

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 5459 of 2025

MUHAMMAD MUNEEB ARSHAD

VERSUS

MST. AMMARA MAHROOF, ETC.

Petitioner by : Mr. Akhtar Hussain Bharwana, Advocate.
Respondents by : Mr. Awais Mehmood Awan, Advocate for the
Respondents No.1 & 2.
Assisted by : Ms. Amna Danial Khawaja, Judicial Law Clerk.
Date of hearing : 03.02.2026

MUHAMMAD AZAM KHAN, J.

1. The Petitioner, Muhammad Muneeb Arshad, has filed the instant writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, challenging the Order dated 10.12.2025 (**"Impugned Order"**) passed by the learned Judge Family Court, West-Islamabad (**"Trial Court"**) whereby his right of defense has been struck off under section 17-A of the West Pakistan Family Courts Act, 1964 on the ground of default in payment of interim maintenance.

BACKGROUND:

2. Brief facts of the case, as per the contents of the instant petition, are that Mst. Ammara Mahroof (**"Respondent No. 1"**) filed a suit for recovery of maintenance allowance against the Petitioner, before the learned Trial Court, with the prayer that the following decree may kindly be issued in her favor: -

- i. A decree to the effect that the Defendant pay an amount of Rs.2,00,000/- per month on account of maintenance of the Plaintiff No. 1 from 19.11.2021 till the completion of Iddat period.

- ii. A decree to the effect that the Defendant pay the maintenance of the Plaintiff No. 2, calculated at PKR 1,67,772/- per month from the date of birth of Plaintiff No. 2, with an increase of 25% per annum.

3. The suit was contested by the Petitioner/Defendant by filing a written statement, raising objections, among other defenses, touching upon maintainability and jurisdiction, with the consistent stance that the parties' residence and the minor's welfare/maintenance issues were already within the cognizance of courts in Ireland. However, the learned Trial Court vide Order dated 11.11.2024 fixed a sum of Rs. 25,000/- as interim maintenance in favour of the minor, namely Minha Muneeb, payable by the Petitioner on or before the 14th day of each month. Issues were framed, including the maintainability of the suit, and the matter proceeded further. It is pertinent to note herein that the Petitioner/Defendant had also moved an application seeking dismissal of the suit at the threshold, inter alia, on the ground that parallel proceedings before the Court in Ireland had already decided the minor's maintenance, by virtue of which the Respondent No. 2/Plaintiff No. 2 has been receiving maintenance thereunder. The Petitioner/Defendant further invoked the principles of **Res Judicata** by invoking Section 11 of the Civil Procedure Code, 1908. The said application filed by the Petitioner/Defendant was dismissed by the learned Trial Court vide Order dated 02.10.2025, indicating that the controversy reflected in the issues framed would be adjudicated in accordance with law at the appropriate stage. For ready reference, the Order dated 02.10.2025 is being reproduced hereunder: -

"Order
02-10-2025

The Application under section 11 CPC filed by the defendant party stands dismissed with the observation that the matter requires evidence and the fate of the case will be decided after conclusion of trial. Certainly, the Issues No. 3 & 4 were framed regarding the jurisdiction and as well as about maintainability of instant case, which will be decided after the conclusion of trial. The parties are

strictly directed to conclude the evidence by next date i.e., 06-11-2025 without failure.”

4. On 06.11.2025, the Respondent No. 1/Plaintiff filed an application under Section 17-A of the West Pakistan Family Courts Act, 1964, read with all other enabling provisions of law, seeking the striking off of the defense of the Petitioner/Defendant. The said application was contested by the Petitioner/Defendant by filing a written reply. After hearing the arguments, the learned Trial Court, vide Impugned Order dated 10.12.2025, struck off the defense of the Petitioner/Defendant under Section 17-A of the West Pakistan Family Courts Act, 1964, on account of his default in payment of the interim maintenance allowance. Being aggrieved by the said Impugned Order, the Petitioner/Defendant has filed the instant petition. Consequent thereto, on 18.12.2025, the learned Trial Court proceeded to decree maintenance for the minor @ Rs. 25,000/- (Twenty-Five Thousand Rupees) with annual increase of 10% with effect from April 2023 till her legal entitlement. The decree was passed on the premise that the right of defense of the Petitioner/Defendant had already been struck off under Section 17-A of the West Pakistan Family Courts Act, 1964 vide Impugned Order dated 10.12.2025, and that the record did not reflect any arrangement or compliance by the Petitioner/Defendant towards payment of the interim maintenance as directed. Accordingly, the suit was decreed to the extent of the minor's maintenance under Section 17-A of the West Pakistan Family Courts Act, 1964, in the terms reflected in the decree. Thereafter, the proceedings were fixed for further steps, including cross-examination of the Plaintiff's witnesses to the extent of the remaining claim i.e., the personal maintenance allowance towards the Respondent No. 1/Plaintiff No. 1. It is also material to mention herein that the instant writ petition challenges solely the Order dated 10.12.2025, whereby the right of defense of the Petitioner/Defendant was struck off by the learned Trial Court; subsequent decree dated 18.12.2025 has not been specifically assailed before this Court in the instant matter.

ARGUMENTS ON BEHALF OF THE PETITIONER:

5. Learned counsel for the Petitioner/Defendant has contended that the Impugned Order dated 10.12.2025 is contrary to law and facts, based on surmises and conjectures, and passed without proper application of judicial mind. Alongside the proceedings pending before the learned Trial Court in Pakistan, the Petitioner/Defendant has placed on record orders passed by the learned District Court, Ballinasloe, Ireland, relating to maintenance for the minor, whereby the Petitioner/Defendant's weekly liability towards the minor was fixed at different stages, which ultimately is reflected as €125 per week vide Order dated 12.09.2024. The Petitioner/Defendant also relies upon payment proofs/bank remittances to show regular payments to the Respondent No. 1/Plaintiff in terms of the arrangement settled by the District Court, Ballinasloe, Ireland. It has been argued that the learned Trial Court acted in haste, ignored the settled law laid down by the Superior Courts requiring matters to be decided on merits rather than technicalities, and failed to consider the available record. It was further submitted that the Respondent No. 1/Plaintiff No. 1 has never denied receipt of the said maintenance, yet the learned Trial Court failed to consider this material fact while passing the Impugned Order. Learned counsel for the Petitioner/Defendant lastly contends that the Impugned Order dated 10.12.2025 is contrary to law and the record, suffers from non-application of mind, and has been passed in a mechanical manner, resulting in grave prejudice by depriving the Petitioner/Defendant of his substantive right to defend.

ARGUMENTS ON BEHALF OF THE RESPONDENT NO. 1:

6. Learned counsel for Respondent No. 1/Plaintiff No. 1 has controverted the arguments advanced by learned counsel for the Petitioner/Defendant, thereby supporting the Impugned Order dated 10.12.2025. It was contended that the Petitioner/Defendant willfully had failed to comply with the Interim Order dated 11.11.2024 passed by the learned Trial Court, thereby attracting the penal consequences under Section 17-A of the West Pakistan Family Courts Act, 1964. It was argued that payment of maintenance, pursuant to an order rendered

by a foreign court, does not absolve the Petitioner/Defendant from complying with the lawful orders passed by the competent court in Pakistan. Learned counsel further submitted that the Petitioner/Defendant has deliberately avoided payment of maintenance towards the Respondent No. 2/Minor and failed to comply with the directions of the learned Trial Court, which, therefore, has rightly struck off his defense after providing due opportunity.

7. I have heard the learned counsel for the parties at considerable length and perused the record.

8. Examination of the record shows that there remains an undisputed cross-border litigation inter se the parties qua the maintenance allowance for the Respondent No. 2/Minor before the District Court, Ballinasloe, Ireland, wherein cognizance had already been taken by fixing maintenance payable by the Petitioner/Defendant towards the Respondent No. 2/Minor. The record reveals that an application under Section 11(1) of the Guardianship of Infants Act, 1964, was filed before the District Court, Ballinasloe, Ireland, regarding the welfare of the Respondent No. 2/Minor by the Respondent No. 1/Plaintiff No. 1, whereby the Irish Court had fixed the maintenance for the Respondent No. 2/Minor at **€50 per week** vide Order dated 07.12.2023. Thereafter, vide Order dated 11.01.2024, the said Court enhanced the maintenance towards the Respondent No. 2/Minor at **€100 per week** by invoking the provisions of Family Law (Maintenance of Spouses and Children) Act, 1976, read with the Guardianship of Infants Act, 1964. Currently, the Petitioner/Defendant has been paying maintenance regularly in compliance with the directions of the District Court, Ballinasloe, Ireland, which had further fixed the maintenance towards the Respondent No. 2/Minor at **€125 per week** vide Final Order dated 12.09.2024. The Petitioner/Defendant, in this regard, has placed on record documentary proofs of such payments, which have not been disputed before this Court by the contesting party. On this premise, it is urged that the Petitioner/Defendant could not have been treated as a willful defaulter, and that striking off the defense, being a harsh procedural consequence, was wholly disproportionate.

9. The record also ostensibly shows that the Respondent No. 1/Plaintiff had instituted a suit in Pakistan for maintenance payable towards herself and the Respondent No. 2/Minor under the West Pakistan Family Courts Act, 1964 on 08.06.2023, whereby the Learned Trial Court vide Order dated 11.11.2024 fixed the interim maintenance payable towards the Respondent No. 2/Minor only at the rate of Rs. 25000/- per month, which shall be paid by the Petitioner/Defendant by 14th day of every calendar month, failing which the Court reserved the right to strike off the defense and decree the suit. Prior to the fixation of interim maintenance, the Petitioner/Defendant had already moved an application for return/rejection of the suit before the learned Trial Court, which was finally adjudicated on 02.10.2025, whereby his application was dismissed on the ground that the matter required evidence, thus, the fate of the case will be decided at the conclusion of trial. Thereafter, the learned Trial Court vide Order dated 10.12.2025 struck off the defense of the Petitioner/Defendant under Section 17-A of the West Pakistan Family Courts Act, 1964 due to his default in the payment of the interim maintenance allowance towards the Respondent No. 2/Minor. The learned Trial Court further observed that the Petitioner/Defendant remained reluctant to oblige the Order dated 11.11.2024. Consequent thereto, on 18.12.2025, the learned Trial Court proceeded to decree maintenance for the Respondent No. 2/Minor @ Rs. 25,000/- (Twenty-Five Thousand Rupees) with annual increase of 10% with effect from April 2023 till her legal entitlement. The decree was passed on the premise that as the right of defense of the Petitioner/Defendant had already been struck off under Section 17-A of the West Pakistan Family Courts Act, 1964 vide Impugned Order dated 10.12.2025, therefore, there was no evidence on record to show any arrangements made or compliance by the Petitioner/Defendant towards payment of the interim maintenance as directed. Accordingly, the suit was decreed to the extent of the minor's maintenance under Section 17-A of the West Pakistan Family Courts Act, 1964. Learned counsel for the Petitioner/Defendant contends that the Impugned Order dated 10.12.2025 is contrary to law and the record, suffers from non-application of mind, and has been passed in a mechanical manner, resulting in grave prejudice by depriving the Petitioner/Defendant of his

substantive right to defend. Learned counsel has further submitted that the learned Trial Court ought to have dealt with the jurisdiction/maintainability objection as a preliminary matter, particularly in a case where the minor is within a foreign jurisdiction and a foreign court is already seized of the matter, and that postponing the jurisdictional determination while simultaneously imposing the sanction of Section 17-A is legally unsustainable.

POINTS OF DETERMINATION:

10. Upon hearing learned counsel for the parties at length and after careful perusal of the record, the following moot questions arise for determination:

1. Notwithstanding that both parties presently reside within the territorial jurisdiction of a foreign court, can the Family Courts in Pakistan validly assume and exercise jurisdiction to adjudicate the dispute in view of Rule 6 of the West Pakistan Family Courts Rules, 1965?
2. Where a competent foreign court has already taken cognizance of the minor's maintenance between the same parties and has fixed the father's liability, can a Family Court in Pakistan concurrently take cognizance and proceed to pass overlapping orders on the same subject matter, between the same parties, and for the same cause of action?
3. Whether the Respondent No. 1/Plaintiff No. 1, having invoked and pursued the foreign forum for fixation/enforcement of the minor's maintenance and obtained operative orders therefrom, is bound by the doctrine of election and thus precluded from simultaneously pursuing an overlapping claim for the same minor-maintenance liability before Pakistani courts?

4. Whether permitting parallel maintenance proceedings/orders in Pakistan amounts to impermissible double burdening of the father and results in unjust enrichment/double recovery for the same liability and period?
5. Whether judicial propriety requires the Courts in Pakistan to avoid passing overlapping/contradictory maintenance orders when a foreign court has already fixed and is enforcing the minor's maintenance?
6. If the Impugned Order striking off the Petitioner's defense under Section 17-A is found to be unlawful for want of reasons and absence of a finding of willful default, can the consequential decree dated 18.12.2025 founded upon that unlawful order legally survive?

POINT NO. 1:

11. There is no cavil to the proposition that territorial competence of a Family Court is not determined solely by the current physical residence of the parties abroad, it is determined by the statutory framework, principally Rule 6 of the West Pakistan Family Courts Rules, 1965, which is reproduced herein below for ready reference:

"Rule 6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which: -

- (a) the cause of action wholly or in part has arisen, or*
- (b) where the parties reside or last resided together:*

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction."

A bare reading of Rule 6 of the West Pakistan Family Courts Rules, 1965, reveals that merely because the parties presently reside abroad does not, by

itself, render the Family Courts in Pakistan incompetent to entertain a family dispute. Jurisdiction of the Family Court is governed by the statutory framework, which contemplates jurisdiction through recognized connecting factors, including inter alia the ordinary residence, last residence, and/or where the cause of action wholly or partly arose, as applicable. Reliance in this regard is placed “Sohail Ahmed Versus Mst. Samreena Rasheed Memon and another” (2024 SCMR 634), wherein the Honorable Supreme Court of Pakistan observed the following while interpreting Rule 6 of the West Pakistan Family Courts Rules, 1965: -

“7. With regard to the question raised before us by the petitioner as to whether Family Courts in Pakistan have jurisdiction to entertain the case when the plaintiff/wife is a dual citizen of Pakistan and the USA and is residing in the USA at the time of the institution of the suit, whereas, the husband is national and permanent resident of Pakistan. In this regard Rule 6 of the West Pakistan Family Courts Rules, 1965 is relevant which is reproduced herein-below:

“6. The Court which shall have jurisdiction to try a suit will be that within the local limits of which: -

- (a) the cause of action wholly or in part has arisen, or*
- (b) where the parties reside or last resided together.*

Provided that in suits for dissolution of marriage or dower, the court within the local limits of which the wife ordinarily resides shall also have jurisdiction.”

8. In the above-proviso, the Legislature has intentionally used the word “ordinarily” which has a different meaning than that of permanent residence. According to Black's Law Dictionary (VIth Edition) word "ordinary" means "usual, common, settled, customary, and reasonable". Furthermore, Dicey, a renowned jurist, in his book, "Conflict of Laws" at page 96 explains expression "Ordinarily resides" in the following words:

“It is not, as a matter of law, necessary that the residence should be long in point of time, residence for a few days or

even for part of a day is enough. The length of residence is not important in itself.”

9. *In the present case, although the Respondent is living in the USA at the time of the institution of the suit through her duly constituted attorney. However, the respondent usually comes to Pakistan; have acquired her education in Karachi and visits her family in Karachi from time to time.*

10. By this proviso, the rigour of normal rule providing for territorial jurisdiction for trial of cases in Family Court have been relaxed in favour of female filing a suit for dissolution of marriage or recovery of dower. The words "Ordinarily resides" and "shall also have jurisdiction" used in proviso demonstrate the intention of parliament is to facilitate things for the wife and off-set her handicap. Therefore, the option of instituting such suits vests with the wife and the Court is bound to take her convenience subject to law. Hence, Family Courts in Pakistan have jurisdiction to entertain the matter and the trial court has rightly exercised so.”

(Emphasis Supplied)

12. Keeping in view the above rationale, it becomes ostensible that cross-border elements in matrimonial disputes do not automatically oust the jurisdiction of Pakistani family fora once the statutory jurisdictional touchstones under Rule 6 are met. Consequently, the objection that the Courts in Pakistan are barred from adjudication simply because both parties are within the territorial jurisdiction of a foreign court is legally unsustainable.

POINT NO. 2:

13. The record placed before this Court shows that the learned District Court, Ballinasloe, Ireland, had assumed jurisdiction and passed orders qua fixation of the maintenance payable towards the Respondent No. 2/Minor by the Petitioner/Defendant, which the latter has been complying with by making regular payments pursuant thereto, with proofs placed on record. In such circumstances, the Courts in Pakistan must act in accordance with judicial propriety and restraint to prevent contradictory or duplicative commands being issued against the same person on the same obligation, particularly where the

foreign court's orders are being complied with, and the receiving party is not shown to be left remediless. Thus, where a competent foreign court has already assumed jurisdiction of the same dispute between the same parties, passed effective orders on the same obligation, and those orders are being complied with, judicial propriety requires the Family Courts in Pakistan to avoid parallel cognizance that would produce overlapping or competing obligations for the same liability and the same period.

14. The question is not of a theoretical power to entertain proceedings, but of the orderly administration of justice. Courts in Pakistan must guard against a scenario where one party is permitted to litigate the same claim twice, thereby exposing the other to multiple coercive mechanisms and inconsistent commands. It is pertinent to note that the Petitioner/Defendant had also filed an application seeking dismissal of the suit at the very outset, *inter alia*, on the ground that parallel proceedings before the competent Court in Ireland had already determined the minor's maintenance, pursuant to which the Respondent No. 2/Plaintiff No. 2 was receiving maintenance. The Petitioner/Defendant further invoked the bar of *res judicata* by placing reliance on Section 11 of the Civil Procedure Code, 1908. The said application, however, was dismissed by the learned Trial Court vide Order dated 02.10.2025, observing that the controversy embodied in the framed issues required adjudication in accordance with law at the appropriate stage. For the purpose of examining whether the bar of *res judicata* is attracted in the present matter, it is appropriate to reproduce Section 17 of the West Pakistan Family Courts Act, 1964, and Section 11 of the Civil Procedure Code, 1908, herein below for ready reference: -

“17. Provisions of Evidence Act and Code of Civil Procedure not to apply —

*(1) Save as otherwise expressly provided by or under this Act, the provisions of the Qanun-e-Shahadat, 1984 (P.O. No. 10 of 1984)], and the Code of Civil Procedure, 1908, **except sections 10 and 11**, shall not apply to proceedings before any Family Court in respect of Part 1 of Schedule.*

(2) Sections 8 to 11 of the Oaths Act, 1873, shall apply to all proceedings before the Family Courts.”

“Section 11. Res judicata — No Court shall try suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

15. Bare reading of the above provisions would disclose that Section 17 of the West Pakistan Family Courts Act, 1964, expressly carves out an exception to the general exclusion of the Code of Civil Procedure, 1908, by providing that, notwithstanding the non-applicability of the CPC to Family Court proceedings, Sections 10 and 11 CPC shall continue to apply. The legislative intent is unambiguous in this regard. While the Family Courts are designed to proceed expeditiously and free from technicalities of the CPC, the principles of *res sub-judice* and *res judicata* are preserved to prevent multiplicity of litigation, inconsistent adjudications, and re-agitation of settled disputes. Consequently, where the statutory ingredients of Section 11 CPC are satisfied, a Family Court is not only empowered, but obliged to give effect to the bar of *res judicata*, so that the same parties are not permitted to litigate the same matter repeatedly under the guise of fresh proceedings. In this regard, reliance is placed on the case titled “Dr. Ayesha Sabir Versus Fida Ul Haq Yasir and 3 Others” (2009 YLR 1536), wherein the Honorable Lahore High Court has observed the following:

*“8. The main question to be addressed herein was as to whether the claim of petitioner is hit by section 17 read with section 11, C.P.C. **Section of the Family Courts Act, 1964 pertains to sections 10 and 11 of the C.P.C. which are not barred by the Family Courts Act, 1964.** Apart from these two sections the provisions of the C.P.C. are barred by the Family Courts Act, 1964, although the principles do apply. However, here there is no contention regarding the principles. **It is very specifically contended by respondents 1 and 2 that having once agitated the issue in Canada and getting relief as prayed for, the petitioner is barred from putting up the same claims again before a Court in Pakistan. I am inclined to agree with this view of the Courts below. The case of the petitioner is hit by res judicata. Once having***

claimed something and the matter having been decided by a Court of competent jurisdiction, she is barred from bringing it up again in Pakistan. All her claims have already been settled. I do grant that the suit was maintainable up to the extent of dowry articles, which in any case respondent No.1 has agreed to return to the petitioner. Her suit pertained to recovery of dowry articles and her mentioning the jewelry again as dowry articles is not justifiable.”

(Emphasis Supplied)

16. Section 17 of the West Pakistan Family Courts Act, 1964 read with Section 11 of CPC embody the rule that where a dispute has already been adjudicated upon by a competent forum between the same parties and on the same cause of action, the Family Courts must decline to re-open the same controversy. The Order dated 12.09.2024 passed by the learned District Court, Ballinasloe, Ireland states that no further application in relation to varying maintenance be made for two years, thereby settling the matter qua maintenance payable towards the Respondent No. 2/Minor inter se the parties. In this regard, it is important to clarify herein that the Explanation of Section 10, therefore, does not apply to the facts of the instant case as the matter qua maintenance payable towards the Respondent No. 2/Minor has been settled by the learned District Court, Ballinasloe, Ireland. Keeping in view the approach taken in the judgement cited supra, this Court is also fortified in holding that once parties had surrendered to the jurisdiction of a competent Irish Court and the claim had been finally adjudicated there, the Respondent No. 1/Plaintiff No. 1 was barred from raising the same claim again before Courts in Pakistan, as the matter would be hit by the principle of *res judicata*. The controlling logic is that once a claim inter se the same parties has been adjudicated by a competent foreign court and relief has been granted/settled, the same Claimant cannot pursue the same claim again before Courts in Pakistan so as to create duplicative recovery and inconsistent outcomes. Hence, applying the same principle herein, where the maintenance payable towards the Respondent No. 2/Minor has already been judicially fixed by the learned District Court, Ballinasloe, Ireland vide Order dated 12.09.2024 and payments are being made in compliance, the proceedings undertaken by the learned Trial Court in Pakistan ought not to be allowed to operate as a second judicial channel for the very same maintenance liability,

because that would defeat finality, invite inconsistency, and prejudice the payer through duplicative burden.

17. Furthermore, a litigant seeking relief must approach the Courts with clean hands and make full candid disclosure of all material facts. In the present matter, the non-disclosure by Respondent No. 1/Plaintiff No. 1 before the learned Trial Court of the parallel proceedings and maintenance orders passed by the Irish Family Court materially affects the fairness of the proceedings, and disentitles her from securing overlapping relief without judicial scrutiny. It is also significant to mention herein that the orders passed by the competent Irish Family Court fixing maintenance were never shown to have been challenged, set aside, or suspended before any competent forum. In the absence of any such challenge by the parties, the subsisting foreign orders and payments made thereunder could not have been ignored while assessing the Petitioner/Defendant's alleged default and the propriety of parallel proceedings.

18. Therefore, while jurisdiction under Rule 6 may exist, parallel cognizance and concurrent enforcement on the very same maintenance liability, already fixed and being complied with under the foreign court's orders, cannot be sustained, as it defeats finality, invites conflicting obligations, and violates judicial comity and orderly administration of justice. Thus, the findings on Moot Question No. 2 are answered in the negative in the facts of the present case. The Family Courts in Pakistan ought not to proceed in a manner that creates parallel maintenance liability for the minor when the same obligation has already been judicially fixed and is being complied with abroad.

POINT NO. 3:

19. The doctrine of election is a rule of fairness designed to prevent a litigant from simultaneously pursuing parallel remedies or parallel fora for substantially the same relief in a manner that multiplies proceedings and exposes the opposing party to double recovery in practical terms. It is a settled principle of law that where two fora are invoked for substantially the same relief on the same obligation, the law does not permit a litigant to "double run" the same claim so

as to obtain two enforceable streams for one liability. Election, in such a scenario, is not an empty technicality, it is rather a rule of fairness and coherence. In the cross-border family dispute, once the Respondent No. 1/Plaintiff elected to pursue maintenance for the Respondent No. 2/Minor before the learned District Court, Ballinasloe, Ireland and obtained a judicial fixation of the father's liability there, she could not, as a matter of principle and propriety, pursue an overlapping claim for the same maintenance liability before the Courts in Pakistan so as to expose the father to concurrent coercive mechanisms for the same obligation. The doctrine of election does not deny the minor's right to maintenance, it rather prevents the maintenance jurisdiction from being used as a means of multiplying enforcement streams for the same obligation. Reliance in this regard is placed on "Chief Executive Officer NPGCL, GENCO-III, TPS Muzafargarrah Versus Khalid Umar Tariq Imran and others" (2024 SCMR 518), wherein the August Supreme Court of Pakistan elaborated on the doctrine of election in the following terms: -

"11. It is a well-settled proposition of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or co-existent actions or remedy from a forum of competent jurisdiction vest with the aggrieved person. Once the choice is exercised and the election is made then the aggrieved person is prohibited from launching another proceeding to seek relief or remedy contrary to what could be claimed and or achieved by adopting other proceeding/ action and or remedy, which in legal parlance is recognized as doctrine of election, which doctrine is culled by the courts of law from the well-recognized principles of waiver and or abandonment of a known right, claim, privilege or relief as contained in Order II, rule (2), C.P.C., principles of estoppel as embodied in Article 114 of the Qanun-e-Shahadat Order 1984 and principles of res judicata as articulated in section 11, C.P.C. and its explanations. Reference in this regard may be made to the case of Trading Corporation of Pakistan v. Devan Sugar Mills Limited and others (PLD 2018 Supreme Court 828). Giving a choice to select a remedy from among several co-existent and/or concurrent remedies prevents the recourse to multiple or

successive redressals of a singular wrong or impugned action. It also provides an opportunity for an aggrieved person to choose a remedy that best suits the given circumstances. Such a rule of prudence has been developed by courts of law to reduce the multiplicity of proceedings. As long as a party does not avail of the remedy before a Court of competent jurisdiction all such remedies remain open to be invoked. Once the election is made then the party generally, cannot be allowed to hop over and shop for one after another co-existent remedies.”

(Emphasis Supplied)

20. The doctrine of election, as explained, is rooted in recognized principles of waiver/abandonment, estoppel, and res judicata, and is intended to curb multiplicity of proceedings and prevent parties from hopping over forums and shopping successive remedies for the same grievance. Applying the said principle to the present case, once the Respondent No. 1/Plaintiff No. 1 invoked the foreign forum qua the maintenance payable towards the Respondent No. 2/Minor, and obtained operative orders fixing the father's liability, which, on the record, is being complied with through regular payments, the Respondent No. 1/Plaintiff No. 1 could not, as a matter of prudence and legal coherence, maintain parallel proceedings in Pakistan for the same maintenance liability so as to expose the Petitioner/Defendant to overlapping commands and coercive processes in two jurisdictions.

21. Thus, in this context, the doctrine of election assumes particular significance because the object of maintenance proceedings reflects welfare and subsistence, not the creation of duplicative financial obligations for the same period and the same entitlement. Permitting parallel pursuit in Pakistan, despite the existence of subsisting foreign maintenance orders and receipt of payments thereunder, would effectively allow the Respondent No. 1/Plaintiff No. 1 to multiply enforcement streams for a single liability and to secure two executable outcomes on the same claim, which the doctrine of election is designed to prevent. Therefore, while the Courts in Pakistan may not be inherently divested of jurisdiction under Rule 6, the Respondent No. 1/Plaintiff's election of the foreign forum for fixation/enforcement of minor maintenance operates to

preclude parallel pursuit of the same relief in Pakistan in a manner that results in duplication and prejudice to the Petitioner. Hence, the findings on Point No. 3 are in the affirmative. The Respondent No. 1/Plaintiff No. 1 was required to elect a single forum for the enforcement of the same maintenance claim. Parallel pursuit is impermissible.

POINT NO. 4:

22. There is no cavil to the proposition that maintenance is fundamentally welfare-driven and intended to secure the subsistence of the child, however, it is not meant to become an instrument for extracting duplicative sums for the same liability. Where a father is already paying maintenance under the subsisting orders of a competent foreign Family Court, and payment is supported through documentary proof, compelling additional payment through parallel proceedings before the Family Courts in Pakistan, without first addressing the overlap effectively taxes the same obligor twice on the same obligation. Such duplication is inherently prejudicial as it forces the payer to simultaneously satisfy two coercive regimes for the same months, thereby creating an unjust and disproportionate burden. At the same time, it risks unjust enrichment if the recipient is allowed to recover two parallel amounts attributable to the same maintenance entitlement for the same period, without disclosure and without adjustment. If such duplication is permitted, the prejudice is twofold. First, the father is placed under the risk of simultaneous sanctions in different fora for the same months, coercive enforcement abroad on the one hand, and strike-off/penal consequences under Section 17-A in Pakistan on the other, despite evidence that the child is in fact being maintained. Second, the very logic of interim maintenance, i.e., to secure subsistence pending adjudication is distorted into a means of collecting amounts over and above what has already been judicially fixed and being received for the same period. That is precisely why, as a matter of fairness and orderly justice, a Court seized of such a claim must not permit parallel recovery without first determining the overlap at the preliminary stage. The court is not to facilitate multiplicity that results in unjust enrichment, it is to balance welfare with fairness. Therefore, any approach that ignores foreign court

orders and receipts, fails to require disclosure, and proceeds to penalize the payer as a defaulter without addressing the overlap, amounts to permitting an abuse of process and is inconsistent with the equitable foundation of family jurisdiction.

23. It is a settled principle that before proceeding on merits, the Courts must first examine and determine the maintainability of the proceedings, particularly where a specific legal objection as to jurisdiction/maintainability has been raised by the opposite party. Reliance in this regard is placed on “Syed Reza Ali Shah Versus XII Model Civil Appellate Court, District South, Karachi and 2 others” (PLD 2022 Sindh 171). In the present case, such an objection having been expressly taken, the same required proper adjudication at the threshold before resorting to penal consequences. It is a settled principle of law that before proceeding further on merits in any suit, petition, appeal or application, the Courts must first address and determine objections going to the root of maintainability and jurisdiction, especially where such objections are specifically raised by a party. Questions relating to forum, parallel proceedings, prior adjudication, and competence of the Court are not matters of mere technicality, rather they strike at the very authority of the Court to continue with the lis in the manner sought. Such objections, therefore, ought to be meaningfully adjudicated at the threshold or at the earliest appropriate stage, rather than being deferred casually to the end of trial if the material on record already warrants judicial scrutiny.

24. In the present case, the record reflects that the Petitioner/Defendant has been paying maintenance towards the welfare of the Respondent No. 2/Minor at the rate of €125 per week pursuant to an Order dated 12.09.2024 passed by the competent court in Ireland, and documentary proofs of such remittances have been placed on record. In these circumstances, permitting the Respondent No. 1/Mother to simultaneously pursue and enforce a parallel maintenance stream in Pakistan for the same minor, without first disclosing the full particulars of the foreign proceedings and without a clear mechanism of credit/adjustment for the amounts already being received, would operate as an impermissible double

burden upon the Petitioner/Defendant. Such duplication would expose the Petitioner/Defendant to overlapping financial liabilities and coercive consequences in two jurisdictions for the same obligation and period, notwithstanding that the child's maintenance, on the face of the record, is already being met through the foreign court-directed payments.

25. Moreover, if the Respondent No. 1 is allowed to obtain and enforce a second executable order in Pakistan for the same maintenance entitlement, while also continuing to receive maintenance under the Irish court orders, this would tend toward double recovery for the same liability and period, which the law does not countenance. Maintenance proceedings are designed to secure welfare, not to enable accumulation beyond entitlement. Therefore, in applying this principle to the present case, the learned Trial Court was required to address the overlap in jurisdiction, ensure transparency regarding the foreign payments, and decline duplicative enforcement, so that the Petitioner/Defendant is not compelled to be taxed twice for the same maintenance liability. In the absence of such adjustment, parallel enforcement would not only prejudice the Petitioner/Defendant, but would also create a real risk of unjust enrichment in favour of Respondent No. 1/Plaintiff under the guise of maintenance for Respondent No. 2/Minor.

26. If a party is already receiving maintenance under orders of a foreign Court and, without candid disclosure of such proceedings and payments, seeks the same or substantially similar relief before a Court in Pakistan for the same period and liability, the Court would be justified in treating such conduct as an abuse of process. The law does not countenance double recovery in the garb of parallel proceedings. At the very least, full disclosure and lawful adjustment of payments are indispensable so that no unfair enrichment results and no person is burdened twice over in respect of the same maintenance obligation.

27. Therefore, even assuming Pakistani jurisdiction exists, the Court must ensure that its orders do not cause duplicative burden. The proper judicial response is to decline parallel enforcement of an already settled maintenance

liability. Any approach that ignores subsisting foreign payments and treats the payer as a defaulter merely because the payment was made under a foreign order, while the child's maintenance is demonstrably being met, converts welfare jurisdiction into an inequitable duplication and cannot be sustained, which will risk transforming maintenance, a welfare right, into an inequitable duplication. The law leans against such an outcome as it undermines certainty and creates conflicting duties, it prejudices the relief by exposing the party liable to pay maintenance towards the minor to multiple sanctions for one obligation, and it potentially enriches the recipient beyond the adjudicated entitlement for the same period and same liability. Thus, any approach that ignores proven foreign compliance and proceeds mechanically to penal consequences under Section 17-A of the West Pakistan Family Courts Act, 1964, is inconsistent with fairness and the welfare-based character of family jurisdiction.

POINT NO. 5:

28. Judicial propriety, particularly in family jurisdiction involving cross-border litigation, demands that the Courts act in a manner that preserves coherence of the judicial process, avoids conflicting commands, and maintains the integrity of adjudication. Where a foreign court of competent jurisdiction has already assumed cognizance of the matter, fixed the obligor's maintenance liability, and that liability is being complied with through regular payments, the Family Courts in Pakistan, while not necessarily divested of jurisdiction under Rule 6, must still exercise powers with restraint and structured reasoning. The purpose is not to abdicate jurisdiction, but to prevent the judicial system from becoming a vehicle for inconsistent or overlapping obligations imposed upon the same person for the same liability and the same period. If a Family Court proceeds mechanically, without weighing the effect of subsisting foreign orders and proven compliance therewith, it risks undermining comity, fostering contradictory outcomes, and eroding public confidence in the administration of justice. The duty of the Court, therefore, is to ensure that any interim or final directions are passed after due consideration of the entire factual matrix,

including prior adjudications and payments, and in a manner that prevents duplication and maintains orderly justice.

29. In the present case, judicial propriety required that the learned Trial Court, before invoking the penal consequence under section 17-A of the West Pakistan Family Courts Act, 1964, should have first determined whether the alleged default was truly willful in the face of the material placed on record showing maintenance being paid pursuant to orders of the Irish Court. A reasoned judicial approach would necessarily have examined whether the foreign orders covered the same maintenance obligation, whether payments were being regularly received, whether any overlap existed for the same months, and if so, what adjustment/credit mechanism was appropriate to secure the child's welfare without creating an unfair double burden. In the absence of such an exercise, the drastic step of striking off defense becomes detached from the realities of compliance and welfare, and converts a welfare-centered jurisdiction into a punitive and technical outcome. Judicial propriety, thus, operates as a controlling principle that requires Courts to avoid issuing directions that lead to inconsistent enforcement or double liability, and to insist upon reasoned, proportionate orders which reflect application of mind to all material circumstances.

30. This Court, however, is not laying down as an absolute proposition that the Courts in Pakistan, in no circumstance, may entertain a claim of maintenance merely because proceedings have been undertaken abroad. Rather, the finding is confined to the peculiar facts and circumstances of the present case, wherein maintenance qua Respondent No. 2/Minor has already been settled by the competent Court in Ireland, and payments are being made thereunder. In such a situation, permitting a parallel claim for the same maintenance liability and overlapping period before the learned Family Court in Pakistan, without proper disclosure and adjustment, would offend principles of judicial propriety and fair process, and would expose the Petitioner/Defendant to duplicative financial burden.

POINT NO. 6:

31. The instant petition primarily assails the Impugned Order dated 10.12.2025, whereby the Petitioner/Defendant's defense was struck off under Section 17-A of the West Pakistan Family Courts Act, 1964. Striking off defense is a penal procedural consequence, which must follow only upon a clear, reasoned satisfaction of willful default. In the present case, the record placed before this Court demonstrates that the Petitioner/Defendant has been making regular payments pursuant to the foreign court's order qua maintenance, and such payments were supported by documentary proofs. In such a situation, treating the Petitioner/Defendant as a willful defaulter, without dealing with the existence and effect of foreign maintenance orders and without recording reasons why such compliance does not matter, betrays non-application of mind. Reliance may be placed on "*Bashir Masih v. Suneela Nadeem and others*" (2024 CLC 863), wherein it was held that although Section 17-A of the West Pakistan Family Courts Act, 1964 empowers the Family Court to strike off the defense and decree the suit upon failure to pay interim maintenance, such provision does not confer unfettered or arbitrary power upon the Court to proceed mechanically. Relevant portion is reproduced hereunder: -

"12. Though by virtue of Section 17-A of "The Act", Family Court was vested with the power to strike off the defence of the defendant and decree the suit on failure by him to pay the interim maintenance in terms of order of the Court but it will not equip the Court with unfettered powers to proceed mechanically. In no circumstances, a Court can abdicate its prime duty to foster justice as per canons of law. It is trite law that Court cannot proceed in vacuum and exercise judicial powers arbitrarily and whimsically. Before invoking a penal provision like section 17-A of "The Act" the Court was supposed to consider as to whether it was vested with the power to pass the order of interim maintenance, which was not done at all. Even the learned appellate Court did not apply its own independent judicious mind to the facts of the case and acted merely as a post office to affix its stamp on the findings of the learned Trial Court in a mechanical manner."

(Emphasis Supplied)

In the present case, where objections regarding parallel Irish proceedings, subsisting foreign maintenance orders, and payments made thereunder were already before the learned Trial Court, the Impugned Order dated 10.12.2025 required a speaking and judicial determination instead of a mechanical invocation of penal consequences.

32. Moreover, the Impugned Order dated 10.12.2025 is found to be a non-speaking order to the extent that it does not engage with the material on record that directly aids in determining the willful default on the part of the Petitioner/Defendant proportionality, and qua the overlap with the foreign maintenance orders. Such an Order passed by the learned Trial Court, therefore, cannot sustain the penal consequence of Section 17-A of the West Pakistan Family Courts Act, 1964. It is a settled principle of law that if the foundation is built upon illegality, the entire superstructure that rests upon it is bound to crumble. Reliance in this regard is placed on “*Federation of Pakistan through Secretary, Ministry of Defence, Rawalpindi Vs Rooh ul Amin*” (2026 SCMR 74), “*Pesco, Wapda House Vs Ishfaq Khan*” (2021 SCMR 637), “*Khyber Tractors (Pvt.) Ltd. through Manager Versus Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad*” (PLD 2005 Supreme Court 842), wherein the Honorable Supreme Court has stated the question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum, having no jurisdiction, even if it is found to be correct on merits, is not sustainable as it is the jurisdiction of a Court that lays down a foundation stone for a judicial functionary to exercise its powers/authority and no sooner the question of jurisdiction is determined in negative, the whole edifice built on such defective proceedings is bound to crumble down.

33. Although the Decree dated 18.12.2025 may not have been independently and specifically assailed in the prayer clause of the instant petition, yet the same is a purely consequential order founded upon the earlier Impugned Order dated 10.12.2025, whereby the right of defense was struck off and penal consequences under Section 17-A of the West Pakistan Family Courts Act, 1964 were set into

motion. Once the foundational order is found to be legally unsustainable, non-speaking, and passed without due consideration of material facts placed on record, the supervening decree, being inseparably connected and resting upon the same foundation, cannot be allowed to survive in the eye of law. In exercise of Constitutional jurisdiction under Article 199 of the Constitution of Pakistan, this Court is competent to grant complete and effective relief so as to prevent perpetuation of illegality. Consequently, the Decree dated 18.12.2025, which was admittedly founded upon the striking off of defense and the premise of non-compliance, cannot independently stand on firmer footing if the foundational Impugned Order dated 10.12.2025 is set aside. The subsequent Decree, insofar as it flows from and is premised upon the penal strike-off, is a superstructure resting upon that foundation. Reliance may also be placed on “*Khurram Shahzad v. Naseem Akhtar and others*” (2021 CLC 1300), wherein it was held that a decree passed under Section 17-A must still amount to a judicial determination based on application of mind in accordance with law and evidence, and cannot be a merely mechanical or technical endorsement of the plaint. It was also emphasized, with reference to Section 17-B, that the Court is required to make a reasonable inquiry into the matter before proceeding to decree the suit on account of default. In the present case, where subsisting orders passed by the foreign court qua maintenance are prevalent, evidence of payments thereunder, and objections regarding duplication and maintainability were already on record, the learned Trial Court was required to judicially examine such material before invoking the harsh procedural consequences of Section 17-A.

34. In view of the foregoing discussion, the instant writ petition is allowed and the Impugned Order dated 10.12.2025, and the consequential decree dated 18.12.2025 are hereby set aside, being unsustainable in law to the extent they were passed without a proper judicial determination of the material objections raised by the Petitioner/Defendant, particularly regarding the existing foreign proceedings and payments made thereunder. Insofar as the claim of Respondent No. 2/Minor for maintenance is concerned, the same shall not lie before the

learned Trial Court in the light of present facts and circumstances, as the matter already stands taken cognizance of and is being acted upon by the competent Court in Ireland, therefore, duplication of parallel maintenance orders on the same cause would offend judicial propriety and result in unjust double burdening. However, the claim of Respondent No. 1/Plaintiff No. 1 shall continue to be adjudicated by the learned Trial Court on its own merits, in accordance with Rule 6 of the West Pakistan Family Courts Rules, 1965, read with the law laid down by the august Supreme Court of Pakistan, after affording the parties full opportunity to lead evidence and deciding the matter through a speaking judgment in accordance with law. Since the lis has remained pending since the year 2023, and mindful of the mandate of expeditious disposal under the West Pakistan Family Courts Act, 1964, the learned Trial Court is directed, in terms of section 12-A of the Act, to conclude the proceedings pertaining to the surviving claim of Respondent No. 1/Plaintiff No. 1 within a period of three months from the date of receipt of a certified copy of this judgment, by proceeding on day-to-day basis where necessary and by avoiding unnecessary adjournments.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--

Approved for Reporting
Blue slip added.