THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Constitutional Petition No.S- 443 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Syed Rehman Ali s/o Syed Akram Ali through Mr. Mashooque Ali Mahar, Advocate.
Respondent	:	Mst. Syeda Shehla Rehman w/o Syed Rehman Ali. Nemo.
Date of hearing	:	**24.10.2025**
Date of Order	:	**11.11.2025**
Date of Reasons	:	**10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Petitioner/defendant husband, Syed Rehman Ali s/o Syed Akram Ali, is aggrieved by the Order dated 12.08.2025 passed by the VIth Family Judge, Hyderabad, in Family Suit No.68/2025 (*re-Mst.Syeda Shehla Rehman v. Syed Rehman Ali*),[1] dismissing his application to reject the plaint filed by the respondent/plaintiff, wife, Syeda Shehla Rehman, in the above-mentioned family suit. Counsel for the petitioner/defendant argues that, after the respondent/plaintiff's earlier filed family suit was decided and decreed on merits in 2017, she could not re-agitate the same subject matter in 2025. The second suit was/is barred under Section 11 CPC and this (High) Court should set aside the Family (trial) Court's impugned order and reject the plaint filed in the 2025 family suit.

2. Heard Counsel and perused the documents available on record in this petition. The background of this marital dispute between the petitioner/husband and the respondent/wife is described first in the judgment of the Xth Civil Judge, Hyderabad, in Family Suit No.63/2012 for restitution of conjugal rights, filed by the petitioner/defendant against the respondent/plaintiff.[2] It appears that after the parties had got married on 18.11.2000 and had two children, Maheen and Ishmal, certain disagreements began to emerge between them and, in January 2011, the respondent/wife left the family home along with the two children. The record appears to show that

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[1] Available on pages 15-19 of the petition
[2] Available on pages 91- 93 of the petition

the petitioner/husband's Family Suit No.63/2012 for conjugal rights proceeded ex parte against the respondent/wife and was decreed vide Order dated 17.04.2012, directing her to join the petitioner/husband and perform her marital duties according to the injunctions of Islam. The documents further suggest that apparently the respondent/wife rejoined the petitioner/defendant. No further information is available from the petitioner concerning this lis.

3. Thereafter, in 2017, the respondent/wife filed Family Suit No.131/2017 against the petitioner/husband for recovery of maintenance, which, after full trial and arguments, was partially decreed against the petitioner/defendant vide judgment and decree dated 18.05.2017.[3] The respondent/wife was held not entitled to maintenance for herself, but was entitled to past maintenance allowance of minors at the rate of Rs.4,000/- each p.m. since 01.012017 till disposal of the case and future maintenance allowance at the rate of Rs.5,000/- each p.m. from the date of decree till their entitlement with 15% increase p.a. The petitioner/husband was directed to deposit the sum of Rs.10,000/- p.m. with the Nazir by the 10th of each month from May 2017 onwards.

4. Aggrieved by the judgment of the Family (trial) Court, the petitioner/defendant preferred Family Appeal No.66/2017 before the IXth Additional Sessions, Hyderabad. However, during the pendency of the appeal, the parties settled the matter out of Court by way of a statement,[4] which is available on record and reads as follows:

> "Janab -e- aali,
>
> Meh arz krta hoon ke out of court xx xx [illegible]
>
> meh raazi nama kr liya hay li-ha-zaa hum case se dus-br-dar ho-taay hain
>
> Signed by parties"

In view of the above statement of the appellants, the appellate Court dismissed Family Appeal No. 66/2017 as withdrawn, with no order as to costs.[5] Additionally, based on the joint statement filed by both parties (copy of which is/was not available in this petition), the respondent/wife (decree-holder) also withdrew the Family Execution Application No.117/2017, and the said execution application was dismissed as withdrawn by the VIth Family Judge,

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[3] Available on pages 95-123 of the petition
[4] Available on page 71 of the petition
[5] Available on the reverse side of page 71 of the petition

Hyderabad, vide Order dated 13.10.2018.[6] The petitioner also filed a one-sided declaration printed on stamp paper dated 11.10.2018, signed by him, referring to a monthly payment of Rs.10,000/- towards the expenses of their two children.[7]

5. This was not the end of the matter. The petitioner has filed several payment receipts indicating payments made between 2019 and 2024, allegedly towards the children's expenses. However, the plaint in the Family Suit No.08/2025 filed by the respondent/wife, while acknowledging the out-of-court settlement between the parties in 2018, alleges that the petitioner/defendant did not fulfil his payment obligations (paragraphs 12 and 13 of the plaint), and seeks enhancement of the apparently out-of-court settled sum for the children from Rs.10,000/- p.m. to Rs.70,000/- p.m. with 10% yearly enhancement from the date of birth, i.e. 17.11.2006 and 08.09.2007 till the date of filing of the suit, etc. plus educational expenses, and, once, again seeks maintenance of Rs.20,000/- for herself.[8] Additionally, the prayer clause in the plaint also seeks a decree for expenses of medication and delivery of both the daughters at the rate of Rs.200,000/-

6. At the outset, it is apparent from paragraph 15 of the plaint that the respondent/plaintiff in the 2025 family suit has claimed fresh cause of action to have accrued after two to three months of withdrawal of the 2018 execution proceedings, including but not limited to when the tuition and school fees of the children were not paid, etc. Thus, on this score, the cause of action in 2025 allegedly arises out of the breach of the terms of settlement between the parties and does not concern matters of 2017. Further, as the execution proceedings were also dismissed as withdrawn, the out-of-court settlement agreement and its subsequent breach present a fresh matter between the disputants and cannot be said to squarely attract the provisions of Section 11 CPC.

7. Yet, the petitioner/defendant also has a point concerning res judicata, concerning some of the prayer clauses in the 2025 suit, which indeed suggest some claims that are being raised for the first time, which had not been claimed in the 2017 suit. To this extent, the petitioner/defendant's challenge deserves consideration. The consequences of not filing some of the claims which were alive prior to the 2017 suit and agitating them for the first time in 2025, will

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[6] Available on page 73 of the petition
[7] Available on page 75 of the petition
[8] Available on pages 37 - 47 of the petition

require fresh determination and cannot be decided summarily, particularly as they may well turn on their own facts and circumstances, and may yet be triable. As it is the respondent/plaintiff-wife's claim to prove, it would be harsh to deny her the chance to prove her claim and reject the plaint at this preliminary stage. This will favour justice, given the history of the litigation between the parties, by allowing the dispute to be decided on merits and not on technicalities, after final determination based on the evidence recorded and the applicable law. Therefore, the plaint cannot be rejected on this account.

8. Furthermore, it is a trite principle, too, that a plaint cannot be rejected in parts. To this end, while arguably some of the prayer clauses in the 2025 Suit may not be re-agitated, yet some prayers in the plaint are distinct and new. They arise out of the breach of the settlement agreement, and constitute a fresh cause of action that will have to be determined after recording of evidence.

9. Finally, it is now a well-accepted proposition by our Courts that a suit for enhancement of maintenance may also be maintainable based on the facts and circumstances of the case, such as rising costs of living, inflation, exigencies of life, etc..

10. In view of the above discussion, in my view, the 2025 suit was/is not concerning an entirely old matter that has been "heard and finally decided" within the meaning of section 11 CPC. Therefore, the respondent/plaintiff's filing of a fresh suit in 2025 based on an out-of-court settlement is/was not barred by res judicata. That being the case, this petition is/was misconceived and is/was dismissed vide my Short Order dated 11.11.2025. The Family Court should decide the 2025 family suit expeditiously and on the merits.

11. The above are the reasons for dismissal of the petition vide my short order dated 11.11.2025.

JUDGE

Tufail