

**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P No.D-15 of 2025

[Allah Rakhio versus Mst. Fozia and another]

Date	Order with signature of the Judge(s)
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Fresh Case

1. For orders on application for urgent hearing
2. For Order on Office Objections
3. For Orders application for exemption
4. For orders on application for stay
5. For Hearing on main case

24.01.2025

M/s Karim Bux Rind and Ms.Farida Naz, Advocates for the Petitioner

Through this writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has approached this Court seeking to set aside the impugned judgment and decree dated 28.11.2024, passed by the District Judge/MCAC, Tando Allahyar, in Family Appeal No. 23/2024 (re: Allah Rakhio vs. Mst. Fozia and another). The aforementioned judgment dismissed the petitioner's appeal, thereby upholding the judgment and decree dated 11.9.2024, passed by the Civil/Family Judge-I, Chamber, in Family Suit No. 25/2024, which decreed the suit filed by Respondent No. 1 regarding maintenance.

2. The succinct facts leading to the filing of the instant petition are that Respondent No. 1 married the petitioner in 2020 with a stipulated dower amount of Rs.5000/-, which remains unpaid. The Nikahnama was duly executed. Respondent No. 1's parents provided her with a dowry, including household items and jewellery, which was transferred to the petitioner's residence and is still in his possession. Post-Rukhsati, Respondent No.1 resided with the petitioner, bearing a son Muhammad Hassan, now approximately three years old. Over time, the petitioner subjected her to mental abuse, prohibited visits to her parental home, treated her subordinate, and neglected to provide basic necessities for her and the minor. Two years ago, the petitioner ousted Respondent No. 1 and their son, forcing them to reside at her parents' house, where they are currently maintained in the absence of maintenance from the petitioner.

The expenses for the minor, approximately Rs.15,000/- per month, are currently borne by her parents. The petitioner, a government teacher with a substantial salary, has neglected his maintenance duties. Despite attempts by Respondent No. 1 to resolve the matter through relatives and community elders, all efforts failed, prompting her to file the suit.

3. The trial Court rendered a decree granting maintenance to Respondent No. 1 solely for the Iddat period at Rs.10,000/- per month and awarding past and future maintenance for the minor at Rs.15,000/- per month from April 2024 to 11.9.2024, with future maintenance at the same rate, inclusive of a 10% annual increment, until legal entitlement. However, the petitioner filed a Family Appeal against the judgment and decree, which was ultimately unsuccessful, leading to the present petition.

4. At the very outset, the learned counsel for the petitioner submits that both lower courts committed gross negligence by hastily passing the impugned judgments and decrees without exercising a judicious mind. The counsel argues that these courts failed to appreciate the valuable rights of the petitioner. As explicitly stated in his written statement, the petitioner is a victim of chronic illness requiring continuous medical care. Furthermore, the petitioner has obtained a bank loan for his treatment and is not receiving his full pay/salary. He is also responsible for maintaining his three sisters and other family members with his limited income. In light of the petitioner's financial position and responsibilities, it is respectfully submitted that the maintenance amount for the minor may be reduced from Rs.15,000/- per month to Rs.5,000/- per month.

5. I have heard the arguments of learned counsel for the petitioner and perused the record.

6. Upon thorough examination of the record, it is evident that Respondent No. 1 and her minor son initiated a suit before the Family Court seeking the recovery of maintenance allowance. This suit was decreed in their favour on 11.9.2024 and subsequently upheld by the appellate Court. The records incontrovertibly establish that the minor, aged approximately three years, is indeed the petitioner's son. Consequently, the petitioner, as the biological father, bears the unequivocal and non-delegable responsibility of providing for his child's maintenance. The child's basic needs, including food, shelter, clothing,

and healthcare, must be met, in addition to other associated expenses that arise in the rearing and upbringing of a child to ensure that he is nurtured in a manner consistent with societal norms and standards. Respondent No. 1, being a homemaker, is not in a position to shoulder these financial obligations independently or adequately cater to the child's needs without external support. It has been firmly established that the petitioner is employed as a government teacher, drawing a substantial salary that positions him well to meet the maintenance obligations decreed by the lower courts. The learned counsel for the petitioner has failed to bring forth any substantive evidence of irregularity, misreading, or non-reading of evidence within the impugned judgments and decrees rendered by the lower courts, thereby further solidifying the validity and enforceability of the maintenance allowance awarded to the minor. Despite the petitioner's contention regarding his financial burden and obligations towards his medical care, the repayment of a bank loan for treatment, and the maintenance of additional family members, he must fulfil his legal and moral duty to provide for his child's well-being.

7. The Petitioner has now filed the present petition before this Court, challenging the factual determinations of the lower courts concerning the quantum of the maintenance allowance. It is imperative to underscore that, under Article 199 of the Constitution, this Court holds the jurisdiction to intervene only in instances where there is an apparent miscarriage of justice. However, in the present case, no such miscarriage has been established. Should this Court choose to substitute or adjudicate on the factual determinations made by the lower courts, it would effectively be tantamount to entertaining an appeal against the appellate Court's judgment, which falls beyond the purview of this Court's jurisdiction in this context as held by the Supreme Court of Pakistan in a case of M. Hamad Hassan¹.

8. For the foregoing reasons, this petition lacks merit both in law and on the facts. Therefore, it is hereby **dismissed** in limine, along with all listed/pending miscellaneous applications.

JUDGE

Sajjad Ali Jessar

¹ M. Hamad Hassan v. Isma Bukhari (2023 SCMR 1434)