HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-580 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Waqar Ali s/o Muhammad Azeem through Mr.Abdul Hafeez Solangi, Advocate
Respondent	:	Mst.Fatima d/o Abdul Hafeez. Nemo.
Date of hearing	:	**24.10.2025**
Date of decision	:	**11.11.2025**
Date of reasons	:	**10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Petitioner/appellant-defendant husband, Waqar Ali s/o Muhammad Azeem, is aggrieved by the Judgment and Decree dated 30.08.2025 passed by the IInd Additional District Judge, Badin, in Family Appeal No.21 of 2024 (*re-Waqar Ali v. Mst. Fatima*),[1] dismissing his appeal against the judgment and decree dated 30.09.2024 passed by the Family Judge, Badin, in Family Suit No.251/2023 (re-*Mst. Fatima v. Waqar Ali*),[2] partly decreeing the suit to the extent of directing the petitioner/appellant-defendant to pay:

(i) the past maintenance of his minor son, Nawab Zunair Ahmed, at the rate of Rs.4,000/- p.m. since his birth till the passing of the said judgment, without annual increase, with the interim maintenance paid by the petitioner/appellant-defendant for his minor son to be adjusted in the past maintenance;

(ii) maintenance to the respondent/plaintiff-wife at the rate of Rs.3,000/- p.m. since the birth of the minor with 10% increase p.a. till her legal entitlement;

(iii) future maintenance of his minor, namely his minor son at the rate of Rs.5,000/- p.m. with 10% increase p.a. till his legal entitlement; and

(iv) such future maintenance of respondent/plaintiff-wife and his minor son on or before the 7th of every month.

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[1] Available on pages 21-31 of the petition
[2] Available on pages 49-73 of the petition

Counsel for the petitioner/appellant-defendant husband contends that the Judgment, Decree, and Order are “without lawful authority” and “are of no legal effect”, as the two lower forums have failed to appreciate that the petitioner/appellant-defendant husband was never married to the respondent/plaintiff-wife and that the minor, Master Nawab Zunair Ahmed, is not his son. Hence, he is liable to pay maintenance to neither the respondent/plaintiff nor the minor child. Now, this challenge is brought under the writ jurisdiction of the 1973 Constitution before the Regular Bench of the High Court.

2. Heard Counsel and perused the record available in the petition. At the outset, the petitioner has invoked writ jurisdiction, and the challenge under the Constitution differs from a challenge in appeal. The petitioner/appellant has already had his opportunity to avail himself of the remedy of appeal. He has arrived at the doorstep of the proverbial constitutional court, having exhausted that remedy. The right of appeal is a statutory creation, and the legislature has not provided for a second appeal. Thus, the appellate court’s findings of fact must ordinarily attain finality. The appellate Court's scrutiny of the Family (trial) Court’s judgment in the Family Suit is much broader than this bench's scrutiny of the appellate Court’s judgment, which is limited to whether it “is without lawful authority” or “is of no legal effect”. Thus, the High Court’s scrutiny is much narrower than the appellate Court’s examination of the judgment passed by the Family (trial) Court.

3. In *M. Hammad Hassan v. Mst. Isma Bukhari and 2 Others*, 2023 SCMR 1434, and *Arif Fareed v. Bibi Sara and Others*, 2023 SCMR 413, the Supreme Court has observed that the High Court’s jurisdiction under Article 199 of the 1973 Constitution is confined to correcting jurisdictional errors and procedural illegalities or irregularities, and does not extend to reappraisal of evidence or reconsideration of factual findings recorded by subordinate courts. Entertaining a constitutional petition merely to reassess such findings would amount to exercising jurisdiction akin to a second appeal, which is impermissible.

4. To this end, the judgment of the IInd Additional District Judge, Badin, re-appraising the Family (trial) Court's judgment notes that the petitioner/appellant-defendant husband has not produced any evidence on record to demonstrate that the respondent/plaintiff wife is not his spouse. The respondent/wife produced her mother as a witness to the marriage, supported by a photograph of her sitting in a bridal dress next to the petitioner/husband, etc. Yet, to rebut the same, the petitioner/husband produced evidence only through his friend, as opposed to family members, and the said friend, as per the evidence on record, resided 40 km away from the parties. Further, the petitioner/husband also neither challenged the paternity of his son in accordance with law nor did he do so within the time frame prescribed under the law, and such time to challenge the paternity of his minor son has lapsed. Finally, on merits, the petitioner/husband did not bring on record any documentary evidence to oppose or mitigate the quantum of the pecuniary amount of the maintenance determined by the Family (trial) Court Judge as payable by the petitioner/defendant to the respondent/plaintiff.

5. Thus, the Appellate Court's conclusion is neither perverse nor arbitrary and did not call for any reason to interfere and/or to set aside the impugned judgment of the appellate court.

6. For the foregoing reasons, the impugned judgment/decree dated 30-08-2025 passed in Family Appeal No. 21/2024 does not call for interference. Consequently, I dismissed the aforesaid petition by my Short Order dated 11.11.2025, and the above are the reasons for dismissal.

JUDGE

AHSAN K. ABRO