

ORDER SHEET
THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Constitution Petition No. S – 155 of 2025

[Allah Rakha @ Irshad v. Province of Sindh and another]

For Petitioner : Mr. Muhammad Qayyum Arain,
Advocate

For Respondents : Syed Israr Ahmed Shah, Assistant
Advocate General Sindh

Date of hearing : 29.10.2026

Date of decision : 29.10.2026

ORDER

Adnan Iqbal Chaudhry J.- None present for respondent No.2. Similar absence prevailed on the last date as well. Therefore, I do not adjourn the matter. The petitioner challenges judgment and decree dated 19.03.2025 passed in Family Appeal No. 34/2024 holding him liable for maintenance of his minor grandson.

The facts are that by the time respondent No.2 gave birth to the minor, the father had passed away. Respondent No.2, therefore, filed Family Suit No. 141/2023 against the petitioner as the minor's grandfather for recovering maintenance for the minor amongst other prayers. The Family Judge, Bhiria City awarded a decree only for the minor to the extent of Rs. 100,000/- as past maintenance, plus Rs. 8,000/- as monthly maintenance with increment of 10% per annum. The petitioner filed an appeal before the District Judge, Naushahro Feroze under section 14 of the Family Courts Act, 1964, who was inclined only to reduce the monthly maintenance from Rs. 8,000/- to Rs. 7,000/- and modified the decree of the Family Judge to that extent, hence this petition.

In view of the Islamic principle discussed in section 370(3) of Muhammadan Law by Mulla, learned counsel for the petitioner acknowledges that where the father of the minor has passed away, the grandfather can be held liable to maintain the minor. However, his submission is that such liability is conditioned on circumstances where "the mother is also poor" and where the grandfather "is in easy circumstances". Learned counsel submits that the courts below did not consider that the petitioner had other dependents to feed with no fixed source of income, whereas the respondent No.2 had earlier executed a P.R.

Bond dated 23.01.2021 before the Additional District Judge, Naushahro Feroze, stating that she would bear expenses of the minor herself.

Heard learned counsel and perused the record.

Before the Family Judge, the petitioner did not bring forth evidence to convince the Family Judge of his incapacity to pay monthly maintenance for the minor. On cross-examination, he had acknowledged that he had a source of income from a bakery. In his examination-in-chief he also stated that he willing to pay monthly maintenance for the minor, however, on his own terms. Therefore, the submission that the petitioner has no financial capacity to bear the minor's monthly maintenance, is not supported by the evidence.

As regards the decree of Rs. 100,000/- for past maintenance of the minor, the examination-in-chief of respondent No.2 indeed records the admission of having executed a P.R. Bond before the Additional District Judge, Naushahro Feroze. Apparently, after his birth, the minor remained with the petitioner for some time. Soon thereafter, when respondent No.2 took custody of the minor from the petitioner via a criminal miscellaneous application under section 491 Cr.PC., she had executed a P.R. Bond dated 23.01.2021 to assure that she would allow the petitioner to meet the minor from time to time. That P.R. Bond also recorded that the petitioner would bear the minor's expenses herself. This piece of evidence was not noticed by the courts below.

Though the aforesaid P.R. Bond executed by the petitioner cannot be taken as a waiver for the minor's maintenance for all times to come, it does appear that respondent No.2 had represented that she had the means to maintain the minor at least for some time. In my view, such evidence was relevant at least in assessing the claim for the minor's past maintenance. As noted above, section 370(3) of Muhammadan Law takes into consideration the mother's financial capacity before holding the grandfather liable for the minor's maintenance.

In view of the foregoing, the courts below had mis-read the evidence in awarding respondent No.2 past maintenance for the minor. Therefore, judgment and decree dated 19.03.2025 passed in Family Appeal No.34/2024 is set-aside to the extent of Rs.100,000/- awarded against the petitioner as past maintenance for the minor. Rest of the judgment and decree remains intact. Petition is partially allowed in said terms.

JUDGE