

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

**C.P. No.S-458 of 2024**

Petitioner : Imran Ali, through Mr. Nadir Hussain Jamali, Advocate.  
Respondent No.1 : Mst. Haleema, through Ghulam Mohiuddin Panhwar, Advocate.  
Respondent No.2 : Learned Vith ADJ, Hyderabad.  
Respondent No.3 : Learned Civil/Family Judge No.VIII, Hyderabad  
Date of Hearing : 03.10.2025.  
Date of Order : 02.12.2025.

**JUDGMENT**

**TASNEEM SULTANA, J:-** This constitutional petition is directed against the judgment dated 09.10.2024 passed in Family Appeal No.21 of 2024 by the Model Civil Appellate Court/6th Additional District Judge, Hyderabad, whereby the appeal preferred by the petitioner was dismissed; the said appeal had arisen from the judgment and decree dated 16.01.2024 passed in Family Suit No.614 of 2023 by the learned 8th Civil and Family Judge, Hyderabad, through which the Family Suit of the respondent was decreed. Being aggrieved by the concurrent findings of both the courts below, the petitioner has approached this Court with the following prayers:

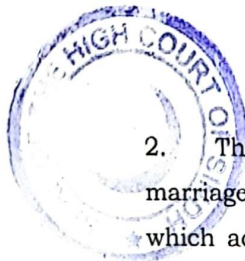
(a) to set aside the judgment and decree dated 16.01.2024;

(b) to suspend the operation of the order passed in Execution Application No.95 of 2024 in Family Suit No.614 of 2023 pending before the learned Family Judge-VIII Hyderabad.

(c) to suspend the judgment dated 09.10.2024 passed in Family Appeal No.21 of 2024; and

(d) to grant any other relief deemed appropriate in the interest of justice.

2. The brief facts of the case are that the parties contracted marriage on 30.12.2014 against prompt dower of Rs.1,000,000/-, which according to the respondent remained unpaid; that rukhsati took place on the same day and dowry articles, including one tola gold and other items worth Rs.70,000/-, were given, most of which, as alleged, remained with the petitioner; that within one month the



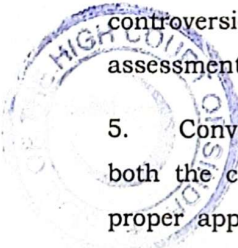
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petitioner began demanding money, maltreated the respondent, and repeatedly pressed her to obtain khulla; that the petitioner pronounced talaq thrice between 2015 and 2016 and paid Rs.100,000/- at the time of final separation; that a daughter, Hafsa, was born from the wedlock; and that the responder has been residing with her parents since separation.

3. The respondent thereafter filed Family Suit No.614 of 2023 seeking unpaid dower amount, maintenance for herself and the minor, return of dowry articles, and delivery-related expenses; the petitioner filed written statement admitting the marriage and paternity but denying the remaining claims. After trial, the suit was decreed on 16.01.2024 and the appellate court maintained the decree; hence, this petition.

4. Learned counsel for the petitioner contended that both the courts below failed to appreciate the evidence in its true perspective; that the petitioner's financial condition was not considered as his monthly salary is Rs.20,000/-, yet the decree directs payment of Rs.15,000/- on account of maintenance of *Iddat period*, Rs.5,000/- per month as past maintenance of the minor from March 2016 till disposal of the suit, Rs.6,500/- per month as future maintenance with 10% annual increment from 2025 onwards, and Rs.900,000/- as remaining dower; that the respondent failed to prove non-payment of dower or entitlement to such maintenance amounts; that the admission of her father regarding settlement of dower through *nek mards* was ignored; that the respondent desired dissolution and subsequently remarried which undermines her stance; that a *brotherly faisla* had amicably resolved all issues yet the respondent filed the suit after more than seven years in a malafide manner; and that the concurrent findings are perverse and warrant interference. However, the petitioner's income and financial capacity are factual controversies requiring evidence, and such disputed factual assessment cannot be undertaken in constitutional jurisdiction.

5. Conversely, learned counsel for the respondent submitted that both the courts below have passed well-reasoned judgments after proper appraisal of evidence; that the respondent proved that the petitioner neither paid the prompt dower nor returned the dowry articles; that maltreatment, monetary demands and the petitioner's conduct leading to dissolution stood established; that the respondent



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has been maintaining the minor without support; that the petitioner admitted the marriage and paternity but failed to discharge his obligations; that the alleged *brotherly faisla* or settlement through *nek mards* was not proved by any admissible evidence; that the plea of limitation is misconceived as claims of dower and maintenance constitute continuing causes of action; and that no illegality or jurisdictional defect exists in the concurrent findings to justify interference.

6. At very outset, a query was made to the learned counsel for the petitioner as to whether any statutory remedy remains available to the petitioner after filing of Family Appeal against the Judgment and Decree of the learned Family Court, and further, whether the extraordinary writ jurisdiction of this Court can be invoked as a substitute for an appeal, notwithstanding the fact that, under the Family Courts Act, 1964, an appeal against the Judgment and Decree of a Family Court attains finality. However, the learned counsel for the petitioner could not furnish a satisfactory response.

7. With respect to the submissions advanced by the learned counsel regarding the impugned Judgment and Decree, I am not persuaded by his contentions. It is appropriate to reiterate the scope of constitutional jurisdiction under Article 199 of the Constitution of Pakistan 1973 in family matters, High Court does not act as a Court of appeal nor reappraises evidence merely because another view may be possible on the same material. Interference is warranted only where the findings suffer from patent illegality, jurisdictional defect, misreading or non-reading of material evidence, reliance on inadmissible evidence, disregard of relevant evidence, or where the conclusions are so arbitrary or perverse that no reasonable judicial mind could sustain them. Concurrent findings recorded by the Family Court and the appellate Court, both forums vested with exclusive jurisdiction, are ordinarily not disturbed unless tainted with such glaring infirmities. Reliance is placed on a case of *M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others* (2023 SCMR246) wherein Hon'ble supreme court of Pakistan has observed that: -

*"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*

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*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."*

8. It is a settled proposition of law, that the right of appeal under the Family Courts Act 1964 ("Act") is a statutory creation and does not provide for two opportunities of appeal. The entire scheme of the law in family matters hints towards an expeditious disposal of cases. If the scope of Article 199 of the constitution is expanded to reevaluating facts, then the same will open floodgates to never ending litigation, it is evident that the Courts below correctly appreciated the material placed before them. The respondent/plaintiff appeared in the witness-box and narrated the circumstances under which she was compelled to leave the matrimonial home in 2015 while carrying out a pregnancy. She stated that minor Hafsa was thereafter born at her parental home and all related expenses were borne by her parents. She further deposed that the prompt dower of Rs.1,000,000/- remained unpaid throughout the marriage and that only Rs.100,000/- was received at the time of divorce. Her testimony was accompanied by the *Nikahnama* and list of dowery articles produced before the trial Court. During cross-examination, she categorically denied relinquishing the remaining dower, stating: "It is incorrect that *Nekmards* decided the issues between us and had forgone the remaining dower." Her testimony, in all material particulars, remained consistent, coherent and unshaken.

9. The respondent's father also entered the witness box and supported her version. He affirmed the ouster of his daughter during pregnancy, the birth of the minor at his residence, and the absence of any contribution by the petitioner towards the child's welfare. While he acknowledged having received Rs.100,000/- after divorce, he

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remained clear that no lawful settlement had extinguished the remaining dower.

10. The petitioner/defendant, when examined on oath, did not dispute the marriage or the birth of minor Hafsa. More importantly, he admitted that "Haq-Mahar was not paid at the time of Nikah." He further conceded during cross-examination, "I have not paid any maintenance to minor since 2015 till today." These admissions strike at the foundation of his defense. The trial Court considered this admission in light of the statutory duty imposed upon a father and the needs of the minor and fixed maintenance accordingly. The appellate Court re-examined the record and concurred. No illegality, misapplication of law or procedural defect has been demonstrated. It is well settled that the quantum of maintenance is ordinarily not interfered with in constitutional jurisdiction unless shown to be capricious or arbitrary, which is not the case. Nothing has been shown to suggest that the concurrent findings suffer from misreading, non-reading or perversity warranting constitutional interference.

11. His entire plea of settlement rested on the photocopy of the alleged *faislo* (Exh.15/A), which he relied upon but failed to prove. He candidly acknowledged that "The person who wrote this document has not been examined." No original document was produced, no elder or mediator gave evidence, and no attestation was proved. Both Courts below evaluated this aspect in strict accordance with the law governing admissibility of secondary evidence. The rejection of the *faislo* was, therefore, not only justified but inevitable. The learned Family Court decreed the suit for unpaid dower, maintenance of Iddat period of the respondent, and past and future maintenance of the minor with the statutory increment,

12. The grounds urged before this Court relating to the alleged *faislo*, the respondent's supposed remarriage, and the filing of the suit after several years carry no weight. A subsequent marriage does not extinguish a woman's enforceable right to unpaid dower amount. Delay does not defeat a minor's statutory right to maintenance. And an unproved private settlement cannot override obligations arising under the law. No portion of the record demonstrates that the Courts below overlooked material evidence or proceeded on any misdirection.

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13. When the evidence is read cumulatively, the findings concurrently recorded by both Courts below emerge as natural, lawful, and consistent with the material produced. They do not suffer from perversity, arbitrariness, or misapplication of law. What the petitioner seeks through this petition is merely a re-evaluation of factual issues, which lies entirely outside the scope of constitutional jurisdiction under Article 199 of the Constitution.

14. As regards the contention of learned counsel, the respondent cannot claim past or maintenance of iddat period beyond the six years as divorce was pronounced in 2016 and she filed Family Suit in the year 2023, the said plea of limitation was also examined and rightly rejected by the both Courts below. In this regard, reliance is placed on a case of Muhammad Aslam Chattha v. Shahnaz Akhtar Zahoor Ahmed and another (C.A. No. 1413 OF 2021) wherein it has observed that:

*"10. It is important to note that the Family Court has determined that the appellant has demonstrated negligence in his responsibility to maintain the respondent. The first appellate court did not overturn this finding, nor has it been contested before us. However, it has been argued that the appellant is willing to pay for past maintenance obligations but insists that he will not cover any amounts due for the period beyond six years. This argument reveals the appellant's desire to abandon the respondent, potentially leaving her with deep emotional scars. By attempting to leverage legal technicalities to evade his obligations, he reveals a troubling disregard for his responsibilities. The arrears of maintenance are, in essence, a debt owed by the husband to his wife (the respondent). The law clearly mandates that he must fulfil his duty to support her, thus he remains liable for the maintenance owed for the past periods. Just because a substantial amount of time has passed specifically, six years does not absolve him of the financial responsibilities he owes to his wife. As the respondent's suit was timely, she is entitled to collect past maintenance for the period delineated in her plaint and substantiated by evidence. The law serves as a protective shield for the vulnerable, ensuring that the husband (the appellant) is held accountable for his every cunning stratagem. Even if he attempts to obscure his responsibilities behind a facade of legal jargon, the consequences for his obstinate actions will inevitably come to light. Therefore, we uphold the judgment delivered by the High Court in all its aspects."*

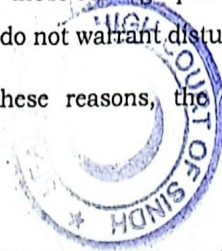
15. Considering the case law cited *supra*, the submission of learned counsel for the appellant that the suit, having been filed after more than seven years, was barred by limitation is misconceived. The

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concurrent findings of both Courts below, when examined cumulatively, disclose a lawful, well-reasoned and evidence-based adjudication. What is sought through this petition is, in essence, a re-appraisal of evidence, which lies beyond the narrow ambit of supervisory jurisdiction under Article 199 of the Constitution. No illegality, material irregularity or jurisdictional defect has been pointed out to justify interference; thus, the concurrent findings particularly those resting upon the admissibility and appreciation of documents do not warrant disturbance in writ jurisdiction.

16. For these reasons, the petition, being devoid of merit, is dismissed.




Sd/-MRS. TASNIM SULTANA  
JUDGE 2.12.2025

CERTIFIED TO BE TRUE COPY

announced in open Court

Sd/-RIAZAT ALI SAHAR  
JUDGE 04.12.2025

  
(MUHAMMAD RIWAN QURESHI)  
Senior Office Associate  
High Court of Sindh,  
Circuit Court, Hyderabad.