLD 1963 SC 51; **Abdul Mannan vs. Safrun Nessa** 1970 SCMR 845; **Ghulam Fatima vs. Abdul Qayyum** PLD 1981 SC 460; **Muhammad Sallahuddin Khan vs. Muhammad Nazir Siddiqui 1984** SCMR 583; **Ghulam Nabi vs. Farrukh Latif** 1986 SCMR 1350; **Rehmat Bibi vs. Sharifan Bibi** 1988 SCMR 1812; **Mushtaq Ahmed vs. Sat Bharaj** 1994 SCMR 1720; **Mst. Farah Naz vs. Judge Family Court, Sahiwal** PLD 2006 SC 457;

⁷ 2005 SCMR 1671

Respondent No. 2 to have obtained a certificate from the relevant Union Council confirming that the divorce has become effective and produce that certificate before the court as evidence. This has not been done and until such a certificate is issued and produced in evidence, the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 would be entitled to hold that the Petitioners statement that he had **not** made three pronouncements of Talak would be deemed as correct. I therefore hold that the findings of the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 as upheld by VIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 that the Petitioner and the Respondent No. 2 on the basis of the evidence led, are still married to be in consonance with law.

20. Having held that the Petitioner and the Respondent No. 2 are and continue to be married one to the other, the sole remaining issue is as to whether there is an obligation on the Petitioner to continue to maintain the wife. A summation of the basic principles that govern this obligation has been clarified by K.N. Ahmed wherein he states:⁸

“ ... It has already been stated that the Muslim law considers a marriage so far as the duties and obligations of the parties to it are concerned to be a civil contract. On marriage certain obligations are imposed on the parties and certain rights are vested in them. The rights and obligations arising out of a marriage are reciprocal so that if either the express or implied conditions of the contract of marriage, he or she shall no longer be entitled to the enjoyment of the rights vested in him or her. Thus, one of the rights of the wife is that her husband should support her while she is under an obligation to look after the domestic comforts of the husband and to make herself available to him. This obligation of the wife makes it necessary that she should live with the husband. Hence, if the husband fails to provide an adequate amount of money for maintenance or lodging for the wife, she can on her part lawfully refuse to live with him. Similarly, if the wife refuses or fails to live with the husband, the latter is no longer under an obligation to support her.

⁸ Ahmed, K.N *The Muslim Law of Divorce*, Islamabad, Islamic Research Institute, (1972) at pg. 710

While evidence was led by the Respondent No. 2 stating that on account of the cruelty that she was subjected to she was constrained to leave the matrimonial home, the same has been discounted by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 on account of various inconsistencies and her not instituting criminal proceedings as against the Petitioner. While I am not in agreement with the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 as to his findings on this issue as the Respondent No. 2 has not filed an appeal against these findings, I will refrain from elaborating on my reasons and consider that these facts have been determined conclusively. However, as regarding the issue is as to whether the Respondent No. 2 “refused” to or “failed” to live with the Petitioner, **no evidence** as to this fact was adduced by the Petitioner and which it was incumbent on him to prove to be able to absolve him of having to pay maintenance. As the Petitioner was under an obligation to prove this fact and which he has failed to do, I hold that the findings of the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 as upheld by VIIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 that the Petitioner and the Respondent No. 2 on the basis of the evidence led was obliged to maintain the Petitioner.

21. Having held that the Petitioner on the basis of the evidence led by him, continues to be liable to pay Respondent No. 2 maintenance; regarding the quantum of maintenance, it is to be noted that as per the Petitioner’s own evidence he earns a sum of Rs. 23,215 per month. The maintenance that has been awarded to the Respondent No. 2 is a sum of Rs. 4,000 per month representing 17.23% of his total monthly income and with an annual increase of 10%, which he is of the opinion is excessive. I am clear that the jurisdiction that vests in this court under Article 199 of

the Constitution of the Islamic Republic of Pakistan, 1973 emanating from the jurisdiction of the Family Courts under the Family Courts Act, 1964 is not to be exercised, as stated by the Supreme Court of Pakistan in **Arif Fareed vs. Bibi Sara**,⁹ to be a “substitute of an appeal or a revision”, this Court cannot therefore in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, revise the quantum of payments to be made by the Petitioner for the maintenance of the Respondent No. 2 and therefore substitute such findings made by the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 and by the VII Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 with the findings of this Court without it being shown that such an amount was calculated contrary to the evidence available on the record. This, to my mind, would amount to exercising powers in revision or in an appeal and is therefore outside the scope of the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 and which cannot be exercised by me.

22. To conclude the decisions of the XVII Civil Judge & Judicial Magistrate Karachi (South) in Family Suit No. 1295 of 2022 as upheld by the VIIth Additional District Judge Karachi (Model Civil Appellate Court) Karachi South in Family Appeal No. 15 of 2023 being judgments that were within the jurisdiction of each of the courts and devoid of any material irregularity renders this Petition as being not maintainable in the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, and which was dismissed by me on 22 May 2023 and these are the reasons for the dismissal.

Nasir P.S.

JUDGE

⁹ 2023 SCMR 413

