

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-185 of 2025

(Junaid-ul-Haq v XIIIth ADJ Karachi East & others)

Date

Order with signature of Judge

Date of hearing and order:- 09.02.2026

Ms. Sabahat Kiran advocate for the petitioner.

Ms. Razia Danish advocate for respondent No.3

Mr. Abdul Jalil Zubedi, AAG

Mr. Faheem Hussain Panhwar DPG

ORDER

Adnan-ul-Karim Memon, J.- Petitioner Junaid ul Haq has filed this Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, seeking the following reliefs:

- “a) To declare that the effect of the previous orders of the learned trial judge and the compromise decree is merged into this Court’s order dated 13.08.2024;
- b) Declare that the learned judges have failed to implement this Court’s order dated 13.08.2024, which was passed with the consent of the parties;
- c) Consequently, declare that the impugned order 1 dated 21.02.2025 and impugned order 2 dated 06.02.2025 are unlawful, illegal, and therefore liable to be set aside.
- d) To set aside the impugned order 1 dated 21.02.2025 and impugned order 2 dated 06.02.2025.
- e) To direct the learned trial judge to implement the High Court’s order dated 13.08.2024 in its letter and spirit by way of determining maintenance afresh for the visitation rights of the petitioners.
- f) to suspend the operation of the impugned order dated 06.02.2025 till the pendency of the instant petition.

2. Being aggrieved by the order dated 06.02.2025 passed by the learned IIIrd Civil & Family Judge, Karachi East, directing deposit of past maintenance with issuance of non-bailable warrants in case of default, the petitioner filed Family Appeal No. 28 of 2025, which was dismissed by the learned XIIth Additional District Judge, Karachi East vide order dated 21.02.2025 on the ground of non-maintainability.

3. Learned counsel for the petitioner vehemently argued that the marriage between the parties stood dissolved through a compromise decree dated 11.08.2012, pursuant to which execution proceedings were initiated, during which the petitioner had already undergone imprisonment for non-compliance. The order dated 05.12.2022, passed in the execution proceedings, was challenged before this Court. It was contended that this Court, vide consent order dated 13.08.2024, passed in the Constitutional Petitions, had specifically

directed the learned Trial Court to determine afresh only the current maintenance, while making the petitioner's visitation rights subject to payment of such current maintenance. According to learned counsel, the said order superseded the earlier orders and the compromise decree to the extent of maintenance. It was submitted that, in disregard of the explicit directions of this Court, the learned Trial Court failed to reassess current maintenance and instead directed payment of past maintenance, which was illegal, arbitrary, and violative of judicial discipline. It was further contended that the doctrine of merger was applicable, and that the learned Appellate Court erred in dismissing the appeal on technical grounds by treating the impugned order as interlocutory. Learned counsel finally prayed that this petition be allowed.

4. Learned counsel for the private respondent opposed the petition, contending that the compromise decree dated 11.08.2012 had attained finality, having been upheld up to this Court in earlier proceedings. It was argued that the Petitioner is a habitual litigant who has repeatedly challenged the same decree under different pretexts to avoid payment of maintenance. The respondent counsel asserted that the order dated 13.08.2024 did not absolve the Petitioner from payment of past maintenance and merely allowed visitation rights subject to payment of current maintenance. The direction to deposit arrears of maintenance was part of execution proceedings and constituted an interim order, against which no appeal lies under Section 14(3) of the West Pakistan Family Courts Act, 1964. However, he preferred, and the same was rightly dismissed. She prayed to dismiss this petition on the same analogy.

5. Learned AAG submitted that the amount fixed by the trial court is exorbitant and needs to be reduced.

6. I have heard the learned counsel for the parties and perused the record with their assistance.

7. The learned Appellate Court held that the compromise decree required the Petitioner to pay both past and future maintenance and that a substantial amount of arrears remained unpaid. Upon perusal before this Court of the order dated 13.08.2024, it was observed that the said order did not exempt the Petitioner from payment of past maintenance; rather, it only regulated visitation rights subject to payment of current maintenance. This Court further noted that the learned trial Court had already determined the current maintenance in compliance with this Court's order and allowed visitation rights accordingly. Therefore, no further determination

was required. Relying upon Section 14(3) of the West Pakistan Family Courts Act, 1964, and the judgments of the superior courts, the learned appellate Court held that an appeal does not lie against an interlocutory order directing payment of maintenance during execution proceedings, as such an order does not finally determine the rights of the parties. On the above reasoning, the learned appellate Court dismissed the appeal as not maintainable, holding that the impugned order was interlocutory in nature and barred by law.

8. It is an admitted position that the marriage between the parties was dissolved through a compromise decree dated 11.08.2012, which attained finality and remained executable. The liability to pay past and future maintenance flowed directly from the said decree. The subsequent order dated 13.08.2024, passed by this Court, though with the consent of the parties, did not set aside or nullify the compromise decree, nor did it absolve the petitioner from payment of accrued arrears of maintenance. Rather, the said order merely regulated the petitioner's visitation rights by making them conditional upon payment of current maintenance. The plea of supersession and application of the doctrine of merger, therefore, is misconceived and without legal basis.

9. The doctrine of merger applies only where a superior court finally adjudicates upon and substitutes the operative portion of the earlier order. In the present case, the order dated 13.08.2024 neither adjudicated upon nor extinguished the petitioner's liability regarding past maintenance. It is a settled principle of law that merger does not occur unless the earlier order is expressly or impliedly set aside. Furthermore, the impugned order dated 06.02.2025 was passed during execution proceedings and merely directed the deposit of maintenance arrears, with coercive process in case of default. It is also settled that orders passed during execution proceedings for the enforcement of maintenance are not appealable. The learned appellate Court, therefore, rightly dismissed the Family Appeal as not maintainable, and no exception can be taken to such a finding. This Court is also mindful of the settled principle that constitutional jurisdiction cannot be invoked to circumvent statutory bars or to convert non-appealable interlocutory orders into appealable ones.

10. As regards the submission made by the learned AAG concerning the quantum of maintenance, the same relates to factual determination and does not raise any jurisdictional error or violation of fundamental rights to attract

constitutional interference. The proper remedy, if any, lies before the competent Family Court in accordance with law.

11. In view of the foregoing discussion, this Court holds that the impugned orders dated 06.02.2025 and 21.02.2025 are lawful, legal, and in consonance with settled principles of law. No case for interference is made out. Consequently, this Constitutional Petition is dismissed along with all pending applications.

JUDGE

Shafi