

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Shakeel Ahmad

Civil Petition No. 5009 of 2024

*(Against the judgment dated 03.10.2024 passed by the
Lahore High Court, Multan Bench, Multan in W.P No.
6365 of 2022)*

Muhammad Imran Baqir ... Petitioner(s)

Versus

Mst. Zarnain Arzoo & others ... Respondent(s)

For the Petitioner(s) : Mr. Azeem ul Haq Pirzada, ASC
Syed Rifaqat Hussain Shah, AOR

For Respondent(s) : NR

Date of hearing : 10.07.2025

ORDER

Shakeel Ahmad, J.- This Civil Petition for Leave to Appeal filed under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, has arisen out of the judgment dated 03.10.2024 ("***impugned judgment***") passed by the Lahore High Court, Multan Bench, Multan ("***the High Court***"), whereby and whereunder Constitution Petition No. 6365 of 2022 filed by the petitioner was dismissed.

2. Briefly stated, the facts necessary for the adjudication of the present petition are that Mst. Zarnain Arzoo, who was previously married to the petitioner, instituted a suit seeking recovery of dower, maintenance allowance for herself and the minor son/ respondent No.2, as well as for dowry articles. The trial Court, vide judgment and decree dated 20.11.2021, decreed the suit and held respondent No.1 entitled to maintenance allowance at the rate of Rs.15,000/- per month from 15.07.2019 until the completion of her *iddat* period, dower comprising Rs. 5,000/-, a 6-marla house situated in Hayat Nagar, Muzaffargarh, nine (9) tolas of gold or its equivalent market value, along with dowry articles enumerated in Exh.P5. Respondent No.2 was awarded maintenance allowance at the rate of Rs. 25,000/- per month, with an annual increase of 10%, until he attains the age of majority. Aggrieved, the petitioner preferred an appeal before

the Appellate Court, which, vide judgment dated 06.04.2022, modified the decree by reducing the quantum of maintenance allowance awarded to respondent No.1 and revising the assessed value of the dowry articles while affirming the remaining findings of the trial Court. Still dissatisfied, the petitioner approached the High Court by filing a Constitution Petition, which was dismissed through impugned judgment dated 03.10.2024. Hence, the present petition.

3. Heard and record perused.

4. The main contention of the petitioner pertains to the quantum of maintenance allowance awarded to his minor son, namely Ameer Haider Khan. A perusal of the record reveals that, after a full-fledged trial, the trial Court decreed the suit of respondent No.1 vide judgment dated 20.11.2021 in the following terms:

"In view of the findings on above said issues, suit in hand is hereby decreed in favour of the plaintiffs and against the defendants with the observation that plaintiff is entitled to take Rs. 5000/- in lieu of dower, dower property-06-Marla situated at Hayat Nagar Muzafargarh or alternative amount Rs. 30,00,000/- against house and 09 tolas ghair Muajal gold ornaments. However, to the extent of prompt dower-gold ornaments 11 tolas, prayer of plaintiff is dismissed. Similarly, plaintiff is declared to get dowry articles mentioned in list of dowry articles attached to instant suit/ Ex-P5 except gold ornaments and bridegroom gifts-serial No.1 to 10, child's cloths and other articles/ serial No.1 to 8, other gifts given to family of bridegroom by plaintiff's family (if any) or alternative price of Rs. 15,00,000/- in terms of dowry articles from defendants. Plaintiff No.2/ minor/Ameer Haider Khan is entitled to get maintenance allowance from the defendant No.1 at the rate of Rs. 25,000/- per month from the date of institution of the suit till even date and in the same rate in future with 10% annual increase till he becomes adult by majority, however, already paid maintenance allowance in term of interim maintenance allowance of minor would be adjusted in it whereas plaintiff No.1 is held entitled to recover the maintenance allowance at the rate of Rs. 15,000/- per month from 15.07.2019 to her period of iddat only. However, prayer of plaintiff to the extent of bridal gifted ornaments 15-tolas, the suit is hereby dismissed being lack of cogent evidence. No order as to cost"

Not contented with the said judgment of the trial Court, the petitioner went in appeal which was partially allowed, reducing

the maintenance allowance of the respondent No.1 from Rs.15,000/- to Rs. 10,000/- and the alternative price of dower was decreased from Rs.1,500,000/- to Rs.1,000,000/- while maintaining the rest of the judgment and decree of the trial Court.

5. The present case invites particular attention to the quantum and continuity of *nafaqah* (maintenance) for a child following the dissolution of marriage between the parents. Under the Islamic jurisprudence¹, as well as the settled case law² in Pakistan, the father bears a solemn and continuous obligation to provide maintenance for his offspring. This duty, grounded not merely in financial capacity but in the principle of *nasab* (lineage), persists until the son attains the age of puberty, and in the case of a daughter, until her marriage³. Where a son, upon reaching majority, is found to be incapacitated or otherwise unable to earn due to physical or mental limitations, the father remains bound to maintain him.⁴ It must be stressed that the obligation to maintain a child is distinct and independent from the obligation to maintain a wife. The latter ceases upon the termination of the marital bond, whereas the former survives the marriage itself and is directly tied to the immutable bond of paternity. However, it has been observed that in certain cases, fathers, upon the dissolution of marriage or after losing custody, become hesitant to discharge their obligation of maintenance, viewing it as contingent upon matrimonial cohabitation or custodial rights. Such a perception is legally flawed and ethically untenable in light of Islamic principles, as the father's obligation is not lessened by the child being in the *hizanat* (custody) of the mother.

6. The determination of the appropriate quantum of maintenance involves two principal considerations: (i) the nature and extent of the child's reasonable requirements and (ii) the father's financial means. Maintenance traditionally includes food, raiment, and lodging⁵. However, this list is not exhaustive. Given evolving societal standards and the overarching principle

¹ Syed Ameer Ali, *Mohammedan Law*, p. 1366; Hedaya, Vol. 1, p. 408

² Humayun Hassan v. Arsalan Humayun (PLD 2013 SC 557)

³ Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, 3rd ed. (Oxford University Press, 1964), p. 205.

⁴ Mulla, *Principles of Mahomedan Law*, 16th ed., Section 370.

⁵ Mulla, *Principles of Mahomedan Law*, 16th ed., Section 369.

of welfare of the minor, the term must be interpreted broadly to encompass all reasonable expenses necessary for the physical, mental, and emotional development of the child. This includes, *inter alia*, educational costs, healthcare, and other needs consistent with the natural growth and comfort of the minor. The amount awarded should reflect the family's social status, ensuring that the child is not deprived of opportunities for development and well-being solely due to the dissolution of the marriage. The second consideration pertains to the father's financial capacity to maintain the child. Under Islamic principles, the obligation of maintenance is generally subject to certain conditions. Firstly, the child must be in need. If the child possesses independent means sufficient for his/her own support, the duty of the father to provide maintenance does not arise. Secondly, the child must be unable to earn due to minority or incapacity. Thirdly, the father must possess the means to provide such maintenance. While most Islamic schools of thought agree that the father's financial ability is a necessary precondition, the *Hanafi* school maintains a distinct view holding that, in the case of children, the obligation to maintain arises irrespective of actual wealth, provided the father has the capacity to earn. Therefore, the mere fact that the father is not working, in the absence of any serious mental or physical challenges, cannot be admitted as a valid justification for his failure to discharge the obligation of maintenance towards his children. In circumstances where the father lacks the means to provide maintenance and is incapable of earning due to genuine limitations, the duty to maintain the children may devolve upon the mother if she is in a position of financial ease. If neither parent possesses sufficient means, the obligation may extend to the paternal grandfather, subject to his financial ability to provide support to the children.⁶

7. We observe that the Courts below, while recording findings on the financial status of the petitioner, held that the minor is entitled to a maintenance allowance of Rs. 25,000/- per month with a 10 percent annual increase until he attains the age of majority. The petitioner has disputed the amount, asserting

⁶ Mulla, *ibid.*, Section 370.

that he has returned from abroad, is now residing in Islamabad, and earns only Rs. 100,000/- per month. He further submits that he is remarried and is supporting another family. However, no documentary evidence has been brought on record, such as a salary slip or income statement, to substantiate this claim. It is established that the petitioner is a well-qualified individual who possesses the earning capacity to maintain the minor at the amount fixed by the Courts below. In this view of the matter, depriving the minor of the maintenance already awarded would not be in the best interest of justice. We are, therefore, of the opinion that the amount of maintenance determined by the Courts below is neither excessive nor beyond the petitioner's financial capacity.

8. Having regard to the facts and circumstances of the case, no case is made out for us to interfere with the concurrent findings of all three Courts below. Consequently, this petition is dismissed and leave declined. No order as to costs.

Chief Justice

Judge

Islamabad
10.07.2025
Zia/* Rameen LC

APPROVED FOR REPORTING