

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-1060 of 2018
(*Mst. Mehwish versus Ist ADJ Malir & others*)

Date	Order with signature of Judge(s)
<u>Disposed of Matter</u>	Before: Mr. Justice Adnan-ul-Karim Memon Mr. Justice Yousuf Ali Sayeed

Date of hearing and order: 09.01.2026

Nemo for the petitioner

Mr. Adnan Khatri advocate for the applicant / respondent No.3

ORDER

Adnan-ul-Karim Memon, J. – This Court has allowed the petition and set aside the earlier decisions of the lower Courts. The husband (respondent No.3) was directed to pay maintenance to the petitioner from September 2016 to January 2018, including her *Iddat* period, at the rate of Rs.30,000 per month with a 7% annual increase, and, if he is truly mindful of his religious obligations, to continue supporting her even beyond that period. The judgment emphasizes that the State must fulfill its constitutional duty to protect the rights of women involved in litigation. It notes that a lack of sensitivity or specialized knowledge by judges in cases concerning women’s rights can seriously harm those rights and negatively affect their lives. Therefore, cases relating to women such as pre- and post-divorce maintenance require trained, professionally competent judges and access to expert guidance. The Constitution obliges the State to safeguard the family, marriage, mothers, and children. It also requires annual reporting on the protection of children’s rights and mandates protection of fundamental rights and adherence to international commitments, including those for women’s protection. Copies of this order are to be sent to the relevant legislative bodies for compliance and to the Sindh Judicial Academy so that special training courses for Family Judges may be introduced.

2. Learned counsel for the applicant submits that the petition was disposed of through the impugned order dated 31.07.2025, whereby the concurrent judgments and decrees of the Family Court and First Appellate Court were set aside, and maintenance of Rs.30,000/- per month was awarded to the petitioner (Mst. Mehwish) for the period from September 2016 until the decree of *Khula* in January 2018, including the *Iddat* period. It is argued that both lower courts had already recorded concurrent findings that the petitioner was living separately of her own free will. The trial court observed that although the respondent had provided separate

accommodation to her in his house, she refused to live with him and did not perform her marital obligations. In her cross-examination before the appellate Court, the petitioner admitted that she left the respondent's house on 10.09.2016 to stay with her parents for Eid, that the respondent had provided her a separate room, and that he was willing to take her back, but she was unwilling to live in a joint family system. She further admitted that she had been properly maintained until 10.09.2016. These statements clearly establish that she voluntarily left the marital home and was thus disobedient, disentitling her from maintenance. It is submitted that despite these findings, the petitioner obtained the impugned order by concealing material facts and has now filed execution proceedings. The respondent came to know of this only through the execution application, although both the trial and appellate courts had held that she was not entitled to maintenance as she left the respondent's house of her own accord. The applicant is aggrieved by the impugned order, which suffers from errors apparent on the face of the record. The High Court interfered with concurrent findings of fact without demonstrating perversity or lack of evidence. Both Courts had conclusively found *Nushooz* (disobedience) on the basis of the petitioner's own admissions. Interference under constitutional jurisdiction, which is not a third appellate forum, amounted to exceeding jurisdiction. It is further argued that Islamic jurisprudence was misapplied, as a wife who commits *Nushooz* and refuses to live with her husband without lawful cause is not entitled to maintenance during that period. By awarding maintenance for the same period during which she was disobedient, the court effectively rewarded misconduct. There is also a contradiction with the decree of *Khula* dated 18.01.2018, obtained by the petitioner on her own initiative after foregoing her dower. Having sought dissolution on her own, she cannot simultaneously claim maintenance for the preceding period as if the husband were at fault. Additionally, the respondent's counsel was marked "Nemo" on the date of hearing, and the impugned order was passed without full opportunity of hearing, constituting a violation of natural justice. The legal effect of *Khula* and relinquishment of financial rights was not adequately considered, which amounts to an error apparent on the record. The applicant, therefore, prays that the review petition be allowed, the order dated 31.07.2025 be reviewed and set aside, the concurrent judgments of the Courts below be restored, execution proceedings be stayed, and any other appropriate relief be granted in the interest of justice.

3. We have heard the learned counsel for the applicant on the listed review application and perused the record with his assistance.

4. The applicant has failed to point out any error apparent on the face of the record warranting review of the impugned order. The grounds urged in the application merely seek reappraisal of evidence and reassessment of concurrent findings, which is beyond the limited scope of review jurisdiction. The plea of *Nushooz* has already been examined and addressed in the impugned order, and no new material or legal infirmity has been demonstrated that would justify interference.

5. The contention regarding lack of opportunity of hearing is also misconceived. The record reflects that adequate opportunity was afforded, and mere marking of “Nemo” on one date does not, by itself, vitiate proceedings in the absence of prejudice duly established as the respondent No.3 since 14.9.2024 till 08.3.2025 failed to put appearance though he was served and engaged his counsel, who put his appearance in some dates, which justified the hearing of the case on merits. Further, the decree of *Khula* does not retrospectively extinguish the wife’s entitlement to maintenance already accrued for the relevant period, including the *Iddat*, particularly where the constitutional and statutory mandate of protecting the financial security of divorced women has been duly considered.

6. The impugned judgment is reasoned, based on correct appreciation of law and constitutional obligations relating to protection of women’s rights, and does not suffer from jurisdictional defect or perversity. The review applicant has, in essence, attempted to reopen concluded issues under the guise of review, which is impermissible. It is also imperative to mention here that the applicant / respondent No.3 sought review of order dated 31.7.2025 and filed review application on 12.11.2025, which is time barred.

7. In view of the foregoing discussion, the review application merits no consideration and is accordingly dismissed with pending application(s). The order dated 31.07.2025 is maintained, and all consequential proceedings shall continue in accordance with law.

JUDGE

JUDGE