

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
**C.P No. S-596 of 2022**

Dated: Order with signature of Judge(s)

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1. For Orders on MA No, 3931 of 2023
2. For Orders on Office Objection
3. For Orders on MA No. 5663 of 2022
4. For Orders on MA No. 3934 of 2022
5. For Orders On MA No. 2935 of 2022
4. For hearing of Main Case

Date of Hearing : 24 May 2023, 25 May 2023, and 26 May 2023.

Petitioner : Muhammad Owais through Ms. Nazish

Respondent No.1 : Abeera Owais through Ms. Kiran Channar and Ms. Ganj Bibi

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
**C.P No. S-289 of 2023**

Dated: Order with signature of Judge(s)

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1. For Orders on MA No, 3931 of 2023
2. For Orders on Office Objection
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Date of Hearing : 24 May 2023, 25 May 2023, and 26 May 2023.

Petitioner : Abeera Owais through Ms. Kiran Channar and Ms. Ganj Bibi

Respondent No.1 : Muhammad Owais through Ms. Nazish

Respondent No. 2 : Nemo

**ORDER**

**MOHAMMAD ABDUR RAHMAN, J.** These two cross Petitions have each been maintained by Ms. Abeera Owais and Mr. Muhamamd Owais under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

- (i) In Constitution Petition No. 596 of 2022 Mr. Muhamamd Owais impugns a Judgement dated 19 May 2022 passed by the XIIth Additional District Judge Karachi (South) passed in Family Appeal No 60 of 2022 whereby:
- (a) an Application was maintained by Mr. Muhammad Owais, under Section 25 of the Guardian and Wards Act, 1890 bearing G& W Application No. 1300 of 2020, before the XIX Civil and Family Judge Karachi (South) seeking the Guardianship and custody of the Minor A and which was, subject to certain visitation, communication and parental rights, dismissed; and
  - (b) a Family Suit No. 1628 of 2020 filed by Ms. Abeera Owais before the XIX Civil and Family Judge Karachi (South) for Maintenance, for the recovery of her personal belongings and for expenses incurred was decreed.
- (ii) Ms. Abeera Owais maintains Constitution Petition No. 289 of 2023 impugning the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in which she was restrained from removing the Minor from the jurisdiction of this Court.
2. It is common ground that Ms. Abeera Owais and Mr. Muhammad Owais were married on 26 September 2014 and from which wedlock the Minor A was born on 13 March 2015. Despite all the pending litigation the Ms. Abeera Owais and Mr. Muhammad Owais are not divorced but remain separated from each other.

3. Mr. Muhammad Owais had maintained an Application under Section 25 of the Guardian and Wards Act, 1890 bearing G& W Application No. 1300 of 2020 before the XIX Civil and Family Judge Karachi (South) seeking the custody of Minor A. The Application was heard and decided by the XIX Civil and Family Judge Karachi (South) who by a Judgement dated 19 March 2022 directed that the Guardianship and custody of Minor A should remain with Ms. Abeera Owais subject to:

- (i) Mr. Muhammad Owais retaining the right to meet and communicate with the Minor A at designated times and also to exercise certain parental rights over the Minor A;
- (ii) Ms. Abeera Owais was restrained from removing the Minor A from the jurisdiction of this Court.

**A. Constitution Petition No. 289 of 2023**

4. Ms. Abeera Owais maintains Constitution Petition No. 289 of 2023 impugning the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) challenging the portion of the Judgement and Decree dated 19 March 2022 restraining her from removing the Minor A from the jurisdiction of this Court. It seems that Ms. Abeera Owais and Mr. Muhammad Owais had applied to immigrate to Canada and had received Permanent Resident Cards in Canada for themselves and the Minor A and wished to migrate to Canada. On 18 May 2023 the following interim order was passed by the Court:

“ ... *Heard Learned Counsel for the Petitioner in CP No. 289/2023. Meanwhile operation of Para 23 of impugned judgement is hereby suspended. Petitioner Abeera Owais and her daughter Baby [A] will be competent to proceed abroad to avail scheme of PR in Canada while admittedly father is also possession PR and hence there will be no harm*

*in the welfare of the minor, if mother and minor are availing scheme of PR in Canada.*

5. Ms. Nazish who appeared on behalf of Ms. Abeera Owais contended that it was in the best interests of the Minor A to be able to live in Canada keeping in mind all the opportunities that are available to her including but not limited to health care, education and future career opportunities. She submitted that Mr. Muhammad Owais himself held a Permanent Resident Card and could travel to Canada to meet Minor A during the period when Ms. Abeera Owais and Minor A sought her immigration. Ms. Kiran Channar who appears on behalf of Mr. Muhammad Owais opposed this request stating that it was in the interests of Minor A that she has regular contact with her father and the Minor A being removed from the jurisdiction would have a terrible psychological impact on her. They both did not rely on any case law in support of their contentions.

6. I have considered the arguments of both the counsel for Ms. Abeera Owais and Mr. Muhammad Owais. It is apparent that Ms. Abeera Owais has impugned the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) without filing an appeal under Section 14 of the Family Courts Act, 1964 and has maintained this Petition directly before this Court. Section 14 of the Family Courts Act, 1964 states that:

“ ... (1) *Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable*

*(a) to the High Court, where the Family Court is presided over by a District Judge, an Additional District Judge or a person notified by Government to be of the rank and status of a District Judge or an Additional District Judge; and*

*(b) to the District Court, in any other case.*

*(2) No appeal shall lie from a decree passed by Family Court:*

(a) for dissolution of marriage, except in the case of dissolution for reasons specified in clause (a) of item (viii) of section 2 of the Dissolution of Muslim Marriages Act, 1939;

(b) for dower not exceeding rupees one thousand;

(c) for maintenance of rupees twenty-five or less per month.”

In the decision reported as **Sana Jamali vs. Mujeeb Qamar**<sup>1</sup> the Supreme Court of Pakistan has opined that:

“ ... 13. The 1964 Act is a special law which provides various legal remedies and the intention of the legislature for creating such remedies is that disputes falling within the ambit of such forum be taken only before it for resolution and bypass or circumvention of the forums is not permissible under the command of Article 199(1) of the Constitution which confers jurisdiction on the High Court only when there is no adequate remedy available under any law. Where an adequate forum is fully functional, the High Court must not interfere and must relegate the parties to seek remedy before the special forum created under the special law. In the case of Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others v. Messrs Punjab Beverage Company (PVT.) Ltd. (2007 PTD 1347 = 2008 SCMR 308), the tendency of by-passing the remedy provided under law, and resort to Constitutional jurisdiction of the High Court was deprecated by this Court, while in the case of Messrs Amin Textile Mills (Pot.) Ltd. v. Commissioner of Income-Tax and 2 others (2000 SCMR 201), also this Court referred to the case of Al-Ahram Builders (Pot.) Ltd. v. Income Tax Appellate Tribunal (1993 SCMR 29) and discouraged the tendency to bypass the remedy provided under the relevant statute to press into service the Constitutional jurisdiction of the High Court.

14. The extraordinary jurisdiction under Article 199 of the Constitution is delineated in essence for affording an express remedy where the wrongfulness and impropriety of the action of an executive or other governmental authority could be demonstrated without any elongated inquiry. The expression "adequate remedy" represents an efficacious, reachable, accessible, advantageous and expeditious remedy. The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right. The writ jurisdiction of the High Court cannot be expended as the solitary resolution or treatment for undoing the wrongdoings, anguishes and sufferings of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies prevents a litigant from chasing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted, with the sole underlying principle that the litigant should not be persuaded to sidestep or disdain the provisions integrated in the relevant statute leading towards the remedies with a precise procedure to challenge the impugned action. In the case of Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813), this Court held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It was further held that the superior

<sup>1</sup> 2023 SCMR 316

Courts should not involve themselves into investigations of disputed questions of fact which necessitate taking of evidence. It was further held that if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent and if such a remedy is prescribed the law contemplates that resort must be had to that remedy.

(Emphasis is added)

7. As per the decision of the Supreme Court of Pakistan, it is not open for a litigant to avail the remedy under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 where a statutory appeal under Section 14 of the Family Courts Act, 1964 was not availed. Ms. Abeera Owais has impugned the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) directly before this Court in its jurisdiction without maintaining an appeal under Section 14 of the Family Courts Act, 1964 within the statutory time frame prescribed as against that Judgement and Decree. That being the case to my mind the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020 as against her had attained finality and she could not invoke the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 to challenge the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020. Constitution Petition No. 289 of 2023 is therefore not maintainable and is dismissed and the interim order dated 18 May 2023 is recalled.

**B. Constitution Petition No. 596 of 2023**

8. Mr. Muhamamd Owais has maintained Constitution Petition No. 596 of 2023 before this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking:

- (i) a reduction in maintenance payments to be made to Minor A from a sum of Rs. 67,000 with a 10% enhancement as

ordered by the XIX Civil and Family Judge Karachi (South) to a sum of Rs. 15,000 per month with an annual increment at 5% per annum;

- (ii) a suspension of the orders directing maintenance payments to be made to Ms. Abeera Owais,
- (iii) a modification in the visitation rights so that the Minor A can be with him from 9:00 am on Saturday Morning to 9:00 pm on Sunday Night which implicitly allows the Minor A to spend the night at his residence

9. From the record it seems that in the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020 directions were given to Mr. Muhamamd Owais to:

- (i) pay a sum of Rs. 331,418 (Rupees Three Hundred and Thirty One Thousand Four Hundred and Eighteen) as past maintenance payments;
- (ii) pay Ms. Abeera Owais a sum of Rs. 25,000 per month with an annual 10% enhancement subject to performance of conjugal rights;
- (iii) pay a sum of Rs 67,000 per month for the future maintenance of the Minor A with an annual 10% enhancement from the date of the decree till legal entitlement;
- (iv) pay past school fees amounting to Rs. 561,290;
- (v) all future medical expenses

The same directions were upheld by the Judgement dated 19 May 2022 passed by the XIIth Additional District Judge Karachi (South) passed in Family Appeal No 60 of 2022 without any modification.

10. Ms. Kiran Channar made little or no arguments on behalf of Mr. Muhammad Owais in respect of the issue regarding the issue of either past or future maintenance payments to be made for Minor A or for that matter in respect of the payments to be made to Ms. Abeera Owais and her arguments focused primarily on the issue as to whether Ms. Abeera Owais should be permitted to take Minor A out of the jurisdiction of this Court. There being no argument raised by Ms. Kiran Channar regarding these issues there was correspondingly no reply from Ms. Nazish on behalf of Ms. Abeera Owais in this regard.

11. Despite the lack of arguments, I have considered both the Judgement dated 19 May 2022 passed by the XIIth Additional District Judge Karachi (South) passed in Family Appeal No 60 of 2022 and the Consolidated Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020 and Family Suit No. 1628 of 2020. It has come on evidence that the Muhammad Owais earns a sum of Rs. 180,000 as a brand manager for a multinational pharmaceutical company. It has also come on record that the school fees of the Minor A alone is Rs. 21,000 per month and that there were additional expenses which were documented and which were not challenged by Muhammad Owais. The amount to be expended on the minor therefore had been proved by Ms. Abeera Owais and was correctly applied in both the Judgement dated 19 May 2022 passed by the XIIth Additional District Judge Karachi (South) passed in Family Appeal No 60 of 2022 and the Consolidated Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W



Application No. 1300 of 2020 and Family Suit No. 1628 of 2020 and their doesn't seem to be any jurisdictional ground for interference with these orders and which is also dismissed.

12. For the foregoing reasons:

- (i) the Judgement dated 19 May 2022 passed by the XIIth Additional District Judge Karachi (South) passed in Family Appeal No 60 of 2022 and the Consolidated Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020 and Family Suit No. 1628 of 2020 not suffering from any infirmity of illegality render Constitution Petition No. 596 of 2023 as not being maintainable and is dismissed with no order as to costs;
- (ii) Constitution Petition No. 289 of 2023 challenging the Judgment and Decree dated 19 March 2022 passed by the XIX Civil and Family Judge Karachi (South) in G& W Application No. 1300 of 2020 without having availed the remedy of an Appeal under Section 14 of the Family Courts Act, 1964 is not maintainable and is dismissed and the interim order dated 18 May 2023 is recalled, with not order as to costs.

JUDGE

Karachi dated 25 August 2023.