JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1436 OF 2025

HINA

VS

ADIL SHAHZAD, ETC.

Petitioner by : Ms. Hajira Zakir Shah and Ms. Sana Liaqat, Advocates.

Respondents by : Sardar Muhammad Nasir Khan, Advocate along with the Respondent No. 1.

Date of hearing : 16.09.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")** the Petitioner [Hina] has challenged the order dated 21.12.2024 **("Impugned Order")** passed by the learned Additional District Judge-I, Islamabad-East **("Appellate Court")** and the Judgment and Decree dated 09.03.2024 **("Impugned Judgment and Decree")** passed by the learned Family Judge, Islamabad-East **("Family Court")**.

2. The brief facts of the case in hand are that the Petitioner and the Respondent No. 1 contracted marriage on 09.12.2016 according to Shariah Muhammadi against a dower of Rs.200,000/-. The Respondent No. 1's as well as his family's attitude towards the Petitioner remained cruel from the very first day of marriage. In March 2017, the Respondent No. 1, during the pregnancy of the Petitioner, threw her out of his home, which left the Petitioner with no choice but to live with her mother. From the wedlock, a baby boy, namely Abu Bakar, was born on 19.09.2017. The Respondent No. 1 did not pay a single penny during the pregnancy period or at the time of the birth of the baby, and Rs.50,000/- were spent by the parents of the Petitioner at the time of delivery. Later on, the Respondent No. 1 sent a divorce deed on 08.08.2018, pronouncing divorce to the Petitioner. Despite repeated requests by the Petitioner, the

Respondent No. 1 refused to pay maintenance to the Petitioner, hence, she filed a suit for recovery of past and future maintenance with the prayer as under:-

> *i. A decree for the recovery of maintenance allowance of the Plaintiff No.1 @ Rs.25,000/- per month from March 2017 till the end of Iddat period.*
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> *ii. A decree for the recovery of maintenance allowance of the Plaintiff No.2 @ Rs.35,000/- per month from his date of birth 19.09.2017 including delivery expense of Rs.50,000/- and future maintenance till completion of education with yearly enhancement as per inflation, educational, medical, lodging requirements.*

3. The Petitioner also filed a suit for recovery of dowry articles given by her parents and dower amount/gold ornaments. Both the suits were consolidated vide order dated 06.02.2020, and consolidated issues were framed by the Family Court. After recording of evidence, the learned Family Court vide the Impugned consolidated Judgment and Decree, partially decreed both the suits in the following manner:-

> *"In nutshell in the light of the findings on issues No.1 to 3, both suits of the plaintiffs is partially decreed in their favour. Plaintiff No.1 is held entitled for maintenance at the rate of Rs.20,000/- per month from date of desertion i.e. August, 2018 till the iddat period, and plaintiff No.2 is also entitled to recover past maintenance at the rate of Rs.25,000/- per month from August, 2018 till interim order dated 09.01.2020, and future maintenance at the rate of Rs.30,000/- per month from disposal of the instant suit till his legal entitlement as he is special child, as per his psyciological condition along with 10% increment per annum, same shall start from March, 2025. Additionally, the father shall reimburse all past expenditures and other medical expenses incurred by plaintiff No.1 on the minor child as per Ex.P2 to Ex.P4 & Ex-P6, totaling amount of Rs.654,885/-. This amount shall be paid within three months from the date of this judgment. Furthermore, plaintiff No.2 is entitled for his medical expenses from his father/defendant, the defendant is legally and morally as per sharia liable to bear all medical expenses of the child and get his treatment from Shifa medical hospital (hospital suggested by the defendant himself) and also provide all medication as required, said medical expenses are separate from maintenance as allowed. If the defendant failed to register minor's name on his medical panel at Shifa International Hospital as suggested by himself, in said case he shall be liable to pay medical expenses of minor @ Rs.30,000/- per month to the plaintiff No.1. Claim of plaintiff No.1 for recovery of delivery expenses and dower/gold 4 tolas stand dismissed."*

4. Being aggrieved by the Impugned Judgment and Decree, the Respondent No. 1 filed Appeal before the learned Appellate Court seeking modification in the Impugned Judgment and Decree with the following prayer:-

> *"In the above circumstances, it is therefore, respectfully prayed that the appeal may kindly be accepted, the impugned consolidated judgment and decree dated 09.03.2024 being devoid of any merit be modified by reasonably decreasing the rates of maintenance allowances of the respondents and to set aside the remaining decree to the extent of suit No.233 in the best interest of justice."*

The learned Appellate Court, after hearing arguments of learned counsel for the parties, vide the Impugned Order, partially allowed the appeal. Being aggrieved by the Impugned Order passed by the learned Appellate Court and the Impugned Judgment & Decree passed by the learned Family Court, the Petitioner has filed the instant Petition, with the prayer as under:-

> *"It is most humbly prayed that the instant writ petition may graciously be accepted, her due right of recovery of dower amount, quantum of maintenance to the child may be increased in the best interest of justice."*

5. The learned counsel for the Petitioner contended that the Impugned Order of the learned Appellate Court and the Judgment and Decree of the learned Family Court are passed without considering the facts, evidence and record present on file and thus reached at a wrong conclusion; that the maintenance awarded is insufficient to cover the minor's basic needs; 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 and Impugned Judgment and Decree.

6. On the other hand, the learned counsel on behalf of the Respondent No. 1 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 Petitioner has failed to point out any illegality or irregularity in the Impugned Order passed by the learned Appellate Court. In the last, the learned counsel prayed for the dismissal of the instant Petition.

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

8. It is an admitted fact on record that the minor/Respondent No. 3 is a special child, diagnosed with autism, who requires constant supervision, specialized medical treatment, therapy sessions, and educational arrangements tailored to his condition. The learned Family Court, while appreciating the peculiar circumstances of the case, fixed his future maintenance at Rs.30,000/- per month along with annual increment, keeping in view the special needs of the minor as well as the financial status of the Respondent No. 1. The learned Appellate Court, however, without fully adverting to the requirements of a special child and the impact of prevailing inflation, drastically reduced the future maintenance to Rs.10,000/- per month. It is also pertinent to underscore that under Islamic law, a father is not only under a legal obligation but it is also his moral and religious duty to maintain his children. This obligation is firmly rooted in the injunctions of the Holy Qur'an, which in Surah Al-Baqarah declares: "And clothing and maintenance must be borne by the father in a fair manner." [Al-Baqarah: 233]. The dictate of the Qur'an, therefore, places upon the father a continuous responsibility to provide sustenance, clothing, education, and medical care to his children in a just and equitable manner, commensurate with his means and status. This duty becomes even more accentuated where the child requires special care, as in the case at hand. Any attempt to dilute or evade such responsibility would be contrary not only to the law of the land but also to the spirit of Shariah, which emphasizes compassion, fairness, and protection of the vulnerable.

9. The jurisprudence developed by the superior Courts of this country, as well as the principles of Muhammadan Law, clearly lay down that the father is under a legal and moral obligation to maintain his children. The concept of maintenance is not confined merely to food and shelter; rather, it encompasses all necessary expenses relating to education, clothing, medical treatment, transportation, and recreational activities, so as to enable the child to live a life of dignity consistent with the status of his father. Reliance in this regard is placed on the case titled *"Humayun Hassan v. Arslan Humayun and another"* **(PLD 2013 Supreme Court 557)**, wherein the august Supreme Court of Pakistan observed the following:-

> *"4. Heard. There can be no cavil with the proposition that the maintenance issue(s), in relation to Muslim relatives shall be governed and regulated by the principles/injunctions of Islam i.e. as per the personal law of the parties. In this context, according to section 369 of the Muhammadan Law by D.F. Mullah, maintenance means and includes food, raiment and lodging. However, it may be observed that from the very language of the above section, such definition is neither conclusive nor exhaustive, and* ***in our view it undoubtedly has a wider connotation and should be given an extended meaning, for the purposes of meeting and catering for the present days social, physical, mental growth, upbringing and well being of the minor, keeping in mind the status of the family, the norms of the society and his educational requirement, which has now attained utmost importance; but obviously corresponding to and commensurating with the means and the capacity of the father to pay.****"*

In the present case, when the quantum of maintenance is examined in the context of double-digit inflation, the rising cost of living, and the specialized requirements of an autistic child, it becomes manifest that the sum of Rs.10,000/- fixed by the learned Appellate Court does not align with either the welfare of the minor or the established principles of law.

10. It is also borne out from the record that the Respondent No. 1 has contracted a second marriage and has two children from that wedlock, who are equally dependent upon him for support and sustenance. This fact cannot be ignored, as the Respondent No.1 indeed shoulders multiple responsibilities within his family. In the case titled *"Nazia Bibi and others v. Additional District Judge, Ferozewala and others"* **(PLD 2018 Lahore 916)**, the Lahore High Court observed the following qua the factors to be considered whilst determining the quantum of maintenance:-

> *"9. Quantum of maintenance requires due consideration of all factors on the basis of which the court can determine the actual need of the minor. In this regard, it is important for the court to first determine the expenses incurred or likely to be incurred on the minors. For this purpose the court must look into the living conditions of the minor and the manner and means by which the mother is maintaining the minors which will include factors like where they reside, whether the mother is dependent upon her family, if so what is the income on the basis of which the minor is also being cared whether she has a job and whether she has any source of independent income.* ***Special needs of the minor which will include medical or physical needs or special educational needs should also be seen. Special needs will vary from case to case, if relevant, as it is unique to the situation and individual. Yet for the purpose of maintenance it is the obligation of the***

> ***father to fulfill these special needs.*** *In the case of enhancement, the court must also determine as to what extent the maintenance already fixed meets the requirement and expenses of the minor and for what purpose, further enhancement is required.* ***At the same time the court must determine the income of the father either through proper documentary evidence or on the basis of the social status and earning capacity of the father****. In order to ensure that proper information is before the court, it may always require the father to produce documents such as his salary slips or any bank statement or property document on the basis of which he is able to show his monthly income or earning or his financial status. In this regard, the assets owned by the father are relevant as it contributes towards establishing the financial status of the father that has to be probed into by the court and based on attending circumstances the court can conclusively establish the means through which the father will be able to maintain the minors.* ***It is also important to take into consideration any liability of the father, that is whether he is paying any bank loan or debt, whether he has remarried or has other children or whether his parents are dependent on him****. In this way the court can determine the manner in which the income of the father is spent and balance the income and capacity with the reasonable requirements of the minors seeking maintenance.*
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> *10. In this regard, it is noted that Section 17(A) of the West Pakistan Family Courts Act, 1964 specifically provides in subsection (4) that for the purposes of fixing maintenance,* ***the court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant. The purpose of this provision is to facilitate the court to determine the financial position of the father. The court therefore is not dependent on documents or information provided by the father and can call for relevant documents or information be it from the relevant department or organization or as the case requires, in order to determine the income of the father.*** *" (Emphasis Added)*

11. However, the obligations arising from a subsequent marriage cannot operate to the detriment of children from an earlier marriage, particularly where the child needs special care. The father cannot absolve himself from his primary and continuous duty of maintaining such a child merely on the plea that he has additional dependents. Reliance is placed on a case titled *"Syeda Farhat Jahan v. Syed Iqbal Hussain Rizvi and another"* **(2010 YLR 3275)**, wherein the Court stated the following:-

> *"it is the legal and moral duty of the father of minor children to keep maintaining them he being the natural guardian till they attain the age of majority.* ***No excuse, big or small can absolve the father from his duty of maintaining his minor children which duty has been ordained on him through divine revelation of Allah Almighty.*** *" (Emphasis Added)*

The law, therefore, places the welfare of the minor at the highest pedestal, and any interpretation which deprives a special child of the care and assistance he deserves would amount to a miscarriage of justice. This Court, thus, is constrained to observe that the said amount is wholly inadequate to meet even the most basic needs of a child, much less a special child requiring continuous medical and therapeutic attention.

12. It is also of significance to note that the reduction of maintenance by the learned Appellate Court on the ground that the Trial Court enhanced the quantum of maintenance "all of a sudden" is not borne out from the statutory framework. The relevant portion from the Impugned Order is reproduced hereunder:-

> *"7. Perusal of record reveals that initially the Trial Court had fixed interim maintenance of the minor @ Rs.7,000/- per month i.e, w.e.f 09.01.2020 till 09.03.2024 (the date of decree). But all of a sudden, the Trial Court enhanced the interim maintenance about more than 200% and burdened the father, who has already prayed that due to his low 13890) 4470/27income, he cannot bear his expenses. Thereafter, the Trial Court once again changed the quantum of maintenance of the minor/ son by enhancing it more than 100% and fixed the future maintenance @ Rs.30,000/-PM.* ***The Respondent/mother will be entitled to get past maintenance of the minor @ Rs.7,000/- per month from the date of birth of minor i.e, 19.09.2017 till the date of decree (09.03.2024), whereas, the future maintenance @ Rs. 10,000/- will be payable by the Appellant/ father from 01.04.2024 till his entitlement with 10% annual increase****.*
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> *8. In view of the above reasons, the appeal of Appellant/Adil Shahzad is partially allowed in the above manners, plus the past Medical & Educational Expenses* ***jointly are fixed @ Rs. 10,000/- from the month of April 2024 till the month of passing of decision of this appeal i.e, December 2024****. The Appellant/Father will be fully responsible to bear the* ***expenses of education & medical of the minor/son from the month of January 2025****. Moreover, Appellant/father will also be liable to provide* ***Eid/seasonable clothing*** *to the minor. The Trial Court is directed to modify the decree accordingly. All pending applications in this appeal, if any, have become infructuous and are dismissed accordingly. Appeal file be consigned to Record Room after its compilation and completion."*

13. It is worth mentioning here that Section 17-A(2)(a) of the West Pakistan Family Courts Act, 1964, empowers the Family Court to fix an amount of maintenance higher than the amount prayed for in the plaint or higher than what

was fixed as interim maintenance, having regard to the afflux of time or other relevant circumstances. For ready reference, Section 17-A of the Family Courts Act, 1964 is reproduced hereunder: -

> ***17A. Suit for maintenance**.– (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.*
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> *(2) **In a decree for maintenance, the Family Court may:***
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> ***(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and***
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> *(b) prescribe the annual increase in the maintenance.*
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> *(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.*
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> *(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.*

14. The provision was consciously introduced by the Legislature to ensure that the minor and the wife are not prejudiced by the passage of time during protracted litigation, inflationary trends, or changing circumstances of the parties. The maintenance fixed through an interim order is only temporary. As and when the final order is passed, the amount fixed by the learned Judge, Family Court, may be modified and revisited in that the quantum of maintenance can be increased or decreased after appraising, evaluating and examining the evidence produced during the trial. Thus, the mere fact that interim maintenance was initially fixed at Rs.7,000/- could not have constrained the Trial Court from enhancing the quantum of final maintenance to Rs.30,000/- upon appreciation of evidence and the peculiar needs of the minor Abu Bakar, who is a special child. The contrary approach adopted by the learned Appellate Court not only overlooks the express statutory mandate, but also undermines the very object of Section 17-A, which is to secure the welfare of minors in a just and fair manner.

15. It is worth mentioning here the case titled *"Dr. Muhammad Jawad Jan Arif v. Dr. Ayesha Chaudhry And 2 Others"* **(2022 CLC 89)**, wherein the Lahore High Court provided detailed guidance regarding autism. The relevant portion is reproduced herein below:-

> *"22. Autism Spectrum Disorders are a group of developmental disabilities characterized by pervasive deficits in socialization and communication, as well as unusual behaviors or interests. Children with autism can present a broad range of clinical features including qualitative, developmental and neurological abnormalities, as well as sensory symptoms, epilepsy, cognitive dysfunction, severe impairments in adaptive behavior, and aberrant regulation of emotion. (Knapp M., Romeo R, and Beecham J: Economic Cost of Autism in the U.K. Autism 2009).*
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> *23. Autistic children may act in a different way than other children. They may find it hard to communicate and interact with other people. They may also find it difficult to understand how other people think or speak. According to the yearly report of the National Health Service, U.K., autistic children find things like bright light and loud noises overwhelming and stressful. They get anxious or upset about unfamiliar situations and social events. They take longer to understand information and do or think the same things over and over again. However, being autistic does not mean that an autistic person is ill or has a disease. It means that his brain works in a different way from other children. Autistic people often have other conditions like dyslexia, depression or anxiety even epilepsy.*
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> *24. Autism is a lifelong state. It is not an illness but a neurodiversity; a different way of being. Autistic individuals have lifelong needs, more so at the tender age of 5. Therapy, schooling, therapist and distant learning support assistant cost, special care, physical activities, special equipment for sensory needs and co-morbid conditions warranting doctor visits are just a few costs that an autistic child entails. We must not forget that an autistic child is not just autistic all, but has needs of a regular child as well. Furthermore, needs that are luxury to typical kids are basically necessity for an autistic child. For example, swimming, skating etc. are basic skills to prevent drowning and develop coordination respectively. Specialist coaches are indeed expensive.*
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> *25. The economic burden and the impacts on health and social integration associated with Autism Spectrum Disorder are considerable. According to a UK National Health Services' Survey, the costs of supporting children with Autism Spectrum Disorder were estimated as 2.7 billion per year. The lifetime cost was estimated as 1.23 million for individuals with Autism Spectrum Disorder and intellectual disability and 0.80 million for individuals with Autism Spectrum Disorder but without intellectual disability."*

16. In the present case, the minor Abu Bakar has been medically acknowledged as a child suffering from Autism Spectrum Disorder. Such children, as recognized by medical science, require specialized therapies, structured schooling, regular medical supervision, sensory equipment, and continuous parental support over and above the needs of an ordinary child. Their condition entails substantial financial implications upon the family, as the cost of therapy sessions, special educators, medical interventions, recreational coaching, and adaptive facilities is considerably high and recurrent. In this backdrop, the quantum of Rs.10,000/- per month fixed by the learned Appellate Court is wholly disproportionate and insufficient to the prevailing conditions of the minor. The said amount neither ensures access to specialized education nor addresses the child's essential therapeutic and medical needs. The welfare of the minor being the paramount consideration, the quantum of maintenance must be realistically assessed in the light of his status as an autistic child, the rising inflationary trends, and the statutory as well as moral obligations of the Respondent No.1.

17. In view of the foregoing discussion, this Court is of the considered opinion that the Impugned Order of the learned Appellate Court is unsustainable. It fails to adequately cater to the welfare of the minor, omits any determination on the child's specific needs and requirements, and does not properly assess the father's income. Moreover, the Impugned Order suffers from an improper appraisal of the evidence. However, rather than this Court undertaking a re-fixation of maintenance, which would require a detailed appraisal of evidence unsuited to writ jurisdiction, it is just and appropriate to remit the matter to the learned Appellate Court. The Court is directed to make a fresh determination of maintenance in light of *Murad Khan v. Mst. Humaira Qayyum* **(2025 SCMR 739)**, keeping in view the updated medical, special educational, and other living expenses of the minor. This assessment must be made whilst considering the father's actual income and financial capacity, which requires determination through cogent evidence as mandated in *Syed Zain Muntazar Mehdi v. Mst. Sara Naqvi* **(2024 CLC 1580)**.

18. For the reasons recorded above, the instant Writ Petition is **partially allowed**. Consequently, the Impugned Order is **set aside** to the extent of the quantum of maintenance fixed for the minor. The case is **remanded** to the

learned Appellate Court for a fresh determination of maintenance for the minor, Abu Bakar, in strict accordance with the law. The Court shall be guided by the paramount principle of the child's welfare and the principles enunciated by the superior Courts, giving due weight to his status as a child with special needs. Upon remand, the parties shall be permitted to lead such additional evidence as is necessary to assess the minor's realistic needs. After hearing both sides and considering all relevant facts and documents, the learned Appellate Court shall determine the quantum of past and future maintenance, passing a speaking order in accordance with the law. The Court is directed to conclude this proceeding expeditiously, preferably within two months from the date of receipt of this order.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____.

JUDGE

Approved for reporting
Blue slip added

Sajid/--