JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Writ Petition No.345 of 2025

Amna Fayyaz
Vs.
Additional District Judge (West), Islamabad, etc

Appellant by:	Raja Muhammad Aleem Khan Abbasi and Malik Akhtar Abbas Advocates.
Respondent No.3 by:	Mr. Shaharyar Nawaz Malik, Advocate.
Respondent No.4 by:	Mr. Khurram Masood Kiyani, Advocate.
Date of Hearing:	**06.03.2025.**

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INAAM ANEEN MINHAS, J:- Through the instant writ petition, the petitioner has assailed the consolidated judgment dated 09.01.2025 **(Impugned Judgment)**, passed by the learned Additional District Judge (West), Islamabad **(Appellate Court)**, whereby the appeals filed by respondents No.3 & 4 were allowed and the order dated 07.10.2024 passed by the learned Judge Family Court (West), Islamabad **(Family Court)** was set aside, whereby impleadment of respondent No.3 (paternal grandfather) as a party was allowed in the suit for recovery of maintenance allowance.

2. The facts, in brief, are that the petitioner and respondent No.4 got married under Islamic law on 28.05.2016 but it quickly became clear that the marriage was one of inconvenience. Two daughters, Rebeeca Malik, now 7 years old and Ameera Malik, now 5 years old were born. The petitioner faced difficulties during the marriage and was repeatedly forced out of the home. Finally, on 23.03.2022, she was sent away

along with her two daughters in a humiliating manner. Respondents No.3 and 4 staged a drama of deportation, sent the petitioner and her children to Pakistan without informing her family to pick them from the Airport and since then, she along with minors is living with her mother and brother. The petitioner enrolled both daughters at Beacon House New Lands in Bani Gala, Islamabad. Their school fee is Rs.59,000/- per child per month, which she is paying. Apart from school fee, she also covers other expenses such as hiring two maids, school transportation, clothing, and extracurricular activities. Due to these financial burdens, the petitioner filed a suit before the learned Family Court against respondent No.4 claiming maintenance for herself and the minor daughters.

3. Respondent No.4 entered appearance and filed his written statement. During the proceedings, the learned Family Court fixed interim maintenance of Rs.10,000/- per month for each child w.e.f the date of institution of the suit, to be paid by respondent No.4, which according to the petitioner was insufficient to cover even school fee along with other expenditures of the minors. The petitioner filed multiple applications requesting payment of school fee and interim maintenance of the minors. Respondent No.4 instead of paying interim maintenance took different stance on different occasions like he has been forced out of his home and was earning only Rs.125,000/- per month, not receiving any support from his father, currently unemployed and working as a labourer in UAE on a visit visa. Additionally, during pendency of the suit, the petitioner was divorced three times. In that eventuality, the petitioner filed an application for impleadment of

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respondent No.3 grandfather of the children in the suit as defendant, who can pay the maintenance being a wealthy person having multiple businesses, properties, factories in Pakistan, U.S.A, UAE, Ajman, Morocco, Bulgaria and England. The petitioner also provided details of the properties of respondent No.3 before the learned Family Court. Respondent No.4 filed the written reply to the application. The learned Family Court after hearing the arguments allowed the application vide order dated 07.10.2024, which order was assailed before the learned Appellate Court by respondents No.3 & 4 by way of filing appeals, which were allowed vide Impugned Judgment and order of the learned Family Court was set aside, hence, this writ petition.

4. The learned counsel for the petitioner contended that the Impugned Judgment is not sustainable and liable to be set-aside; that the Impugned Judgment is legally flawed, arbitrary and based on incorrect reasoning; that the litigation history shows that respondent No.4 has taken contradictory stances, making his claim unreliable; that the order assailed before the learned Appellate Court was an interim order, against which no appeal is available under Section 14(3) of the West Family Courts Act, 1964; that the learned Appellate Court overlooked this legal bar and failed to recognize that interim orders cannot be appealed during pendency of the suit; that the learned Family Court correctly impleaded respondent No.3 (the paternal grandfather) in the suit for recovery of maintenance as per the legal precedents affirming that if a father is unable to support his children, the grandfather must step in; that the learned Appellate Court erred while observing that the father's incapacity be proven separately before

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including the grandfather despite clear evidence in the pleadings that the father is financially incapable; that this approach burdens the petitioner with multiple litigations, contradicting the principle that Courts should facilitate justice and avoid unnecessary technicalities. Learned counsel for the petitioner further contended that excluding the grandfather from the case is legally incorrect and violates natural justice; that the law recognizes that in the father's absence or incapacity, the grandfather is a proper and necessary party to maintenance proceedings; that the learned Appellate Court wrongly ignored this principle, leading to an unjust decision; that the petitioner and her children risk suffering irreparable harm, if the grandfather is not impleaded in the suit; that submission of a written statement and conducting the proceedings by the attorney of respondent No.4 before the learned Family Court is not permissible under the law.

5. Conversely, the learned counsel for the respondents contended that the suit was filed with malafide intention, whereas, due to the petitioner persistent troubles, respondent No.4 divorced her twice with the hope of improving her behavior but her attitude remained harsh; that respondent No.4 is currently in UAE on visit visa issued on 31.03.2022; that respondent No.4 lost his job due to the petitioner's non-cooperative behavior and that he can only pay Rs.5000/- per month for each minor; that the petitioner herself left the house on 28.03.2022, making her ineligible for maintenance; that the petitioner prevented respondent No.4 from meeting his children, forcing him to file a guardian petition in Islamabad, which is still pending; that respondent No.4 attempted reconciliation but failed; that the petitioner has made excessive and

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unreasonable demands, which are beyond means of respondent No.4. It was further argued that respondent No.4 divorced the petitioner on two separate occasions, allowing room for reconsideration, yet she remained steadfast in her position; that respondent No.4 has been regularly paying interim maintenance as per the Court's directive and has never defaulted in this regard; that the petitioner filed the application seeking impleadment of respondent No.3 (paternal grandfather) with mala fide intent, as there exists no substantive evidence on record to support the claim that respondent No.4 is not in a position to pay the maintenance; that respondent No.4 has voluntarily increased the interim maintenance for the minors upon securing employment, which demonstrates his commitment to fulfilling his financial responsibilities; that the Impugned Judgment is well within the confines of the law.

6. I have heard arguments of the learned counsel for the parties and gone through the record with their able assistance.

7. This Court has carefully examined the pleadings, arguments, and documentary evidence presented by both the parties. The matter in hand pertains to the impleadment of respondent No.3 (paternal grandfather) in the suit for recovery of maintenance. Given the significance of the issue involved, this Court is bound to dispense justice while considering the welfare of the minor children the paramount consideration.

8. The record reflects that the petitioner and respondent No.4 solemnized their marriage under Islamic law on 28.05.2016. However, soon after the marriage, the relationship between the petitioner and respondent No.4 became strained, ultimately resulting in separation. It is established that the petitioner along with her two minor daughters,

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faced financial hardships. The petitioner has been solely responsible for the upbringing and education of the minors, bearing substantial expenses, including school fee amounting to Rs.59,000 per child per month, hiring domestic help and ensuring the children's overall well-being.

9. The learned Family Court, after considering the plea of financial incapacity of respondent No.4 in his written statement, impleaded respondent No.3 (paternal grandfather) in the suit for recovery of maintenance, which order was set aside by the learned Appellate Court through the Impugned Judgment. The petitioner has challenged this decision, primarily on the ground that the learned Appellate Court has failed to appreciate the legal principle that when a father is unable to provide maintenance for his children, the obligation falls upon the grandfather.

10. It is a well-established principle in Islamic jurisprudence, as well as Pakistan's family laws, that the responsibility of maintaining minor children primarily rests on the father. However, in certain circumstances where the father is incapable of fulfilling this duty due to financial constraints, the responsibility extends to the grandfather. This position has been affirmed in multiple judicial precedents wherein superior Courts have held that the paternal grandfather, being in a position of financial stability, cannot absolve himself of the responsibility to ensure the welfare of his grandchildren.

11. The documentary evidence submitted by the petitioner regarding financial status of respondent No.3 shows that he possesses substantial wealth, including multiple properties and businesses in Pakistan, USA,

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UAE, Ajman, Morocco, Bulgaria and UK. His financial standing remains undisputed, making it apparent that he has the means to contribute to the maintenance of his grandchildren. Conversely, respondent No.4 has claimed financial distress, stating that he is unemployed and currently working as a labourer on a visit visa in the UAE, earning a meager income. This Court acknowledges the hardships faced by respondent No.4, however, it is crucial to consider that the minor children's right to maintenance should not be compromised due to the father's financial incapacity. The law, in such instances, allows for the financial responsibility to be extended to the grandfather. Reliance is placed upon ***Bashir Ahmad vs. Additional District Judge, Hafizabad and others,*** (**PLD 2024 SC 67**).

12. The learned Appellate Court's reasoning that the father's incapacity must first be separately adjudicated before impleading the grandfather creates an unnecessary procedural hurdle and burdens the petitioner with prolonged litigation. This approach is inconsistent with the principle that the Courts should facilitate justice rather than hinder it through excessive technicalities. The well-being of minor children is of utmost importance. Reliance is placed upon ***Arif Fareed Vs. Bibi Sara,*** **(2023 SCMR 413),** wherein it has been held that:-

> *"Family litigation directly or indirectly causes long term effects on the emotional health of parties especially the children who become a silent victim of differences and disputes between contesting adults. Therefore, when a child comes to interact with the judicial system, the response must be facilitative, cooperative and backed by child-right driven approach."*

Similarly, in case of ***Farzana Rasool v. Dr. Muhammad Bashir,*** **(2011 SCMR 1361),** the Honourable Supreme Court held that:-

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> *"The object of West Pakistan Family Courts Act, 1964 is to shorten the agony of litigant parties and to provide them justice as early as possible."*

13. Argument on behalf of respondent No.4 that the petitioner is acting with malafide intent is unsubstantiated, however, it does not absolve him of his legal duty towards his children. It is evident that respondent No.4 categorically admitted in his pleading that he is unemployed and cannot provide maintenance to the minor children beyond Rs.5000/- per month each and when the learned Family Court passed the order of interim maintenance, since then respondent No.4 is paying Rs.10,000/- per month for each minor, whereas on the other side, the petitioner provided the receipts of school fee and other expenditure, which are on the very higher side and respondent No.4 denied to pay the same due to his poor financial condition. The financial incapacity of respondent No.4 is apparent from the record and the petitioner should not be subjected to multiple litigations to establish an already evident fact. The law mandates that where a father is unable to provide the maintenance, the grandfather must step in. Therefore, respondent No.3 being the grandfather of the minors is a necessary party in the maintenance proceedings.

14. The Supreme Court in the case of ***Bashir Ahmad Vs. Additional District Judge, Hafizabad and others, (PLD 2024 SC 67)*** has laid down the law regarding institution of a suit for maintenance against the grandfather, where the property is not in the name of father, which is reproduced as under:-

> *"The obligation of a grandfather to maintain his grandchild is dependent upon two conditions (i) the father of the child must be a poor person who*

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> *has no financial resources to maintain that child, and (ii) the grandfather of the child must be a person who is financially in easy circumstances. In case either of these conditions is not fulfilled, the grandfather is not under any obligation to maintain his grandchild. A child who claims his maintenance from his grandfather has to prove these two conditions, and the grandfather must be provided with an opportunity to defend the claim made against him by rebutting the existence of either of these two facts. This is the requirement of the fundamental right guaranteed by Article 10A of the Constitution of Pakistan, which mandates that for the determination of his civil rights and obligations, a person shall be entitled to a fair trial and due process."*

15. The Apex Court has also held in Bashir Ahmed's case *supra* that:-

> *"A decree for maintenance passed against the father of a child cannot be executed against the grandfather, and the child has to institute a suit for maintenance against his grandfather, in case no property of his father. The reason being that the petitioner was neither a party to the suit instituted by his grandchild against his father nor was any decree passed against him. The Court reasoned that a decree that was not passed against the petitioner cannot be executed against him or his property."*

16. It is paramount to note that in the present matter, respondent No.4 (father) has himself admitted in his written statement that he is unable to pay maintenance beyond Rs.5000/- per month for each minor. On the other hand, respondent No.3 (paternal grandfather) of the minors, as per the details of wealth and properties provided by the petitioner, appears to be a man of financial means. It is a well-established principle of law that if, during the course of proceedings, a Court finds that the presence of any person is necessary for the final adjudication of the matter, then, in the interest of justice and based on the facts available, such a person

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should be arrayed as a respondent or defendant. Such a party is deemed proper and necessary for the just and expeditious resolution of the case in totality. In such circumstances, if respondent No.3 (paternal grandfather) is made a defendant in the case concerning the maintenance of the minors, no prejudice would be caused to him. Instead, a fair opportunity would be afforded to him to establish his financial capacity and whether he is capable of maintaining the minor children and rebut the stance taken by the petitioner through cogent and reliable evidence before the learned Family Court.

17. Furthermore, if a decree of maintenance is passed against respondent No.4 (father) and he fails to pay the maintenance, then it will be necessary to ultimately implead respondent No.3 (paternal grandfather) as a party and file a fresh suit for maintenance, which would result in unnecessary complications and delays, ultimately causing hardship to the minors. The purpose of the law is to ensure the welfare of minors and not to allow procedural technicalities to hinder the dispensation of justice. Similarly, legal procedures should serve as instruments to achieve justice rather than obstruct it. Accordingly, in the interest of justice and to avoid multiplicity of proceedings, respondent No.3 (paternal grandfather) is declared necessary party for adjudication of this case expeditiously and providing procedural convenience to the minors. Reliance is placed upon ***Arif Fareed Vs. Bibi Sara*** **(2023 SCMR 413),** wherein it has been held that**:-**

> *"wherever there is a procedural convenience, subject to the command of the statute, it must be resolved in favor of the women and children."*

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18. Argument of the learned counsel for the petitioner that the appeal was filed against an interim order, which, as per established legal principles, is not maintainable under the law. However, in the present case, the application filed under Order I, Rule 10 of CPC for the impleadment of a party was adjudicated upon by the learned Family Court and the nature of the order passed thereon was of a final character. Unlike purely interlocutory orders, which do not determine substantive rights and are subject to modification during the proceedings. An order allowing or rejecting an impleadment application conclusively determines the right of a party to participate in the proceedings. Consequently, an order concerning the impleadment issue has the characteristics of a final order, therefore, is appealable under the law. Moreover, technicalities and trappings of normal practice and procedure are not suitable to the cases where very young children are the party. Reliance is placed upon ***Arif Fareed vs. Bibi Sara*** **(2023 SCMR 413).**

19. With regard to argument concerning the submission of a written statement and conducting the proceedings by the attorney of respondent No.4 (father) before the learned Family Court, it is observed that the matter is *sub judice,* any finding or remark on this aspect may unduly influence the ongoing proceedings and potentially prejudice the right of either party. Therefore, reference to the principles of judicial propriety and to ensure that the learned Family Court exercises its jurisdiction without external influence, this Court deems it appropriate to refrain from addressing this question at this juncture.

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20. In view of the above discussion, this writ petition is **allowed**. Impugned Judgment of the Appellate Court dated 09.01.2025 is **set aside** and order of the learned Family Court dated 07.10.2024 is **upheld.**

(INNAM AMEEN MINHAS)
JUDGE

Announced in open Court on 19.03.2025.

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APPROVED FOR REPORTING

R.Anjam

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