JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 1256/2025

UMAR AKBAR ALI GHUMMAN
Vs
MST. MARIA JAVED CHEEMA ETC

Petitioner by	**:**	**Mr. Kaleem-ud-Din Malik, Advocate.**
Respondents by	**:**	**Mr. Sajid Mehmood Shad, Advocate for Respondents No.1 to 3.**
Date of hearing	**:**	**25.04.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, Umar Akbar Ali Ghumman **("Petitioner/Defendant")** has challenged the Order dated 06.03.2025 passed by the learned Guardian Judge, East-Islamabad, whereby interim maintenance of the Respondent No.1/Plaintiff No.1 has been fixed as Rs. 15,000/- per month with effect from December 2024 and Rs. 30,000/- per minor (Respondents No. 2 & 3/Plaintiffs No. 2 & 3).

2. The brief facts leading to the filing of the present Writ Petition are that Respondents No. 1 to 3/Plaintiffs filed a suit for recovery of maintenance i.e. past maintenance allowance amounting to Rs.4,664,485/-, present and future maintenance allowance @ Rs.200,000/- per month with 20% annual enhancement therein, contending that Respondent No. 1/Plaintiff No. 1 married the Petitioner/Defendant on 06.03.2011, against the prompt dower of six tolas of gold. During their wedlock, Minors/Respondents No.2 & 3 were born.

3. The suit was contested by the Petitioner/Defendant by submitting written statement. The learned Family/Guardian Judge, vide the Impugned Order dated 06.03.2025, fixed the interim maintenance of Respondent No.1/Plaintiff No.1 at Rs. 15,000/- per month w.e.f. December 2024 and Rs. 30,000/- for Respondents No.2 & 3/Plaintiffs No. 2 & 3 each, w.e.f. December, 2024. The Petitioner/Defendant was directed to pay the interim maintenance before the 14th of each month. Being

aggrieved by the Impugned Order, the Petitioner/Defendant has filed the instant Writ Petition.

4. The learned counsel for the Petitioner/Defendant argued that the Impugned Order is contrary to the law and facts of the case, as Respondent No.1 has refused to reconcile, disobeying her matrimonial duties. The Petitioner/Defendant made multiple efforts to reconcile, visiting Respondent No.1 over sixty-five times, providing gifts and financial support, yet the Family Judge failed to consider these facts in the order dated 06.03.2025. The Petitioner/Defendant previously filed a suit for restitution of conjugal rights in May 2024, which was later withdrawn due to assurances from Respondent No.1 to reconcile. The Petitioner/Defendant further alleges that Respondent No.1 and her family imposed unreasonable conditions, leading to the failure of reconciliation. The Petitioner filed a second suit for restitution of conjugal rights in September 2024, but Respondent No.1 refused to join him. The children are being deprived of the Petitioner/Defendant's love and affection, which is detrimental to their welfare. The Family Judge failed to consider the Petitioner/Defendant's financial situation and relied on unsupported claims, leading to an unjust and excessive maintenance order. The order was based on presumptions without proper evidence or consideration of the Petitioner/Defendant's income and does not align with his financial capacity. Therefore, the Petitioner/Defendant requests the court to set aside the impugned order and issue an appropriate writ.

5. Learned counsel appearing on behalf of Respondents No. 1 to 3 has resisted the instant petition and prayed for its dismissal on the ground that the impugned order is a well-reasoned order that does not call for any interference. He contended that the learned Trial Court has rightly fixed the maintenance allowance keeping in view the facts of the case.

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

7. Perusal of the record shows that due to irreconcilable differences *inter se* the parties, their relationship became estranged, which compelled them to live separately. Both sides put forth certain conditions with a view to cohabitating again; upon failure to reach a settlement, the Petitioner/Defendant filed a suit for restitution

of conjugal rights on 08-05-2024 before the Family Court, Gujranwala. The suit was dismissed as withdrawn vide order dated 22-07-2024 upon recording the statement of the Petitioner/Defendant. Thereafter, a second suit for restitution of conjugal rights was filed by the Petitioner/Defendant on 14-09-2024 before the Family Court, Wazirabad; the latter, vide order dated 21-11-2024, rendered an ex-parte decree in favour of the Petitioner/Defendant. The ex-parte decree was set aside by the learned Trial Court, Wazirabad, after accepting the application moved by the Respondent No. 1. Furthermore, written statement has been submitted by Respondent No. 1 in this regard on 13-03-2025, thereby contesting the suit.

8. The Respondents No. 1 to 3 filed a suit for recovery of maintenance allowance on 28-11-2024 before the Learned Judge Family/Guardian Court, Islamabad (East). The Petitioner/Defendant contested the same by submitting his written statement on 15-02-2025. The learned Trial Court, vide order dated 06-03-2025, fixed the interim maintenance allowance of Respondents No. 1 to 3, after putting into consideration their daily needs and the delay caused after the appearance of the Petitioner/Defendant. The interim maintenance allowance of Respondent No.1 and Respondents No. 2 & 3 has been fixed at Rs. 15,000/- and Rs. 30,000/- per month respectively with effect from December, 2024. It is pertinent to mention herein that the sole contention of the Petitioner/Defendant is to declare the grant of interim maintenance to the extent of Respondent No. 1 as illegal, unlawful and without jurisdiction, thereby setting aside the same. The only abovementioned part of the order dated 06-03-2025 has been challenged in the instant petition. Learned counsel for the Petitioner/Defendant has laid great emphasis on the point that Respondent No. 1 is a disobedient lady, hence, not being entitled to any maintenance unless and until she joins the Petitioner/Defendant to perform and fulfil her matrimonial obligations and responsibilities as ordained in the Holy Quran, Sunnah and prevailing law on the subject. This contention has not impressed this Court at all, and rightfully so because it reeks of bigotry and patriarchy; a true reminder of archaic male chauvinism.

9. Time and again, suits for restitution of conjugal rights are filed by husbands to counterblast the claims for maintenance by the wives. The intent to oust the right of maintenance of the wives is oft-camouflaged behind filing of such suits by the husbands. This phenomenon was highlighted in case titled *Tariq Mehmood Versus*

Mst. Farah Shaheen **(2010 YLR 349)**, wherein the Lahore High Court observed the following: –

> *"Many a time, I have hoped for a more dynamitic approach by the Courts when it comes to grant of maintenance. It has been proved time and again that the women are either thrown out of their homes or put in a situation whereby they are compelled to leave the marital abode. In either case, most of the time the women do not return to their parents' home, of their own accord, they are compelled to do so. Had their husbands been kind to them the need for leaving the marital abodes would not have arisen.* ***On their compelled return to their parents homes the husbands do not maintain them and the minors born in the wedlocks, which further compels filing of suits for recovery of maintenance****.* ***This is countered by filing of suits for restitution of conjugal rights by the husbands, which is only to try to prove their bona fides and also to oust the right to maintenance of the wives.*** ***When the wives who do not adhere to the decrees for restitution of conjugal rights passed in favour of the husbands, and file dissolution of marriage they are immediately declared "nashizas" without taking into consideration that, had the husbands really come to Court with bona fide intentions where they filed suits for restitution of conjugal rights, they could have instead shown their good will by giving the estranged wives maintenance.*** ***This is almost never done and courts give sweeping judgments when they declare the women "nashizas" thus not entitled to maintenance****. My opinion stated herein is not binding on the Family Court as respondent No.1 has not appealed the judgment/decree dated 4-9-2008. It has been given as food for thought for the courts below."* (Emphasis added)

10. The argument of the Petitioner/Defendant is expressed in Paras 277 and 278 of D.F. Mulla's Principles of Mohammedan Law, which is reproduced hereunder for ready reference.

> *"****277. Husband's duty to maintain his wife:*** *The husband is bound to maintain his wife (unless she is too young for matrimonial intercourse) so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him, or is otherwise disobedient, unless the refusal or disobedience is justified by non-payment of prompt (S.290) dower, or she leaves the husband's house on account of his cruelty.*
>
> ***278. Order of maintenance:*** *if the husband neglects or refused to maintain his wife without any lawful cause, the wife may use him for maintenance, but she is not entitled to a decree for past maintenance, unless the claim is based on a specific agreement. Or, she may apply for an order of maintenance under the provisions of the Code of Criminal Procedure, 1898, section 488 in which case the Court may*

> *order the husband to make a monthly allowance in the whole for her maintenance not exceeding five hundred rupees."*

It is pertinent to mention herein that Section 488 of the Code of Criminal Procedure, 1898 has been repealed by Ordinance XXVII of 1981. Over time, the state has shown legitimate interest in regulating private relationships, as reflected in legislation addressing domestic violence, marriage, divorce, and maintenance. The Muslim Family Laws Ordinance, 1961 and The Family Courts Act, 1964, exemplify the shift toward codifying areas formerly governed by uncodified personal law. For instance, paragraphs 277 and 278 of D.F. Mulla's Principles of Mohammedan Law, reproduced above, list certain conditions that purportedly determine a wife's entitlement to maintenance, such as obedience, cohabitation, and fulfilling of marital obligations. The judicial reliance on such conditions has resulted in a subjective framework where maintenance claims are often decided based on a judge's discretion rather than consistent legal standards. Thus, there is no uniformity among scholarly consensus on whether such conditions must be met. Some jurists argue that compliance is necessary for a wife to claim maintenance, others maintain that maintenance is an unconditional right during the subsistence of marriage, and that a wife's refusal to live with her husband does not disentitle her to claim maintenance. Reliance in this regard is placed on case titled *Shahab Saqib through Attorney Versus Sadaf Rasheed and 2 others* (PLD 2023 Islamabad 34), wherein the Court held that: -

> *"Due the import of such conditions from commentaries on Mohammedan Law into case-law, what emerged was a subjective set of rules determining the right to maintenance that could be employed in view of the proclivities of the presiding judge, as opposed to any objectively justiciable principle that would add certainty to the question of maintenance and a wife's entitlement to it. Even within the domain of Muslim Personal Law there is no consensus among scholars as to the conditions that attach to a wife's entitlement to maintenance. There are schools of thought that argue that various conditions are to be satisfied by wife to be eligible for claiming maintenance from the husband. There are others who argue that the right to maintenance is unconditional and a wife refusing to live with the husband is a ground for divorce but not to deny her maintenance during such period when she is still in the bond of marriage"*

11. The august Supreme Court of Pakistan, in case titled *Mst. Tayyeba Ambareen and another Versus Shafqat Ali Kiyani and another* **(2023 SCMR 246)**, propounded

its wisdom on the usage of Paras 277 and 278 of D.F. Mulla's Principles of Mohammedan Law in suits pertaining to restitution of conjugal rights filed by the husbands in response to suits for maintenance by wives. The relevant portion is reproduced hereunder: -

> *"While claiming conjugal rights by a husband in response to the suit for dissolution of marriage, dower, dowry and maintenance,* ***it is also an onerous responsibility of the Court to see whether he is sincerely fulfilling his obligations towards his wife, rather than gratifying the urges of male chauvinism.*** *According to Paragraph 277 of Chapter XIV of "Principles of Muhammadan Law" (Ninth Edition), by D.F. Mulla under the nomenclature "Marriage" (M. Mahmood), "the husband is bound to maintain his wife (unless she is too young for matrimonial intercourse), so long as she is faithful to him and obeys his reasonable orders. But he is not bound to maintain a wife who refuses herself to him, or is otherwise disobedient, unless the refusal or disobedience is justified by non-payment of prompt (section 290) dower, or she leaves the husband's house on account of his cruelty." Whereas Paragraph 281 provides that "where a wife without lawful causes ceases to cohabit with her husband, the husband may sue the wife for restitution of conjugal rights".* ***The lodging of this claim should not be used as weapon to defend or obstruct the claim of dower or maintenance allowance, but must be lodged in good faith and with a bona fide intention to reconcile and rectify the issues between the spouses in order to save the matrimonial tie with magnanimity, kindness and through the fulfillment of the husband's obligations and not as a tool to fight out or frustrate the claim of maintenance allowance or dower amount.*** *"*

As upheld by the august Supreme Court, this Court is also fortified to conclude that filing of such claims by husbands must not be used as a means to obstruct or undermine the wife's claim for dower or maintenance. Rather, it should be initiated in good faith, with a genuine and *bona fide* intent to resolve the disputes *inter se* the spouses, preserve the marital bond, and promote reconciliation through compassion, mutual respect, and the husband's fulfillment of his legal obligations. It must not be used as a tactic to contest and/or frustrate legitimate claims for maintenance or dower.

12. Furthermore, it is essential to mention herein that neither any conditions have been placed on the wife's right to maintenance under Section 9 of the Muslim Family Laws Ordinance, 1961, nor does the law intend to do the same.

> ***"9. Maintenance.*** *(1) If any husband fails to maintain his wife adequately, or where there are more wives than one, fails to maintain*

> *them equitably, the wife, or all or any of the wives, may in addition to seeking, any other legal remedy available apply to the Chairman who shall constitute an Arbitration Council to determine the matter, and the Arbitration Council may issue a certificate specifying the amount which shall be paid as maintenance by the husband.*
>
> *(2) A husband or wife may, in the prescribed manner, within the prescribed period, and on payment of the prescribed fee, prefer an application for revision of the certificate, [to the Collector] concerned and his decision shall be final and shall not be called in question in any Court.*
>
> *(3) Any amount payable under sub-section (1) or (2), if not paid in due time, shall be recoverable as arrears of land revenue."*

This Court, in the judgement passed in case titled *Shahab Saqib through Attorney Versus Sadaf Rasheed and 2 others* **(PLD 2023 Islamabad 34)**, has further held that the aforementioned provision does not accept multiple interpretations qua right to maintenance, nor does it prescribe any preconditions for a wife to be entitled to maintenance, who remains legally married nonetheless. No external conditions may be read into the provision based on commentaries or treatises on Mohammedan Law. The relevant portion of the judgment is reproduced below: -

> *"35. On the question of maintenance Section 9 of the MFLO is unequivocal and its language does not open the provision to multiple interpretations with regard to affixing the obligation of a husband to maintain his wife.* ***There are no conditions prescribed therein that need to be satisfied prior to establishing the eligibility of the wife, who remains in the bond of marriage, to maintenance and none can be imported into it on the basis of commentaries in various treatises on the principles of Mohammedan Law.*** *Section 9 of the MFLO simply states that, "if any husband fails to maintain his wife adequately," the wife can apply to Chairman Arbitration Council for enforcement of the obligations or seeking any other legal remedy available such as before the Family Court etc.*
> *38. As already stated above, Section 9 of the MFLO is not ambiguous and consequently conditions for grant of maintenance to a wife cannot be read into it by virtue of erstwhile Section 488 of Cr.P.C. or Section 2 of the Muslim Personal Law (Sharia) Application Act, 1937, or case law evolved at a time when such statutory provisions were in the field.* ***In this view of the matter, the respondent is entitled to maintenance for the entire period that she remained married to the petitioner unconditionally, and no preconditions can be imposed the satisfaction of which would be a prerequisite to assert her entitlement to maintenance. The learned***

> ***ADJ therefore made no mistake in law in granting maintenance to the respondent.****"*

13. Similarly, no such conditions have been envisaged under Section 17-A of the West Pakistan Family Courts Act, 1964 either. Therefore, the obligation of a husband to maintain his wife is clear and unambiguous. These provisions do not stipulate any preconditions for the wife's entitlement to maintenance during the subsistence of marriage, nor do they permit the importation of extraneous conditions derived from commentaries or treatises on Mohammedan Law. The statutory framework, thus, affirms that a legally wedded wife is entitled to maintenance without the need to satisfy additional criteria not found within the law itself. At this juncture, it would be apt to look into the binding effect of principles contained in Mohammedan Law on matters pertaining to family disputes before the courts in Pakistan. *Messrs Najaat Welfare Foundation through General Secretary Versus Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 4 others* (PLD 2021 Federal Shariat Court 1)

> *"D.F. Mulla did acknowledge that he largely relied upon the translation of Hedaya by Hamilton and translation of Fatawa Alamgiri by Baillie. Hence, relying on secondary sources by D.F. Mulla is itself a question mark on the validity of the opinion contained therein and on the understanding of the Islamic Law by him…****Finally, the book of D.F. Mullah titled "The Principles of the Mohammedan Law" is just a text book as stated by Mulla himself or it can be considered as a reference book but in no way it is a statute.*** *This has already been decided by this Court in Shariat Petitions Nos.06/I and 13/I of 2013."* (Emphasis added)

14. This notion is entrenched in various judgments rendered by the apex courts of Pakistan, wherein it has been settled that the courts can indeed deviate from the viewpoint taken in the Mohammedan Law, especially if it is contrary to the principles of equity, good conscience and justice. In a case titled *Khalida Shamim Akhtar Versus Ghulam Jaffar and Another* (**PLD 2016 Lahore 865),** the Court held that: -

> *"Muhammadan Law by D.F. Mulla, not only in the present case, but other cases also is often quoted for a reference.* ***The Hon'ble Federal Shariat Court, in the referred judgment, has held that, said law is in fact only a reference book and not a statutory law applicable in Pakistan, in the sense that the legislature has not enacted the same. It is just an option of the Court to consult the same on the basis of***

> ***equity and refer to the principles mentioned in paragraphs of the said book, at times, and that too casually in some matters only. Moreover, the rules quoted in Muhammadan Law are not at all applicable, if in the opinion of the Court, they are found opposed to justice, equity and good conscience.*** *These rules are not even referred to in situations directly covered by the Holy Quran or Sunnah or by binding Ijma and Qisas." (Emphasis added)*

A similar opinion has been taken in *Mst. Mumtaz Bibi Versus Qasim and 4 Others* (**2022 PLD Islamabad 228)**, *Gulzar Ahmad Versus Ayesha Naz Sarwar and 2 others* **(2022 CLC 675)**, *Mahnoor Shabbir Versus Additional District Judge and Others* (**2024 CLC 513)**, wherein it has been held that Principles contained in Mohammedan Law could only be consulted as a reference book; they cannot be termed to be statutory law having binding effect, upon which any presumption could be drawn against a person. It was neither a statute, nor a custom or usage, therefore, the opinion of author of the book was not binding.

15. Section 14 of the West Pakistan Family Courts Act, 1964, being a special law, has placed an embargo on the right of appeal against an interim order pertaining to maintenance. It is a settled principle of law that the quantum of the interim maintenance cannot be made a ground for invoking the constitutional jurisdiction of this Court. Therefore, when a statute specifically excludes a remedy, a petition in terms of Article 199 of the Constitution cannot be held to be maintainable against the said order, as it would tantamount to circumventing the intent of the legislature and frustrate the express provision of law. Reliance in this regard is placed upon *Makhdoom Shahab-ud-Din Versus Judge Family Court, Islamabad (West) and another* **(2024 YLR 2854)**. Furthermore, perusal of record further reveals that the suit before the learned Trial Court was filed on 28.11.2024 and the same has to be concluded within a period of six months as prescribed under Section 12-A of the West Pakistan Family Court Act, 1964, therefore, in order to meet ends of justice, the Judge Family Court, Islamabad (East) is hereby directed to decide the suit for recovery of maintenance, filed by Respondents No.1 to 3, preferably within a period of two months so that the Petitioner/Defendant could only be burdened with the interim maintenance for two months, which would subsequently be merged into final judgment.

16. Before parting with the judgment, the language used by the Petitioner/Defendant in the instant Petition as well as the written statement against

his wife, with whom he wants to reconcile appears deeply troubling. The choice of words, such as "undaunted", "selfish", "wayward", "arrogant", "a woman of willfulness", "bigoted attitude", "disobedient lady", etc., reflects his mala-fide intent behind filing the suit for restitution of conjugal rights. Such expressions used by husbands against their wives contradict the very essence of a suit for restitution of conjugal rights. As already observed in the preceding paragraphs, such suits should not be used as a weapon to obstruct claims for maintenance allowance, but must be instituted in good faith and with a *bona fide* intent to reconcile and resolve the issues between the spouses aimed at preserving the matrimonial bond with dignity and kindness.

17. For what has been discussed above, the instant Petition, being devoid of merits, is hereby **dismissed**. The interim maintenance fixed by the learned Family/Guardian Judge, East-Islamabad, vide the Impugned Order dated 06.03.2025, does not suffer from any illegality, jurisdictional error or factual irregularity warranting interference in constitutional jurisdiction. This Court, therefore, finds no cogent reason to set aside the Impugned Order to the extent challenged herein.

18. The office is directed to send a copy of this Judgment to the learned Judge Family/Guardian Court, Islamabad (East) for compliance of directions contained in paragraph 15 of this Judgment.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of May 2025.

JUDGE

Sajid/--

Approved for Reporting
Blue Slip added.