

*Order Sheet***IN THE HIGH COURT OF SINDH, KARACHI****C.P. No.S-713 of 2025****[Irfan Billa vs.Mst. Sadaf Irfan & Others]****FRESH CASE**

1. For Orders on CMA No. 5634 / 2025 (If granted)
 2. For Orders on Office Objection No. 1 & 2 & Reply of Counsel thereof as "Flag - A"
 3. For Orders on CMA No. 5635 / 2025 (Exemption)
 4. For Orders on CMA No. 5636 / 2025 (Stay)
 5. For Hearing of Main Case.
- [Statement filed by Counsel for Petitioner as Flag – B]

Date of Hg:
27.08.2025

Mr. Iftikhar Ali Larik, Advocate for the petitioner.

ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition has challenged the order dated **15.07.2025**, passed by XVI Family Judge, Karachi [South] on the application under Section 17-A of the Family Courts (Amendment) Ordinance, 2002, filed in Suit No.375/2025, by the respondent No.1, against the petitioner for Recovery of Maintenance and Dowry Articles & Gold Ornaments. The petitioner has prayed for setting aside the impugned order and suspension of its operation and he may be allowed to pay the maintenance of the minors amounting to Rs.5000/- per month each according to his source of income.

2. Learned counsel for the petitioner has argued that the impugned order is capricious, arbitrarily and contrary to law and fact both and the same is totally based on surmises and conjectures. He has argued that the learned trial court has not considered the merits of the case and the respondent has made false statements. He has argued that the impugned order is bad in law and against the principles of natural justice and the learned trial court did not apply its judicial mind while passing the said order. He has argued that the respondent left the house of the petitioner and, therefore, the petitioner pronounced the divorce to respondent No.1 on 03.11.2023 and at that time the minors/respondents were residing with the petitioner and thereafter custody of the minors / respondents

was handed over to the petitioner in compliance of the order, passed by the XI ADJ Karachi South in HCP No.174/2025, filed by the respondent No.1. He has further argued that respondent No.1 has taken back her dowry articles including the gold ornaments from the house of the petitioner in presence of the witnesses. Learned counsel has further contended that before the trial court counsel for the petitioner/defendant had filed a Statement dated 17.05.2025, stating therein that since civil transfer application No.29/2025 is still pending before the High Court no adverse order may be passed till the final decision of the said civil transfer application. And another Statement dated 27.05.2025, filed on behalf of the petitioner before the learned trial court requesting time in order to file further documents by way of statement. The learned trial court did not consider the above statements, available on the record, and passed the impugned order in hasty manner. Learned counsel has argued that the petitioner earns only Rs.50,000/- and working with his father and he has also solemnized the second marriage with whom the petitioner has other three children. He has further argued that the trial court has granted a huge amount of interim maintenance and the petitioner is unable to pay such a huge amount of maintenance. He has relied upon the cases reported as PLD 2005 SC 395. Lastly, he has contended that the impugned order has been passed in hasty manner, which is liable to be set aside being illegal and unlawful.

3. Heard learned counsel for the petitioner and perused the record. At the very outset, learned counsel was asked about maintainability of the present constitutional petition, however, he has not been able to satisfy the Court.

4. Concisely, the respondent No.1/plaintiff- Mst. Sadaf Irfan and 5 others has filed suit for Recovery of Maintenance, Dowry Articles & Gold Ornaments together with Application under Section 17-A of the Family Court [Amendment] Ordinance, 2002, praying therein for interim maintenance of the plaintiffs No.2 to 6 [all the daughters of the plaintiff] at the rate of Rs.1,00,000/- per month, to be paid by the petitioner/defendant to each daughter with 15% enhancement per annum till the disposal of the aforesaid suit. The said application was supported by an affidavit of the respondent / plaintiff-Mst. Sadaf Irfan, wherein she has taken the grounds that the petitioner/defendant did not pay a single

rupee as maintenance of his daughters who are studying in school, colleges and universities and they are unmarried and she cannot bear all the expenditures of food, education and medicines of her daughters. Whereas the petitioner/defendant is residing in his own bungalow and he is doing business of estate / construction with the name and style of M/s. Billa Enterprises; he earns more than Rs.1,00,00,000/- to 1,50,00,000/- per month; despite of that he is not paying even a single penny to her as her maintenance or her daughters' maintenance. She also stated that the petitioner/defendant is under legal obligation to pay the maintenance of his wife and children. **On the contrary**, the petitioner has filed his counter affidavit to the aforementioned application wherein he has denied the contents of the application and its supporting affidavit being false, fabricated, concocted, misconceived and vexatious. It is stated in the counter affidavit that the respondent/plaintiff No.1, being disobedient wife, is not entitled for any maintenance.

5. From perusal of the record, it appears that the impugned order dated **15.07.2025**, passed by the learned trial court on the interlocutory application under Section 17-A of the Family Court [Amendment] Ordinance, 2002, speaks [relevant paras] as follows:

4. Heard counsel for the plaintiff and perused the record.

5. The instant application was fixed on hearing stage for several times. Defendant counsel was given several opportunities either to argue on the matter or get injunctive order from Hon'ble High Court in transfer application but he has failed to do so. The court is bound to fix the monthly interim maintenance allowance of the wife or a child on the first date of appearance of the defendant. Rel. 2019 CLC 1261.

6. Plaintiff No.1 has claimed interim maintenance of the plaintiffs No.2 to 06. Plaintiff No.1 has claimed that defendant is builder and earning handsome amount of Rs. 1,000,000/- to Rs. 1,500,000/-. Defendant has simply denied the para in which business and income of defendant is mentioned, but neither he disclosed his job/business nor disclosed his monthly income. I am of the humble view that the defendant being father of plaintiffs No.2-6 is legally bound to maintain his daughters as per Shariah & law of the land. It is fact that the defendant is bound to maintain the minors but it does not mean that he will be compelled to pay the amount as per direction of the plaintiffs that too beyond his sources. The defendant cannot be compelled to go beyond his financial sources.

7. For the foregoing facts and circumstances and looking into living standards of parties, I am of the humble view that plaintiffs No.2 to 6 are entitled for interim maintenance @ Rs.30,000/- (Rupees Thirty Thousand Only) each per month along with school expenses separately. [Interim maintenance starts from the month of July 2025 till further order/final disposal of instant suit). The defendant is directed to deposit

the same on or before 14th day of each calendar month. This order is based on tentative assessment hence shall not affect merits of the suit.

6. Before going further, it would be appropriate to reproduce Section 17-A of the Family Courts (Amendment) Ordinance, 2002, which reads as follows :

17A. Interim order for maintenance.- At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, where under the payment shall be made by the fourteenth day of each month, failing which the Court may strike off the defence of the defendant and decree the suit.

7. At the very outset, it is observed that the impugned order dated 15.07.2025, passed by the learned XVI Family Judge, Karachi (South) on an interlocutory application under Section 17-A of the Family Courts [Amendment] Ordinance, 2002, is in the nature of an interim order regarding fixation of interim maintenance; reliance in this regard may be placed upon the case reported as *Abbas Ahmad vs. Mst. Ayesha Aziz* [2009 CLC 980]. It is also observed that at any stage of the proceedings of suit for recovery of maintenance allowance the parties can make request to the court for interim maintenance allowance, which will be considered by the Family Court and then the father shall have a responsibility to deposit maintenance allowance from the date of passing of order; reliance can be placed upon the case reported as *Zafar Hussain v. Begum Farzana Nazli* [PLD 2004 Lahore 349]. The said order neither finally determines the lis between the parties nor concludes their substantive rights. It is a settled principles of law that interlocutory orders, unless patently without jurisdiction or suffering from gross illegality, are not amenable to constitutional jurisdiction. It has also been held that the High Court, while exercising powers under Article 199 of the Constitution, does not act as a court of appeal or substitute its own assessment for that of the court of competent jurisdiction in matters of interim maintenance.

8. Furthermore, Section 17-A *ibid* places an express obligation upon the Family Court to fix interim maintenance at the first date of appearance of the defendant. The record reflects that the petitioner/defendant was afforded repeated opportunities to contest the application and to disclose his income or place material before the trial court; however, he failed to do so. Mere bald denial of income without disclosing any cogent particulars cannot absolve the father of his

statutory and Shariah-based responsibility to maintain his minor children. Thus, the learned Family Court rightly exercised jurisdiction vested in it and assessed the interim maintenance based on tentative appraisal of the pleadings, living standards of the parties and needs of the minors/children.

9. The grievance of the petitioner that the amount so fixed is “huge” or “beyond his means” is a disputed question of fact, which necessarily requires evidence and cannot be adjudicated in constitutional jurisdiction. The impugned order itself records that the defendant cannot be compelled to pay beyond his actual sources, and that the quantum fixed is tentative and subject to modification upon production of evidence. Hence, no illegality, perversity or violation of natural justice is apparent on the face of the record. Learned counsel for the petitioner has also not been able to bring on record any concrete material or evidence, whereby such order could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given.

10. For the foregoing reasons, the instant constitutional petition is found to be not maintainable as well as devoid of merit. The impugned order dated **15.07.2025** does not suffer from any legal infirmity or jurisdictional defect warranting interference by this Court. Resultantly, this petition is dismissed in limine, along with all pending applications.

JUDGE