

IN THE HIGH COURT OF SINDH, KARACHI**C.P.No.S-1489 of 2024**

Petitioner : Ms. Aisha Qazi D/o Qazi Muhammad
Ismail through Mr. Saadat Yar Khan,
Advocate.

Respondent : Irshad Ali Shah S/o Syed Sultan Ali Shah
through Mr. Zakir Laghari, Advocate

Respondent : The State
through Mr. Muhammad Javed, A.A.G.

Date of hearing : 18.02.2025

Date of order : 04.03.2025

ORDER

AMJAD ALI SAHITO, J:- The Petitioner has impugned the Order dated 23.12.2024 passed by learned XXIIIrd Civil Judge and Family Judge, East Karachi whereby Application under Section 17-A of the West Pakistan Family Courts Act read with 151 CPC filed by the Petitioner was declined by the learned trial Court being devoid of merits. Hence, the Petitioner has prayed to set-aside the above-dated order and also requested that the directions may be given to the Respondent to deposit the examination fee for the minor children worth Rs.245,000/- and medical treatment expenses up to Rs.4,00,000/ in respect to the minor Syed Subhan Ali Shah.

2. Brief facts of the case are that Petitioner Aisha Qazi was married with Respondent Irshad Ali Shah in the year 2006 and due to such wedlock, two children namely Syed Subhan Ali Shah and Syed Sultan Ali Shah were born; however, the marriage was terminated by way of Divorce Deed in the year 2016. Thereafter, the Petitioner filed a Family Suit before the trial Court, which was decreed in favour of the Petitioner; but subsequently, the Petitioner moved an application under Section 17A of the West Pakistan Family Court Act for seeking medical expenses for minor Syed Subhan Ali Shah so also examination fee expenses, which was declined by the learned Family Judge. Hence, the instant petition.

3. Learned counsel for the petitioner submits that Petitioner is a single parent, who is taking care of both the children; that prior filing of this petition, the Petitioner filed a Family Suit bearing No.1723/2018 for Dissolution of Recovery of Dower Amount, Maintenance & Guardianship, which was decreed by directing the Respondent to pay maintenance allowance to Syed Subhan Ali Shah amounting to Rs.12,000/- per month and Syed Sultan Ali Shah amounting to Rs.10,000/- per month with annual increase of 10%; that thereafter the Petitioner filed an Application under Section 17A of the West Pakistan Family Courts Act read with 151 CPC for medical expenses on the ground that minor Subhan Ali Shah has developed serious dental issue which required immediate treatment and Doctor has given an estimated amount of Rs.400,000/- for treatment so also examination fee; that learned Family Judge did not give any detailed or cogent reason for declining the said application; that the amount being paid by the Respondent is not sufficient to meet the expenses of the minors especially in such a high inflation; that the said amount

of medical treatment will not be paid in one go; that Respondent, being real father, is a guardian of both the children; that though the mother is also teaching in a prestigious school but she cannot afford such expenses. He lastly prays for suspension of the impugned order.

4. On the other hand, learned counsel for the respondent submits that the Respondent is paying the maintenance amount regularly to the minors, as such, he is not in a position to pay extra amount for taking care of the minors as the same is beyond the capacity of the respondent; that the Respondent is a heart-patient and currently he is under treatment in a Civil Hospital, which is a Government Hospital; that the Respondent is already facing financial issues; that the Respondent is also living with his first wife having three children. Respondent is also present in Court; when he was confronted about how many children he has from his other wife and whether they are studying, he replied that he has three children, two of them are studying in Canada on state expenses and the third child has completed her education.

5. Heard the argument and perused the material available on record.

6. The case of the Petitioner is that she was married with Respondent Irshad Ali Shah in the year 2006 and due to such wedlock, two children namely Syed Subhan Ali Shah and Syed Sultan Ali Shah were born; however, they were separated by way of Divorce in the year 2016. Thereafter, the petitioner filed a Family Suit bearing No.1723/2018 for Dissolution of Recovery of Dower Amount, Maintenance & Guardianship, which was decreed by directing the Respondent to pay maintenance allowance to Syed Subhan Ali Shah amounting to Rs.12,000/- per month and Syed Subhan Ali Shah amounting to

Rs.10,000/- per month. The petitioner/respondent's son namely Subhan Shah who is a student of grade eleven BVA School was also served the exam schedule for O level part II for the year 2025 the exam fee per paper was Rs.30,600/ and the total papers were seven in numbers the total cost was R.245000/- and the last date for depositing the exam fee was 1st January 2025.

7. Further, due to screaming in the teeth of minor Syed Subhan Ali Shah, the mother/petitioner rushed him to the hospital for treatment where the Dentist advised him alignment of teeth and other treatments, for which the doctor informed her an estimated cost of Rs.400,000/- will be incurred. The petitioner appraises such facts to the respondent/father of minor Subhan Shah. But he flatly refused to pay the exam fee as well as medical expenses.

8. In Pakistan, issues related to child maintenance are dealt with by the Muslim Family Laws Ordinance, 1961, and the West Pakistan Family Courts Act, 1964. However, these laws do not provide a specific definition for "maintenance". For better understanding, it is suitable to rely on the dictionary meaning of the term. The word "maintenance" is derived from the Arabic word "Nafaq" which means "to spend" and in the literal sense, the word "nafqah" means what a person spends on his family. The word "maintenance" has been defined in Black's Law Dictionary as under:

"Financial support given by one person to another."

9. In the instant case father had refused to pay the educational fee so also medical expenses to his children by saying that he is paying the monthly amount to his children as per judgment dated 31.10.2019. From the face of the judgment passed by the family court it was ordered that Syed Subhan Ali

Shah is entitled to the maintenance allowance of Rs.12,000/ whereas Plaintiff No.3/Syed Sultan Shah is entitled to Rs. 10,000/ per month with the 10% increase per annum. I am shocked to say that in the presence of both the children aged about 13/14 years father refused to maintain his children by saying that he had no source of income to maintain them.

10. In Islam, the maintenance and upbringing of children are considered vital responsibilities that reflect the religion's emphasis on family values, compassion, and justice. Islamic teachings provide clear guidelines regarding the rights and responsibilities of parents toward their children, as well as the obligations of society to ensure the welfare of children. Below is an overview of key principles related to the maintenance and care of children in Islam. In Islam, both parents have a duty to care for their children, but specific responsibilities are outlined based on gender roles and financial capacity. The father is primarily responsible for the financial maintenance (nafaqah) of his children. This includes providing food, clothing, shelter, education, and other basic needs. The Prophet Muhammad (peace be upon him) said: ***"It is sufficient sin for a man if he neglects those whom he has to support."*** (Sunan Abu Dawood). If the parents are divorced or separated, the father remains financially responsible for the children until they reach adulthood or become self-sufficient.

11. While the mother is not obligated to provide financial support, she plays a critical role in nurturing, caring for, and raising the children. Her primary responsibility lies in emotional, moral, and physical care during early childhood. Breastfeeding is highly encouraged in Islam, and mothers are entitled to compensation for breastfeeding if they are divorced and living separately from the child. Children hold a special place in Islamic teachings, and their rights are protected under

Shariah law. Some of these rights include. Infanticide was prohibited by Islam at a time when it was practiced in pre-Islamic Arabia. Allah says in the Quran: "**And do not kill your children out of fear of poverty; We will provide for them and for you. Indeed, killing them is a great sin.**" (Quran 17:31)

12. Parents must treat all their children equally without favouritism. The Prophet Muhammad (peace be upon him) emphasized fairness when giving gifts to children, stating: "**Fear Allah and treat your children justly.**" (Sahih al-Bukhari). Children should be treated with kindness, patience, and affection. Harshness and abuse are strongly condemned in Islam. The Prophet (peace be upon him) said: "**He who does not show mercy to our young ones and respect to our elders is not one of us.**" (Sunan Tirmidhi)

13. In cases of divorce, Islamic law provides detailed instructions to safeguard the interests of the children. Custody typically goes to the mother during the early years of a child's life because she is better suited to nurture and care for young children. However, this can vary depending on circumstances such as the mother's ability to provide proper care. Even if the mother has custody, the father remains financially responsible for the child's expenses, including housing, food, clothing, and education. Non-custodial parents (usually the father) retain visitation rights and are encouraged to maintain a close relationship with their children.

14. While Islam emphasizes kindness and compassion, it also allows for reasonable discipline to instill good behaviour and moral values. However, any form of abuse or harm is strictly forbidden. Parents are encouraged to lead by example, demonstrating honesty, humility, and piety so that children

grow up emulating these qualities. Islam places immense importance on the maintenance, care, and upbringing of children. It outlines clear responsibilities for parents, guardians, and the wider community to ensure that children grow up in a safe, loving, and nurturing environment. By adhering to these principles, Muslims fulfil their religious duties while contributing to the development of a just and compassionate society.

15. A father's duty to maintain his children is a legal and moral responsibility. This duty generally includes providing for the basic needs of children such as financial support to ensure food, clothing, shelter, education, and healthcare. A father should provide emotional stability and guidance, offering love, care, and moral support to foster healthy emotional development in children. Further ensuring that children have access to an education is part of a father's duty. As it impacts their future opportunities and well-being. A father's duty to provide medical treatment for his children is an important part of his responsibility for their well-being. It is also his responsibility to contribute financially toward their children's medical costs, especially in situations where healthcare expenses are high and the mother is/was not in a position to pay the same. Overall, a father's duty to maintain his children is about ensuring their well-being in every aspect of life, both during childhood and into adulthood.

16. Undeniably, the Almighty Allah is the only sustainer, but, He has created means through which this task is accomplished. Bearing the expenses of children is the second most important task of the father. In the present case, although the Respondent is living with his first wife and three children he has failed to persuade this Court as to how he is bearing their

expenses. On the Court's query, he categorically stated that the education expenses of two children, who are presently in Canada, are being borne by the State of Canada and the third child has already completed her education; as such, his financial position cannot be considered as weak. So far as the plea taken by learned counsel for the Respondent that the Respondent is also taking medical treatment from a Government hospital, the same is not justifiable. Since the financial resources of the Petitioner are limited; hence, the Respondent, being the real father of the minors is fully responsible for meeting the expenses of his children, especially those related to their health and education.

17. In view of the above discussion, the instant petition is **allowed**. The Respondent is directed to deposit the amount of examination fee for all seven papers (**Per paper fee is Rs.30,600/-**) with the concerned school/British Counsel in respect of minor Syed Subhan Ali Shah within seven days and submit such compliance report before the trial court so also medical treatment expenses upto Rs.4,00,000 as per schedule provided by the Dentists/Doctor.

JUDGE