ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No. 1250/2024
Zulqarnain Ahmed
Versus
Mst: Nazish Shaheen, etc.

Serial No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
1	2	3
	02.10.2025	Mr. Shaukat Hussain Raja, Advocate for petitioner, Mr. Zohaib Mehrban and Muhammad Nadeem Raja, Advocates for respondent.

Arbab Muhammad Tahir, J: Listed petition (WP No. 1250 of 2024) as well as WP No. 1328 of 2024 stem from common judgments and decrees dated 05.09.2023, 01.03.2024 and 11.03.2024, passed by the learned Judge Family Court and the learned Additional District Judge-I, East-Islamabad respectively, therefore, being decided through this single judgment.

2. Precisely, Zulqarnain ('petitioner') and Mst: Nazish Shaheen ('respondent No.1'), first-cousins inter-se, had been in marital bond for about 08 years (2013-2021), blessed with two kids, a daughter Irha Fatima ('respondent No.2'), born in the year 2016-now aged about 09-years, and son Muhammad Arham ('respondent No.3), born in 2019-now aged about 07 years. The bond, though had blood-relation, instead to become stronger by afflux of time, ended in separation that led to filing of suit by the lady and the two minors for the recovery of maintenance allowance, dowry articles and gold ornaments. The petitioner contested the suit by filing written-statement wherein he controverted claim of the respondents. The trial court, then framed necessary issues in the light of pleadings of the parties and recorded evidence, oral as well documentary, wherein the lady herself appeared and also got examined her brother and father as PW-1 to PW-3 respectively whereas petitioner, on the other hand, opted to refute the claim of respondents by only

appearing as his own witness as DW.1. The documentary evidence comprised of Ex.P2 to Ex. P15 and list of dowry articles Ex.D2 tendered from petitioner's side. The trial court, at the conclusion of trial, heard learned counsel for the parties and decreed the suit of respondents vide judgment and decree dated 05.09.2023 in following terms:-

> "29. In view of reasons discussed above in Issues No.1 to 3, suit of the plaintiffs is decreed in their favor. Plaintiff No.1 is entitled for maintenance @ Rs. 20,000/- from June, 2021 till her Iddat period, and the plaintiffs No.2 and 3 is entitled for past maintenance @ Rs. 15,000/- per month each since June, 2021 till interim order dated 21.12.2021, as well as future maintenance of plaintiffs No.2 and 3 @ Rs. 25,000/- per month each from disposal of this suit till the legal entitlement of plaintiffs No. 2 and 3 or they rejoin the defendant with 10% annual increment, each increment will effect from September of each year, first increment will effect from September, 2024. Defendant is directed to deposit the same before the Nazir of this Court. It is clarified that whatever defendant has been paid on the interim maintenance order of this Court shall be adjusted in the past maintenance of the minors. Plaintiff No.1 is also entitled to the remaining dowry articles as per list Ex. P6 except the articles mentioned at Sr. No.1 to 11, 27 to 35, 37 to 43, 63 to 77 and articles mentioned as per list of defendant which has not received or their alternate depreciation price Rs. 50,000/- and gold ornaments of 08 tolas or their alternate current market price from the defendant….."

3. Against the judgment and decree *ibid*, petitioner filed an appeal accompanied by two applications, one for the appointment of local commission and the other for additional documents i.e. copies of revenue record and rent agreement to counter the quantum of maintenance decreed by the trial court. The Appellate Court after hearing both the sides, partly allowed the appeal vide judgment and decree dated 01.03.2024 in following terms:-

> "22. For above reasons, this appeal of Zulqarnain is partially dismissed and partially allowed to the extent of modifying and reducing the quantum of maintenance of respondents as held in Para-14 above. Learned Family Court is directed to modify and amend the decree accordingly under Rule 22(4) of the West Pakistan Family Court Rules, 1965. All pending applications in this appeal, if anyone, have become infructuous and are dismissed accordingly…."

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4. Pursuant to above modification in appeal, the trial court prepared amended decree dated 11.03.2024. By the judgment-in-appeal, application for production of additional documents, referred above, was also allowed. Both the sides being dissatisfied with the judgments and decrees of the trial and the appellate court, filed writ petitions, detailed in para-01 above. The petitioner sought outright rejection of respondents' claim by setting aside both the judgments and decrees and prayed for moderate reduction in quantum of maintenance allowed, fixed and modified by the appellate court for the two minors. Conversely, respondent-lady and the two minors questioned the judgment-in-appeal and prayed for restoration of judgment and decree passed in their favor by the trial court.

5. The main thrust of submissions advanced by learned counsel for the petitioner had been on two points. Firstly, that the findings arrived at by the two learned trial courts insofar as holding the lady entitled to gold ornaments are erroneous and contrary to evidence on record wherein the lady had taken the stance of taking away gold ornaments forcefully which allegation remained unproved. Secondly, the evidence on record explicitly reflects financial incapability of the petitioner to pay maintenance allowance to the two minors even at the rate determined by the appellate court and that the rate so fixed does not commensurate with financial status of the petitioner, therefore, under the law on the subject, the latter cannot be held liable to pay beyond his financial capability. Learned counsel in support of his submissions placed reliance upon case law reported as 2025 SCMR 1003, PLD 2009 SC 760, PLD 2018 Lahore 916, 2019 MLD 820, 2021 CLC 809, 2011 CLC 820, 2015 CLC 349, 2020 CLC 131 and PLD 2022 Lahore 840.

6. On the contrary, learned counsel for respondents repelled the above submissions and further argued that the concurrent findings of the two learned courts regarding gold ornaments are not open to any exception; that the quantum of maintenance allowance determined by the trial court had been in accordance with the evidence available on record besides financial position

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of the petitioner which could not have been modified in appeal and that the course adopted by the appellate court in allowing application for production of additional evidence in appeal is not only alien to the scheme of West Pakistan Family Court Act, 1964 ('Act of 1964') and the Rules framed thereunder, but also offensive to right of fair trial and principles of natural justice as no opportunity was afforded to the lady to rebut the documents, tendered as additional evidence by the petitioner, therefore, judgment in appeal is liable to be set aside. Lastly, learned counsel prayed for restoration of judgment and decree of the trial court. Learned counsel relied upon case laws reported as PLD 2024 SC 581, 2023 SCMR 1438 and 2024 CLC 1580.

7. Heard the learned counsel for the parties and consulted the record with their able assistance.

8. The objections upon quantum of maintenance fixed by the trial and the first appellate court, the latter by *accepting application for additional evidence* are inter-connected, therefore, being decided together.

It is well settled principle that appeal is considered continuation of trial. Likewise, it is also well settled that Family Court, whether as a trial court or an executing court, is governed by the principles of *equity*, *justice* and *fair play*. The main object of the Act of 1964 is the protection and convenience of the weaker and vulnerable segments of the society i.e. women and children, to minimize the technicalities and procedural bottlenecks for the purpose of speedy justice between the parties in shortest possible time and in shortest possible manner. The Act has changed the forum and also altered the method as to how the trial under the Act is to be proceeded and case decided. Reliance is placed upon case of Haji Muhammad Nawaz v. Samina Kanwal and others (2017 SCMR 321) and Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others (2011 SCMR 12361).

10. The aim and object of the Act of 1964 is to make provisions for the establishment of Family Court for the

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expeditious settlement and disposal of dispute relating to marriage and family affairs and for matters connected herewith. In terms of Section 17 (1) of the Act of 1964, the provisions of Qanun-e-Shahadat, 1984 and the Code of Civil procedure 1908, except in Section 10 and 11 of the CPC are not applicable to proceedings before any Family court in respect of the matters stipulated in part (I) of the Schedule to Act of 1964 and in terms of Section 17-B, the Court may also issue a commission to (a) examine any person, (b) make a local investigation and (c) inspect any property or document. The duty of the court while dealing with the issue of maintenance is to adopt an objective approach and broadly look into the social status of the parties, financial capability of the defendant and requirements of the minors.

11. Perusal of record reveals that in appeal filed by the petitioner, quantum of maintenance awarded to the respondents was modified and reduced in terms that the lady was held entitled to recover Rs.7,000/- per month from June 2021 till her Iddat period after divorce on 12.8.2021. For the children, maintenance was modified and reduced to Rs.15,000/- for both minors since June, 2021 and Rs.10,000/- per month per child, total Rs.20,000/- with 10% annual increase with effect from January, 2025 till their legal entitlement.

12. The quantum of maintenance determined by the First Appellate Court is not exclusively based upon the additional documents submitted before the First Appellate Court rather the Court itself in order to reach at just conclusion questioned the lady as reveals through paragraph 13 of the judgment-in-appeal. The lady herself apprised the Court that the minor daughter had been studding in Shafqat Model School ever since the time parties were living together where her fee was Rs.2,000/- per month plus Rs.1,000/- annual examination fund; that minor Arham has also got admission in school and his school expenditure were more or less Rs.2,000/-; that she

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incurs Rs.3,000/- per child for pick and drop service and that as a whole she incurs Rs.12,000/- to Rs.15,000/-per child per month. In such circumstances, when the financial capability of the petitioner to have monthly income of Rs.200,000/-, as claimed by the lady, remained unsubstantiated, the modification cannot be termed to be in conflict with the evidence on record besides financial status of the petitioner and most importantly requirements of the minors.

13. As mentioned above, appeal is considered continuation of trial, the proceedings in matters falling in part-1 of the Schedule to the Act of 1964 are governed by the principle of *equity*, *justice* and fair *play*, therefore, the course adopted by the First Appellate Court cannot be termed to be offensive to the scheme of the Act of 1964, the object of which is to minimize the technicalities and bottlenecks for the purpose of speedy justice between the parties in shortest possible time and shortest possible manner. Not only this but in terms of section 17-B (c) of the Act of 1964 Family Court may also issue a commission to inspect any document for determining the quantum of maintenance keeping in view the needs of the minors and the financial status of the father. The objection upon procedure adopted by the First Appellate Court is accordingly repelled.

14. Lastly, objection of the petitioner regarding holding the lady entitled for gold ornaments by the two courts is to be addressed. It was argued that findings to this effect are erroneous, it being contrary to evidence on record, therefore, may be interfered with by this Court under Article 199 of the Constitution. The learned counsel fortified his stance by placing reliance upon case of *Mst. Humaira Wazir v. Muhammad Faisal and others* (2025 SCMR 1003) to highlight the significance and import of the facts being akin to one, made basis to hold the lady entitled to gold ornaments. The contention of the learned counsel, as a matter of fact, does not cohere with the ground situation for the reason that in the referred case, there were

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concurrent findings of facts arrived at by the appellate and the High Court and the decisions were maintained as the two courts concluded that the allegation of snatching away of gold ornaments remained unproved. The situation in the present case is altogether distinct as there are concurrent findings of fact of the two courts in favour of the lady and not the petitioner, therefore, case law relied upon by the learned counsel do not extend any help to the petitioner due to having distinct facts and circumstances.

15. However, in order to evaporate apprehension of injustice lurking in the mind of the petitioner on the aspect of holding the lady entitled to gold ornaments, evidence has also been gone through whereby it emerges that the stance of the lady on the aspect had been consistent throughout whereas the petitioner had taken divergent stances as on the one hand he maintained that no gold ornaments were given to the lady from his side while on the other hand admitted to have given by himself and by his other family members as well. Not only this but some of the gold ornaments were also returned at the time of collection of dowry articles from the house of the petitioner by his mother. The significant aspect is that the parties are closely related inter se; the mother of the lady is real sister of petitioner's father. The father of the lady and her brother as well entered appearance, testified her claim while on the other hand, the petitioner opted not to get examine any of his family members including the father to rebut the claim of his maternal niece. The excuse of non-appearance of petitioner's father was also taken into consideration and turned down as his father had been attending the court proceedings but despite that did not enter the witness box to authenticate petitioner's stance. The concurrent findings of the two learned courts on the aspect of holding the lady entitled to gold ornaments, on facts as well are not open to any exception.

16. Before parting with the judgment, it is necessary to mention that the right to appeal is a statutory creation, either

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provided or not provided by the legislature. If the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for this Court to offer another opportunity of hearing, especially in family cases where the legislature's intent, not to prolong the dispute is clear. The purpose of the approach is to ensure efficient and expeditious resolution of legal disputes. However, if **this Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. To give an end to the litigation is essential for fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on facts by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own. The acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms. Guidance may be taken from the law laid down by the Hon'ble apex Court in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* (2023 SCMR 1434).

17. The sequel of above discussion is that the impugned judgments and decrees are well reasoned, in accordance with the law on the subject and reflect correct appreciation of the material facts brought on record through the evidence by the parties, therefore, warrant no interference. Consequently, both the petitions fail and are accordingly dismissed. Though the spouses have since parted their ways yet the fact remains that they are closely related to each other, tagged in blood relation, therefore, it is expected that instead to indulge in litigation again and again may opt to settle their trivial disputes harmoniously under the supervision of their elders, who are

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none other than real brother and sister inter-se. It is further expected that both the parents, who appear to be quite sensible may take all possible steps for better future of the two minors. There shall be no orders as to costs.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open court on ___/10/2025.

JUDGE

APPROVED FOR REPORTING

Shafqat

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