

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

H.C.A. No.216 of 2024

Farhat Rashid
Versus
Saba Farhat Rashid

Date	Order with signature of Judge
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1. For orders on CMA 1272/24
2. For orders on office objection a/w reply as at "A"
3. For orders on CMA 1273/24
4. For hearing of main case.
5. For orders on CMA 1274/24

Dated: 30.05.2024

Mr. Rafiq Ahmed Kalwar for appellant.

M/s. Haider Waheed, Hussain Idrees and Mehak Asghar for respondent on statutory notice under Rule XLIII Rule 3 CPC.

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In respect of some past/future maintenance, seemingly, a direct Constitution Petition No.S-637 of 2024 was filed before this Court on appellate side where, on the assumption of jurisdiction, despite office objections, an order was passed on 24.05.2024 directing appellant to deposit Rs.600,000/-, US \$.3,100/- and US \$.1000/- per month for respondent and children respectively. Aggrieved of it appellant, being respondent in the petition, has filed this appeal under section 3 of Law Reforms Ordinance, 1972. The petitioner in the petition prayed in the following terms:-

- I. Direct the Respondent to pay for the past maintenance of the petitioner till date totaling PKR 31,800,000/- as well as future maintenance at the rate of PKR 600,000/- per month with a 25% enhancement per annum.
- II. Direct the Respondent to pay US \$ 140,000/- to Alina Rashid for the amount of debt incurred by her as well as future maintenance at the rate of US \$ 3,100/- per month

as well as PKR 5,000,000/- for her upcoming wedding expenses.

- III. Direct the Respondent to pay US \$ 160,000/- to Ali Rashid for the amount of debt incurred by him as well as US \$ 140,000/- for future tuition fee and health insurance till graduation plus future maintenance at the rate of US \$ 1000/- per month for living expenses.
- IV. Any other relief

We have heard Mr. Rafiq Ahmed Kalwar, learned counsel appearing for appellant, at some length.

We refrain from commenting about the jurisdiction assumed by learned Single Judge on account of maintainability of this appeal, hence will deal only with reference to our jurisdiction.

The reliance under section 3 of Ordinance 1972 read with Article 199 clause (1) of the Constitution of Islamic Republic of Pakistan, 1973 of appellant is misconceived as in the first instance the order, as conceded by Mr. Kalwar, does not arise out of frame of clause (1) of Article 199. This would not only exclude the appellant from preferring an appeal but clause (3) of Article 199 is also directly applied in the sense that it was only an ad-interim order.

This question of maintainability also came up for consideration before this Court in an unreported judgment in the case of M/s National Oil Refinery Ltd. v. Syed Mansoor Ali in High Court Appeal No.D-372 of 2023 which was for the reason disclosed therein was dismissed as no such appeal could be filed within the frame of Section 3 of Law Reforms Ordinance, read with Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as the causes arising out of clause (1) of Article 199 are primarily dealt with by learned Division Bench of this Court as against rest of other jurisdictions. This is highlighted and explained in the above referred judgment.

The question here is not different; if according to wisdom of Mr. Kalwar it was wrong assumption of jurisdiction, he may well address it under the principle of Kompetenz-Kompetence and the learned Single Judge at best shall decide the issue of maintainability first before proceeding further in any manner.

The reasoning assigned in deciding the appeal vide unreported judgment, referred above, may also be read along with this order being passed in this appeal, which is hereby disposed of with the understanding of the learned counsel including Mr. Haider that learned Single Judge shall hear the counsels preferably on the maintainability issue first and shall then, if so require, proceed further as far as merit is concerned.

Appeal stands disposed of in the above terms along with listed applications.

Judge

Judge