

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. S-41 of 2025

Date	order with signature of Judge
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Fresh case.
1.For orders on CMA No. 424/2025
2.For bearing of main case.

14th April, 2025

Mr. Zubair Ahmed, Advocate for Petitioner.

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Brief facts of the case are as follows:

1. Family suit No. 236/2023 was filed by Respondent No.1 against the Petitioner with the following prayers: -
1. It be ordered through Judgment & Decree pass the maintenance of the Plaintiff No.1 & her daughter Plaintiff No.2 in the sum of Rs.100,000/= (One Hundred Thousand Rupees) each, per month since the day when the Plaintiffs were compelled to leave Defendant house in November 2020 as since then the welfare of the Plaintiff and her daughter is being borne by the plaintiff's parents.
 2. It may also be further pass Judgment & Decree that the welfare of the plaintiff and her daughter lies with, and sole responsibility of the Defendant, such as for both the seasonal clothing, medicine of the minors and routine checkups, and special amount for maintenance in the sum of Rs.100,000/- (One Hundred Thousand Rupees) per year for each Plaintiff may also be ordered.
 3. It may also be pass Judgment & Decree and dissolve the marriage/Nikah by way of Khula and order the defendant for maintenance (Naan, Nafqa & Sukna) of the plaintiff during the Iddat in the sum of Rs.150,000/- per month till completion of the Iddat.
 4. It may also be pass Judgment & Decree to pay the Dower amount Rs.50,000/- (fifty thousand Rupees) and return the amount of Rs.50,000/- (Fifty thousand Rupees) which the defendant taken from the plaintiff's brother (M. Adil) for his marriage expenses.
 5. It may also pass the Judgment and Decree that Plaintiff No.2 will live/remain in the custody of the Plaintiff No.1 after the dissolution of marriage too, as she is living since her birth with the plaintiff No.1.
 6. It may also pass the judgment & Decree that the Defendant will return all Dowry Articles in the safe and sound condition, as the plaintiff left behind in the defendant house, to the plaintiff immediately.
 7. It may also pass the judgment and Decree that, after the marriage dissolution, the defendant will continue to bear the maintenance expenses of the plaintiff No.2 not less than Rs.100,000/- (One Hundred Thousand Rupees) and pay regularly without any gap and

delay with 20% annual increment as the inflation rate is very high and the plaintiff No.2 is in growing stage and later on her educational, medical, and any other unseen/un-forecasted ordinary or extra-ordinary expenses will also be borne by the defendant.

8. Any other relief be deemed fit and proper be granted in favour of the plaintiffs.

2. After recording the evidence of both parties, judgment and decree was passed by the Family Court, Karachi West and Respondents claim of iddat maintenance and further dowry articles was dismissed. The Respondent was directed to restore Rs.50,000/= as dower to the Petitioner. Further maintenance of minor was increased to Rs.20,000/- per month effective from 01st June, 2024 with an increase of 5% per annum till the legal entitlement. The Petitioner was further directed to pay any arrears of orders passed under Section 17-A.

3. Thereafter the Petitioner being aggrieved with the above judgment and decree filed Family Appeal No. 247/2024 and the same was dismissed vide Impugned judgment dated 26.11.2024, maintaining the order of the Family Court below. The Petitioner has therefore Impugned concurrent findings of the courts below.

4. Learned counsel for the Petitioner has invited my attention towards the cross examination of Respondent No.1 and has stated that various admissions were made on her behalf which do not entitle her for the grant of maintenance. He has further stated that the amount of Rs.20,000/- is excessive as the Petitioner only earns approximately Rs.150,000/= (Rupees One lac fifty thousand only). He has further stated that being elder member of the family also bears the expenses of his mother and siblings. Therefore, he is unable to comply with orders of the Courts below to maintain his own child.

5. I have perused both the orders below I do not find any infirmity in them. The amount ordered to be paid as maintenance cannot be classified as excessive or exorbitant considering the inflationary trends and the income of the Petitioner, as stated by him.

6. The limited scope of Constitutional Petitions, more specifically in matters related to family law, was expounded in the case of **M. Hamad Hassan v. Mst. Isma Bukhari and 2 others**¹ in the following words: -

“6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.”

7. I do not see any illegality and infirmity which requires any interference in the orders passed by the Courts below. Accordingly, the above petition is dismissed, with no order as to costs.

JUDGE

¹ 2023 SCMR 1434