JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 931 OF 2025

MST. AMBER FAHAD, ETC.

VS

CH. IQBAL AHMED, ETC.

Petitioners by	**:**	**Mr. Touqeer Akram, Advocate for the Petitioners.**
Respondents by	**:**	**Mr. Taufiq Asif Advocate for the Respondent No. 1.**
Date of hearing	**:**	**07.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition, the Petitioners seek setting aside of Order dated 17.01.2025 **("Impugned Order")** passed by the learned Additional District Judge, Islamabad-East **("Appellate Court")** and modification in the Judgment and Decree dated 11.09.2024 **("Impugned Judgment and Decree")** passed by learned Family Court, Islamabad-East **("Family Court")**.

2. The brief facts of the case in hand are that the Petitioner No. 1's husband [Chaudhry Fahad Iqbal] died on 30.05.2021 leaving behind the Petitioners, Respondent No.1 and Mst. Fouzia (mother) as his legal heirs. After the death of Chaudhry Fahad Iqbal (Petitioner No.1's husband), the Respondent No. 1/Defendant and his son, Ch. Tariq Iqbal, allegedly took possession of certain moveable and immovable properties and assets of the deceased without distributing shares to the Petitioners. The Petitioners claimed that the Respondent No. 1/Defendant being the grandfather of the Petitioners No. 2 to 4, is duty bound to maintain his grandchildren, especially as he is earning a substantial income from the inherited properties, bank accounts, showrooms and vehicles of the deceased. Despite repeated requests by the Petitioners, the Respondent No. 1/Defendant refused to pay maintenance for the Petitioners, hence, they filed Suit for Recovery of Maintenance Allowance of the Petitioners No. 2 to 4 against the Respondent No. 1/Defendant before the learned Family Court-East, Islamabad. The Respondent No.1/Defendant contested the Suit by filing written statement, raising various legal and factual objections. From the divergent pleadings of the parties, on 15.03.2023, the learned Family Court framed issues and parties were directed to produce evidence. In order to prove her case, the

Petitioner No.1/Plaintiff No.1 got recorded her statement as PW-1. She also produced documentary evidence including her Affidavit (Ex.P1), Family Registration Certificate (Ex.P2), a copy of the Succession Application (Ex.P3), the Succession Certificate (Ex.P4), receipts of challan fee payments (Ex.P5 to Ex.P7), Cash Receipts (Ex.P8), a copy of the Bahira Town Bill (Ex.P9), an order regarding legal heirs (Ex.P10), Death Certificate of deceased (Ex.P11), Family Court's Order (Ex.P12), House Rent Receipts (Ex.P13, Ex.P18), Gas Bill (Ex.P14), miscellaneous expenditures Receipts (Ex.P15), Internet Bill (Ex.P16), Bahria Town maintenance bill (Ex.P17) and other property related documents (Ex.P19 to Ex.P27) and closed her evidence. The learned Family Court vide the Impugned Judgment and Decree dated 11.09.2024 held that the Respondent No.1/Defendant, as the paternal grandfather, is obligated to maintain the Plaintiffs Nos. 2 to 4 at a rate of Rs.100,000/- per month for each child, effective from 30.05.2021, until their legal entitlement.

3. Being aggrieved of the Impugned Judgment and Decree dated 11.09.2024 to the extent of quantum of maintenance, the Petitioners filed an Appeal before the learned Appellate Court seeking modification in the Impugned Judgment and Decree dated 11.09.2024 in the terms that: -

a. That the quantum of maintenance may kindly be increased from Rs.1,00,000/- to Rs.3,00,000/- in each case as per appellant's prayer in main suit.

b. That 20% annual increment may kindly be fixed in each case.

c. That period of maintenance / legal entitlement of appellant No.2 may kindly be modified till his completion of studies to secure the ends of justice.

The Respondent No.1/Defendant also filed an appeal before the learned Appellate Court seeking setting aside of the Impugned Judgment and Decree dated 11.09.2024. After hearing arguments of the parties, the learned Appellate Court, Islamabad vide the Impugned Order dated 17.01.2025 held as under: -

> *"In view of above, the impugned judgment and decree dated 11.09.2024 is reversed. Learned Family Court is directed to conduct enquiry per mandate of Section 17-B of Act, 1964, consider evidence, in accordance with Sections 7(3) and 9(3), whatever material deemed expedient and just in circumstances of the suit and then adjudicate the matter, in accordance with law. Case is remanded to Trial Court to decide the same after considering above factors. In above terms only, both appeals filed by the parties against each other are allowed".*

Being aggrieved of the Impugned Order dated 17.01.2025 passed by the learned Appellate Court and the Impugned Judgment & Decree dated 11.09.2024 passed by the learned Family Court, the Petitioners have filed the instant Petition.

4. The learned counsel for the Petitioners contended that the Impugned Order of the learned Appellate Court and the Judgment and Decree of the learned Family Court regarding the quantum of maintenance are contrary to law and facts, and thus unsustainable; that the learned Family Court, despite acknowledging the Respondent No. 1/Defendant's financial status through documentary evidence, fixed an unreasonably low amount of maintenance under Section 17-A, of the Family Courts Act, 1964 **("Act")** contrary to criteria set by the superior Courts; that although an appeal was filed for enhancement, the learned Appellate Court instead remanded the matter unlawfully, bypassing legal provisions; that the maintenance awarded is insufficient to cover the minors' basic needs, including food, clothing, education, healthcare, and extracurricular expenses; that the learned Family Court failed to set an annual increment, despite rising inflation, which is against legal precedents; that Respondent No. 1/Defendant enjoys full benefit of joint and personal properties while the Petitioners suffer severe financial hardship; that the Petitioner No. 2, a student nearing majority, remains dependent and unsupported; that both the Courts failed to appreciate the evidence, misread and ignored material facts, and exercised jurisdiction improperly; and that the Impugned Judgment and Decree as well as the Impugned Order are arbitrary, unreasoned, and based on presumptions, leading to miscarriage of justice and are therefore liable to be set aside. Lastly, the learned counsel prayed for acceptance of the instant Writ Petition and setting aside the Impugned Order dated 17.01.2025 passed by the learned Appellate Court and modification of the Impugned Judgment and Decree dated 11.09.2024 passed by learned Judge Family Court in the manner mentioned in paragraph 3 above.

5. On the other hand, the learned counsel on behalf of the Respondent No. 1/Defendant argued that the learned Appellate Court has passed a well-reasoned order keeping in view the facts and evidence available on record; and that the learned counsel for the Petitioners has failed to point out any illegality or irregularity in the Impugned Order as well as the Impugned Judgment and Decree. In the last, the learned counsel prayed for the dismissal of instant Petition.

6. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

7. The learned Family Court after framing of issues decided that the Petitioners Nos. 2 to 4 are entitled for maintenance @ Rs.100,000/- per month, to be paid by the Respondent No. 1/Defendant being their paternal grandfather. Both the parties challenged the said Judgment before the learned Appellate Court and the learned Appellate Court remanded the case to the learned Family Court for conducting inquiry under Section 17-B of the Act in order to ascertain the financial status of the Petitioner No. 1, the value/income of properties devolved upon the children as inherited properties and finally the status of grandfather (Respondent No. 1/Defendant), for the maintenance of the minors if he becomes liable to maintain the minors. The Appellate Court has correctly determined that an inquiry should be conducted by the learned Family Court to assess the financial status of Petitioner No. 1, the value/income of the properties inherited by the children, and the grandfather's responsibility for the maintenance of the grandchildren, following the recording of evidence. The issue, whether a grandfather is obligated to maintain his minor grandchildren has already been addressed by the learned Family Court in paragraph 6 of the Impugned Judgment and Decree dated 11.09.2024. The Court determined that Respondent No. 1/Defendant, as the grandfather, is responsible for providing maintenance for the children of his deceased son, based on several rulings from superior courts. To this extent, the findings of the learned Appellate Court are not tenable and it is held that Respondent No. 1/Defendant is liable to maintain the children of his deceased son, effective from 30.05.2021 until their legal entitlement. However, as far as the rate of maintenance per month for each child is concerned, it is to be decided finally by the learned Family Court after adducing pro and contra evidence. However, in the meanwhile, Respondent No. 1/Defendant is liable to pay interim maintenance of Rs. 100,000/- per month for each child from the institution of the maintenance suit i.e. 20.07.2023, which shall be made by the 14th of each month, till the final decision made by the learned Family Court or as the learned Family Court deems it fit. The issue of maintenance is of utmost importance as the grandchildren (Petitioners Nos. 2 to 4), who are enrolled in prestigious educational institutions and have been raised in a nurturing environment, require financial support to cover their daily living expenses, educational fees, transportation, and lodging needs. The Petitioners Nos. 2 to 4 are the grandchildren of Respondent No.1

and they are the responsibility of Respondent No.1 to bear their maintenance until their legal entitlement.

8. In light of the observations made hereinabove, the instant Writ Petition stands **disposed of** with some modification in the Impugned Order of the Appellate Court. However, the learned Family Court is directed to decide the matter remanded to it by the learned Appellate Court preferably within a month from the date it receives the copy of this Judgment keeping in view the sensitivity of the matter i.e. the maintenance of children and submit a compliance report to the office of the Registrar of this Court.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this 14th day of April, 2025.

JUDGE

Sajid/--