

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-717 of 2025

[Alamgir Hussain v. Mst. Saira Anwar & others]

Petitioner: Through Raja Rashid Ali, Advocate.

Date of Hg: & Order: 29.10.2025

ARSHAD HUSSAIN KHAN, J. This constitutional petition is directed against the *Judgment and Decree dated 10.07.2025*, passed by VIth Additional District Judge Karachi [Central] passed in Family Appeal No.140/2024, whereby the petitioner's appeal was dismissed, thereby upholding the *Judgment and Decree dated 06.11.2024* passed by the learned XVI Civil / Family Judge, Karachi [Central] in Family Suit No.290/2024, through which the suit filed by respondent No.1 was decreed. For the sake of convenience, both the said decisions shall hereinafter be collectively referred to as the "*impugned judgments*".

2. Concisely, the facts of present matter are that the plaintiffs/respondents No.1 to 3 filed family Suit No.290/2024 for Recovery of Maintenance and Dower Amount against the defendant/petitioner, which was decreed through the judgment dated 06.11.2024 in the following terms:

- i) *The plaintiff no.1 is held entitled for the recovery of her Iddat period maintenance from the defendant for three months @ Rs.15,000/- per month total amounting Rs.45,000/-.*
- ii) *The minors/plaintiff no.2 and 3 are entitled for the recovery of their past maintenance from the defendant @ Rs.10,000/- per month for each from the month of filing of this suit i.e. January, 2024 till the month of passing of this judgment/decreed i.e. November, 2024 while their future maintenance is fixed @ Rs.15,000/- per month from the month of December, 2024 until the plaintiff no.2 attains the age of majority and plaintiff no.3 gets married which shall increase@ 10% per annum. The amount of interim maintenance already deposited by the defendant (if any) shall be adjusted in the past maintenance amount while the defendant is directed to deposit all the outstanding past maintenance amount as fixed hereinabove in lump sum in favor of the plaintiffs. Further the defendant is directed to deposit the future maintenance of the minors in the Court on or before 14th day of every English calendar month."*

The aforesaid judgment of the Trial Court was assailed before the learned VIth Additional District Judge, Karachi-Central, in *Family Appeal No.140 of 2024*, which was dismissed through judgment dated **10.07.2025**, thereby maintaining the judgment and decree passed by the Trial Court. Both the said judgments and decrees are now impugned through the present constitutional petition.

3. Learned counsel for the petitioner has argued that the impugned judgments and orders of the two Courts below are illegal and a nullity in the eye of law. It is submitted that neither the Trial Court nor the Appellate Court provided the petitioner a fair opportunity to defend his case, which is his vested right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973. It is further contended that the Courts below passed the impugned judgments in a mechanical manner, without proper consideration of the record or the material facts involved. Learned counsel submits that the quantum of maintenance has been determined by the Trial Court without recording the petitioner's version, particularly regarding his alleged monthly income of Rs. 35,400/- and the fact that he is also responsible for the care and expenses of his aged parents. In these circumstances, it is argued, the petitioner is financially incapable of paying the amount fixed, and therefore the impugned judgments are liable to be set aside. It is lastly submitted that both Courts below failed to apply their judicial mind while deciding the matter, resulting in grave miscarriage of justice, and thus interference by this Court in its constitutional jurisdiction is warranted.

4. Heard learned counsel for the petitioner and perused the record.

5. From a perusal of the record, it appears that although the petitioner had duly received copies of the plaint, he initially failed to file his written statement and was consequently debarred from filing the same vide order dated 18.04.2024. Thereafter, upon an application moved by the petitioner and in view of the *no objection* endorsed by the respondents' counsel, the said order was recalled, and the petitioner filed his written statement on 23.05.2024. Issues were then framed on the basis of the pleadings, and the respondent/plaintiff produced her

evidence. Thereafter, despite being afforded sufficient opportunities, the petitioner failed to cross-examine respondent No.1 and was accordingly debarred from cross-examination through order dated 12.09.2024. The matter was thereafter, fixed for the petitioner's evidence; however, he once again failed to produce any evidence in his defence. Furthermore, at the stage of final arguments, the petitioner's counsel remained absent and did not advance arguments. In these circumstances, since the petitioner/defendant failed to lead any defence evidence despite repeated opportunities, the Trial Court rightly proceeded to decide the matter in his absence, on the basis of the un rebutted and unchallenged evidence produced by the respondents, which stood fully supported by the material available on record. The Trial Court vide judgment dated 06.11.2024 decreed the suit filed by the respondent/plaintiff.

6. From a perusal of the aforesaid judgment, it transpires that although respondent No.1 had claimed maintenance at the rate of Rs.25,000/- per month for herself from 01.01.2022 to 10.04.2022 (i.e., for the period of *Iddat*), and maintenance for minors/respondents No.2 and 3 at the rate of Rs.78,000/- each per month, the Trial Court, keeping in view the overall circumstances and the basic necessities of human life, granted maintenance to respondent No.1 for three months at the rate of Rs.15,000/- per month, and to the minors at the rate of Rs.10,000/- each per month for the past, and Rs.15,000/- per month from December 2024 onwards, until respondent No.2 attains the age of majority and respondent No.3 gets married. The quantum so fixed appears to be a reasonable and judicious amount of maintenance.

7. From a perusal of both the impugned judgments, it appears that the Trial Court has given detailed findings on every material aspect of the case, which are based on sound reasoning and supported by the relevant law and the said findings were thereafter rightly upheld by the Appellate Court. Hence, in my view, no question arises that the impugned judgments are erroneous, contrary to law, or passed without proper application of judicial mind. Both the Courts below, after thoroughly examining the evidence produced before them and properly evaluating the facts, reached a concurrent and well-reasoned conclusion.

8. It is also important to observe that dragging a matter from one forum to another, particularly in family disputes, amounts to vexatious litigation, causes unnecessary delay, and burdens the Court system without justification. Such conduct has been strongly deprecated by the Hon'ble Supreme Court of Pakistan¹.

9. It may further be observed that a constitutional petition cannot be treated as a second appeal against the order of the lower Appellate Court. The petitioner, through this petition, seeks nothing more than a reappraisal of facts already concurrently determined by two competent forums, which is impermissible in constitutional jurisdiction. Moreover, learned counsel for the petitioner has been unable to point out any illegality, infirmity, perversity, or jurisdictional error in the impugned judgments/orders warranting interference by this Court in the exercise of its extraordinary jurisdiction under Article 199 of the Constitution.

10. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings 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 finding could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

11. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice². It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided³, and is restricted inter alia to appreciate whether any manifest illegality

¹ Shahzad Amir Farid v. Mst. Sobia Amir Farid [2024 SCMR 1292]

² Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

12. Furthermore, the supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434] while dilating upon the scope of constitutional jurisdiction of the High Court has observed as under:-

“7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the 1 Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259] 2 Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413]. 5 legislature's intent to provide a definitive resolution through existing appeal mechanisms.”
[emphasis supplied]

13. In view of the foregoing discussion, no case for interference is made out. The concurrent findings of the two courts below are upheld, and the instant constitutional petition is **dismissed in limine** along with pending applications

JUDGE

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