

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P No.S-496 of 2025

[Sikander Khan vs. Mst. Sana]

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Petitioner by : Mr. Muhammad Arif advocate
Respondent by : Mr. Zulqarnain Talpur advocate
Date of Hearing & Decision : 02.02.2026
Date of Reasons : 13.02.2026

JUDGMENT

ARBAB ALI HAKRO, J:- The captioned constitutional petitions, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, arise out of family proceedings between the parties. As both matters rest upon an identical factual and legal substratum, they are being decided through this consolidated judgment.

2. The factual matrix is that the petitioner and respondent entered into marriage on 16.01.2014, and three children were born from the wedlock, namely *Baby Hania, Baby Hurrain and Shahzain*. The marriage, however, could not be sustained. The respondent, on 11.07.2023, instituted Family Suit No. 952 of 2023, before the learned Family Judge-XI, Hyderabad, seeking dissolution of marriage by way of khula, payment of dower amount of Rs.50,000/-, return of dowry articles as per the annexed list, past maintenance for herself till the expiry of iddat and maintenance for the minors from 11.11.2023 till their entitlement.

3. Meanwhile, the petitioner filed Guardian Application No. 370 of 2023, under Sections 7, 10 and 25 of the *Guardian and Wards Act, 1890*, before the same Family Court, seeking a declaration appointing him as guardian of the minors, along with their custody, on the basis of his status as their father.

4. Both matters were proceeded with by the Family Court, and vide judgment and decree dated 04.09.2024, the respondent's suit was decreed. The petitioner was directed to return the dowry articles and to pay maintenance for the minors at the rate of Rs.7,000 per month from January 2023, with a 10% annual increment. On the same date, the petitioner's Guardian Application was dismissed as meritless; however, he was granted visitation rights to meet the minors within the Court premises on alternate Saturdays of each calendar month, subject to payment of Rs.1,500 as conveyance charges for each meeting.

5. Aggrieved, the petitioner challenged both the judgment and decree in Family Appeal No. 135 of 2024 and the dismissal of his Guardian Application in Guardian & Wards Appeal No. 35 of 2024, before the learned Additional District Judge-IX, Hyderabad. Both appeals were dismissed vide judgment dated 19.08.2025, followed by decree dated 21.08.2025 and order dated 19.08.2025. Hence, the present petitions.

6. Arguing the matter about custody of the minors, learned counsel for the petitioner submits that although the petitioner continuously paid interim maintenance, the respondent failed to comply with specific Court orders requiring her to allow the petitioner to meet the minors. He contends that such disobedience was not considered by either of the Courts below. He further submits that the respondent has failed to maintain the minors properly, whereas the petitioner earns a reasonable monthly income and can provide better welfare for them. It is argued that both Courts below failed to appreciate the attachment of the minors to their father and the impugned orders effectively deprive the minors of paternal love and affection.

7. While addressing the dissolution suit and the award of maintenance, learned counsel submits that both Courts below ignored material facts and passed their judgments in a slipshod manner. He argues that the marriage lasted nearly 9/10 years, during which the dowry articles remained in use and most became damaged or worn; hence, returning them to their original form

was unwarranted. He further submits that the petitioner belongs to a middle-class family and earns only Rs.20,000/22,000 per month, making the award of Rs.7,000 per minor per month excessive and unjustified. He prays that the judgments, decrees, and orders passed in both matters be set aside and that custody of the minors be handed over to the petitioner.

8. Conversely, learned counsel for the respondent challenges the maintainability of these petitions, arguing that the legislature has placed a "full stop" in family litigation after the decision of the appellate forum and a constitutional petition cannot be used as a substitute for an appeal. He submits that the petitioner's pleadings are self-contradictory: on the one hand, he claims to earn a handsome income to justify custody, while on the other, he pleads financial hardship to challenge the maintenance awarded to the minors. Counsel argues that such contradictory stances render the petitions not maintainable. He further submits that the judgments and orders passed by both Courts below are well-reasoned and call for no interference in the exercise of writ jurisdiction.

9. Heard learned counsel for the parties and perused the available record with their able assistance. The scope of jurisdiction under Article 199 of the Constitution is supervisory in nature. It does not permit this Court to act as a Court of appeal over the well-reasoned and concurrent findings of the Family Court and the Appellate Court. Interference is warranted only where the impugned orders suffer from a jurisdictional defect, patent illegality, perversity or violation of law.

10. The record reflects that both the Family Court and the Appellate Court undertook a comprehensive appraisal of the pleadings, evidence and circumstances surrounding the dissolution proceedings as well as the custody dispute. The petitioner has not pointed out any material irregularity or jurisdictional defect in the exercise of authority by either forum. His primary grievance concerns the factual conclusions reached by the Courts below, particularly regarding the welfare of the minors, the return of dowry articles, and

the quantum of maintenance. These are matters falling squarely within the domain of the Family Court, which is the trial forum vested with the authority to record evidence, assess credibility and determine factual controversies. This Court, in its writ jurisdiction, cannot substitute its own view for that of the Courts below merely because another conclusion is possible.

11. As regards the custody of the minors, the Family Court dismissed the petitioner's Guardian Application after evaluating the welfare of the children, their tender ages and the surrounding domestic circumstances. The Appellate Court, upon re-examination, affirmed those findings. The petitioner's contention that the respondent allegedly obstructed visitation does not, by itself, constitute a ground to disturb concurrent findings on custody. The Family Court had already provided a structured visitation mechanism within the Court premises, which the petitioner may seek to enforce through appropriate proceedings before the Guardian Court. The writ jurisdiction cannot be invoked to reopen factual disputes or to re-determine the welfare of minors on the basis of assertions that were already considered and rejected by the competent forums.

12. The petitioner's argument that he earns a "handsome amount" for purposes of custody, yet simultaneously claims to belong to a lower-middle-class background for purposes of reducing maintenance, is self-contradictory. Both Courts below rightly observed that such inconsistent stances undermine the petitioner's credibility. The Family Court assessed the parties' financial circumstances and awarded maintenance at the rate of Rs. 7,000 per minor per month, with a 10% annual increment. The Appellate Court found no infirmity in that determination. The quantum of maintenance is a factual matter, depending on the minors' needs and the father's financial capacity. This Court cannot, in writ jurisdiction, reevaluate the evidence or reassess the petitioner's income merely because he disputes the amount. No perversity or misreading of evidence has been demonstrated.

13. The petitioner's challenge to the direction regarding the return of dowry articles is equally untenable. The Family Court, after examining the list and the evidence, concluded that the respondent was entitled to their return. The petitioner's plea that the articles were used for nearly a decade and had become worn out was duly considered and rejected. Whether the articles remained intact or were damaged through use is a factual inquiry, and both Courts below have already adjudicated upon it. This Court cannot reappraise such factual determinations under Article 199.

14. The respondent's objection regarding maintainability also carries weight. The statutory scheme governing family litigation provides a complete hierarchy of remedies culminating in an appeal before the District Court. Once the appellate forum has rendered its decision, the legislative intent is to bring finality to such disputes. A constitutional petition cannot be used as a substitute for a second appeal or revision. The petitioner has not demonstrated any violation of law, lack of jurisdiction or procedural impropriety that would justify invoking the extraordinary jurisdiction of this Court.

15. It is also significant that the petitioner has not pointed out any instance where the Courts below acted in excess of their jurisdiction or failed to exercise jurisdiction vested in them. The judgments reflect due application of mind, proper appreciation of evidence and adherence to settled principles governing custody, maintenance and dowry claims. The mere dissatisfaction of a litigant with the outcome does not furnish a ground for constitutional interference.

16. The supervisory jurisdiction of this Court is intended to correct jurisdictional errors, not to retry family disputes or reevaluate evidence. The concurrent findings of fact recorded by both Courts below are neither arbitrary nor perverse. The material on record supports them and is in consonance with the welfare of the minors, which remains the paramount consideration in custody matters. No illegality, infirmity, or misapplication of law has been demonstrated that would warrant interference.

17. For the reasons recorded above, both petitions stand **dismissed**. Resultantly, the impugned judgments, decrees and orders passed by the Courts below are maintained. No order as to costs.

Above are the reasons for my short order dated 02.02.2026.

JUDGE

AHSAN K. ABRO