IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitutional Petition No.S-621 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Abdul Sami S/o Ghulam Farooque through Mr. Shahzad Siddiqui, Advocate
Respondent No.1 through	:	Mst. Iqra D/o Ayaz Hussain Memon Mir Muhammad Nohri, Advocate
Date of hearing	:	**11.11.2025**
Date of decision	:	**11.11.2025**
Date of reasons	:	**10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Abdul Sami s/o Ghulam Farooque, petitioner/father, impleaded as a defendant in Family Suit No.1370 of 2025, filed by the plaintiff, Mst. Iqra d/o Ayaz Hussain Memon, respondent/mother, against him, has impugned the interim maintenance order dated 23.09.2025, passed by the IVth Family Judge, Hyderabad, in the said Family Suit,[1] concerning the payment of interim maintenance of each minor, namely, (1) Minsa, (2) Hunaiza/Shireen Akhtar, and (3) Muhammad Taha, at the rate of Rs.18,000/- per month each payable by the petitioner/father to the respondent/mother on or before the 14th day of each calendar month from the date of the aforesaid order.

2. Counsel for the petitioner/father contended that the impugned order dated 23.09.2025 is "without lawful authority" and "of no legal effect" for the reason that the learned trial Court has directed the petitioner/father to pay the interim maintenance of the three minors, at the rate of Rs.18,000/- per month per minor, starting from the date of order, without taking into consideration:

(i) the petitioner/father is jobless;

(ii) the respondent/mother had already filed a suit for maintenance, namely Family Suit No.70/2021 before the VIIth Family Judge, Hyderabad, and maintenance already stood

[1] Available on page 19 of the petition.

decided at Rs.5,000 per month per minor, total Rs.15,000 p.m., which cannot be modified;

(iii) the petitioner/father, due to joblessness and ill health, is unable to take care of the three minors;

(iv) the respondent/mother owns a flat in her name, recovers rent from the same flat, and the same is currently in litigation in FC Suit 564/2021 before the VIIIth Senior Civil Judge, Hyderabad.

3. The Counsel for the petitioner/father argued that the quantum of the interim maintenance of Rs.18,000/- per month per minor is/was fanciful and arbitrary, particularly when the amount arrived at by the Family Judge had not been scrutinised through evidence, and none of the points raised above was factored into the impugned Order. Therefore, the said Order was liable to be set aside under Article 199(1)(a)(ii) of the Constitution of the Islamic Republic of Pakistan, 1973 ("the 1973 Constitution").

4. Heard counsel. It is well-established now that a challenge to an interim maintenance order passed under Section 17-A of the Family Courts Act, 1964 in writ jurisdiction is maintainable only if it can be demonstrated that such an order defeats the cause of justice and/or perpetuates injustice, is void ab initio, is fanciful, is without jurisdiction or if it has attained the status of a final order. In the present case, the petitioner/father has challenged the interim maintenance fixed by the learned trial Court concerning modification of the enhanced maintenance. The record reflects that, by way of a Compromise Order dated 07.04.2022 passed by the VIIth Family Judge, Hyderabad, in Family Suit No.70/2021,[2] the parties agreed that the petitioner/defendant would pay maintenance of Rs.15,000 in a lump sum towards the three minors. However, the record reflects that after the impugned order dated 07.04.2022, the petitioner/father has not been depositing maintenance payments regularly.

5. This Bench also has sight of an order dated 15.03.2025 passed by the Family Judge IV, Hyderabad in G&W Application No.56/2022,[3] wherein the parties entered into a compromise, and agreed that:

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[2] Available on page 59 of the petition.
[3] Available on pages 73 – 75 of the petition.

> "**[01]** the petitioner/father will hand over the custody of minors to the respondent/mother. . .[and]
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> **[2]** [He will be] bound to pay school fees of minors and bear all expenditures of minors including medical/health issues, etc. and will not claim any expense from the respondent/plaintiff, as respondent/plaintiff is jobless and dependent on her family…."

6. It appears from the perusal of the plaint filed in Family Suit No.1370/2025, that the respondent/mother filed the said Suit in July 2025 as a consequence of the petitioner/father's failure to fulfil his payment obligation towards deposit of maintenance payment under the Compromise Order dated 07.04.2022 passed by the VIIth Family Judge in Family Suit No.70/2021,[4] his subsequent undertaking recorded in the compromise order dated 15.03.2025 passed by the Family Judge IV, Hyderabad in G&W Application No.56/2022 and change in circumstances. Clearly, there has been a considerable increase in the cost of living and inflation between April 2022, when the first compromise order was passed and March 2025, when the second order was passed, wherein the petitioner/father undertook to fully maintain the three minors. As the maintenance for three (3) minors in March 2025 was likely more than the lump-sum maintenance of Rs.15,000 for all three minors, the undertaking recorded in the Order dated 15.03.2025 neither quantifies such an amount nor expresses any numerical figure, leaving this aspect to be decided at a later stage. Yet, undoubtedly, if one were to assign a number to the undertaking given by the petitioner/father to be bound "*to pay school fees of minors and bear all expenditures of minors including medical/health issues, etc*.", such sum would most likely be more than Rs.15,000 per month per child. Given the above, it appears the respondent/mother was compelled to file Family Suit No. 1370/2025 in July 2025.

7. The entire purpose of Section 17-A of the West Pakistan Family Court Act, 1964, is to ensure that while the trial proceedings are in process,

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[4] The record available in the petition reflects that the petitioner/father is presently not up to date in depositing maintenance payments in Family Suit No.70/2021.

the welfare of the minor is not jeopardised. Hence, the Courts have narrowed the grounds of challenge to an Order passed under Section 17-A of the Act of 1964. Clearly, the petitioner/father's pleas concerning affordability of tentatively fixing monthly maintenance per month per minor will require evidence at trial, yet given the circumstances described above and the petitioner/father's undertaking recorded as recently as on 15.03.2025 in G&W Application No.56/2022, his conduct does not inspire confidence. If affordability was in question, he had no reason to bind himself with an undertaking on the Ides of March in 2025. In this context, the Family Court's tentative (interim) assessment of maintenance at Rs.18,000/- per month per minor cannot be assumed to be arbitrary and appears reasonable given the petitioner/father's undertaking as recorded in the order dated 15.03.2025 passed by the Family Judge IV, Hyderabad in G&W Application No.56/2022, and the default in payment of existing maintenance payments in Family Suit No.70/2021. A challenge to an order passed under Section 17-A must be considered only in exceptional circumstances, as it directly affects the child's welfare during the pendency of the Family Suit. In the instant case, no extraordinary circumstances are made out to warrant review, modification, and/or intervention in the interim maintenance amount of Rs.18,000/- per month per minor.

8. For the above reasons, and given the interim nature of the impugned Order, which is/was subject to final adjudication after recording evidence of the parties, I dismissed the writ petition vide my Short Order dated 11.11.2025 with directions to the learned trial Court to record evidence and to decide the lis within the next three months.

9. The observations above are for the purpose of deciding this petition and may not be relied upon by the parties and/or the Courts below.

10. The above are my reasons for dismissing the petition.

J U D G E