



MANDVIWALLA & ZAFAR  
ADVOCATES

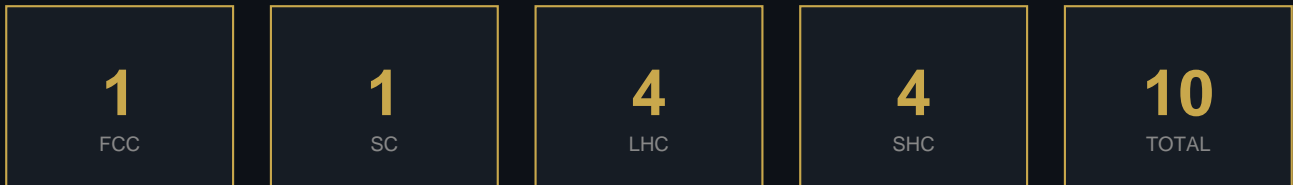
# CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

*Tuesday, 16 June 2026*

Upload Window: 13-16 June 2026 (last 3 working days)

FCC: 1 judgment | SC: 1 judgment | LHC: 4 judgments | SHC: 4 judgments | IHC: no new entries



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*Sunday 14 June excluded from the working-day count. Islamabad High Court returned no reportable judgment uploaded in-window. Sindh High Court entries are listed by order date, as the SHC Caselaw portal does not expose an upload date.*

# Federal Constitutional Court of Pakistan

1 judgment

## REGULARIZATION OF CONTRACT EMPLOYEES — FATA

### Government of Khyber Pakhtunkhwa through Chief Secretary and others v. Tanveer Ahmad & others

**PETITION DISMISSED; LEAVE TO APPEAL REFUSED**

*C.P.L.A. No.632-P/2018 · Bench: Justice Aamer Farooq; Justice Syed Arshad Hussain Shah · Decided: 19.05.2026 · Uploaded: 15-06-2026*

#### FACTS

The respondents were appointed as Dispensers (BS-6) on contract basis in the erstwhile Federally Administered Tribal Area (FATA) on 28.11.2002 and 6.3.2007 respectively. Consequent upon the deletion of health facilities from the ADP 2010-11, their services, along with other staff working under the ADP Scheme, were terminated with effect from 30.6.2010. Having failed to obtain relief through their departmental appeals, the respondents invoked the writ jurisdiction of the Peshawar High Court under Article 199 of the Constitution by filing Writ Petition No.4147 of 2010. By judgment dated 31.5.2018, the High Court allowed the petition and directed the Government of Khyber Pakhtunkhwa to reinstate the respondents and to issue formal regularization orders against their respective posts in accordance with law, treating the interregnum period as extraordinary leave without pay. The provincial government challenged the said judgment.

#### LEGAL ISSUE

Whether contract employees of erstwhile FATA, appointed prior to 4.6.2008 in BS-1 to BS-15, are entitled to regularization under the Cabinet Decision Case No.76/10/2008 dated 4.6.2008 issued vide Establishment Division O.M. No.10/30/2008-R.II dated 29.8.2008, notwithstanding the absence of statutory service rules, and whether termination of their services on the closure of project(s) is sustainable in law in light of Articles 9 and 25 of the Constitution.

#### HOLDING

The Court held that the respondents' case squarely fell within the ambit of the Cabinet Decision Case No.76/10/2008 dated 4.6.2008, by virtue of which the Federal Government regularized all contract employees in BS-1 to BS-15 working prior to 4.6.2008, including FATA employees. Neither the advertisement nor the appointment letters indicated that the appointments were project-specific; hence termination on closure of projects was illegal. The precedent in Deputy Director Finance and Administration FATA v. Lal Marjan (2022 SCMR 566) was distinguished on the ground that the employees there had claimed regularization under the KP Employees (Regularization of Services) Act 2009, which was inapplicable to FATA, and the Supreme Court had not been adequately assisted on the Federal Government policy. Regularization is grounded in the fundamental rights guaranteed under Articles 9 and 25 of the Constitution, and the continued retention of employees on contract basis where the work is permanent constitutes economic exploitation and administrative arbitrariness. The petition was dismissed and leave to appeal refused.

#### LEGAL SIGNIFICANCE

The decision affirms that contract employees of erstwhile FATA, falling within the Cabinet Decision dated 4.6.2008 and the Establishment Division O.M. dated 29.8.2008, are entitled to regularization independently of provincial regularization statutes such as the KP Employees (Regularization of Services) Act 2009. By distinguishing Lal Marjan, the Court narrows the precedential reach of that judgment to cases where the federal policy was not invoked. More broadly, the judgment elevates regularization from a mere service-law claim to a constitutional entitlement linked to the right to livelihood under Article 9 and the equal-protection guarantee under Article 25, and condemns the practice of giving artificial breaks in service to defeat regularization. It significantly strengthens the position of long-serving contract employees performing permanent functions.

#### LEGAL PROPOSITIONS (VERBATIM)

— Adverting to the issue of regularization of contract employees, it may be observed that it is not merely a matter of service jurisprudence but is linked with the enforcement of fundamental rights guaranteed under the Constitution.

— Regularization of the employees is not a part of the terms and conditions of service of the employees for which there need to be some statutory rules but it depends upon the length of service and in terms of equity that a person who has given his prime life and youth to a department is always kept in dark and his services were taken in a very explorative manner.

— The continued retention of employees on contract basis for years together, particularly, where the nature of work is permanent and their services are continuously required, constitutes a form of economic exploitation and administrative arbitrariness, which is violative of the Constitution and the law.

#### LEGAL PRINCIPLES EXPOUNDED

**Contract employees in BS-1 to BS-15 working prior to 4.6.2008, including FATA employees, fall within the Federal Government's policy of regularization under Cabinet Decision Case No.76/10/2008 and Establishment Division O.M. dated 29.8.2008.**

*Source:* the case of respondents falls within the ambit of Cabinet Decision Case No.76/10/2008 dated 4.6.2008 issued vide Establishment Division O.M. No.10/30/2008-R.II dated 29.8.2008, whereby the Government of Pakistan regularized all contract employees working in BS-1 to BS-15 prior to 4.6.2008, including the employees of FATA.

*Authority:* Cabinet Decision Case No.76/10/2008 dated 4.6.2008; Establishment Division O.M. No.10/30/2008-R.II dated 29.8.2008

**The right to life under Article 9 of the Constitution, broadly and purposively construed, encompasses the right to livelihood and job security, particularly where the nature of work is permanent.**

*Source:* The concept of 'life' under Article 9 is not to be construed narrowly but must be given a broad and purposive interpretation so as to ensure meaningful existence, which necessarily includes the assurance of stable employment where the nature of work is permanent.

*Authority:* Article 9 of the Constitution; 2015 SCMR 1257

**Termination of services of persons entitled to regularization under federal policy, while similarly-situated persons are regularized, offends the equality guarantee of Article 25 of the Constitution.**

*Source:* termination of services of the respondents, instead of regularization, is also hit by Article 25 of the Constitution, which guarantees equality before law and equal protection of law, necessarily implying that persons similarly placed must be treated alike.

*Authority:* Article 25 of the Constitution

**The practice of public authorities engaging employees on temporary or contract basis for prolonged periods by giving artificial breaks in service to defeat regularization has been judicially deprecated.**

*Source:* widespread practice adopted by public authorities to engage employees on temporary or contract basis for prolonged periods, often by giving artificial breaks in service, with the sole object of depriving them of the benefits of regularization, has always been deprecated.

*Authority:* 2018 SCMR 1181; 2018 SCMR 1405

**The decision in Lal Marjan (2022 SCMR 566) is distinguishable where employees did not invoke the federal regularization policy but relied on the KP Employees (Regularization of Services) Act 2009, which is inapplicable to FATA.**

*Source:* in the above cited case(s) were employees of FATA, but they did not claim their right of regularization under the above referred decision/directions/policy of the Federal Government, rather they claimed regularization of their services under KP Employees (Regularization of Services) Act 2009, which was obviously not applicable in the cases pertaining to FATA.

*Authority:* Deputy Director Finance and Administration FATA v. Lal Marjan, 2022 SCMR 566; KP Employees (Regularization of Services) Act 2009

#### OPERATIVE ORDER

As a sequel to above, we see no force in the instant petition, which is dismissed and leave to appeal is refused.

■ [View Full Judgment](#)

# Supreme Court of Pakistan

1 judgment

## ILLEGAL DISPOSSESSION ACT — SIXTY-DAY TRIAL TIMELINE

### Raja Khan v. Sohail Arif Shah and another

**PETITION DISMISSED AS NOT PRESSED; SYSTEM-WIDE DIRECTIONS ISSUED**

*Crl.P.L.A. No.818/2026 · Bench: Justice Jamal Khan Mandokhail; Justice Malik Shahzad Ahmad Khan · Decided: 25.05.2026 · Uploaded: 16-06-2026*

#### FACTS

The petitioner filed a complaint under sections 3 and 4 of the Illegal Dispossession Act, 2005 in February 2016 before the Additional Sessions Judge-III, Khairpur (Trial Court). Although section 5(2) of the Act mandates day-to-day proceedings and disposal within sixty days of cognizance, the complaint remained pending for more than ten years without any sufficient reasons for the delay being recorded. An interim order of the Trial Court was challenged before the High Court of Sindh, Sukkur Bench, and the present criminal petition was filed against the High Court's order dated 04.05.2026 in Crl. Revision No.S-107/2025. Counsel for the petitioner offered not to press the matter if a direction were issued for decision within sixty days, an offer endorsed by the Additional Prosecutor General.

#### LEGAL ISSUE

Whether the sixty-day timeframe stipulated under section 5(2) of the Illegal Dispossession Act, 2005 is mandatory or directory, and what directions the Supreme Court may issue under Article 187 of the Constitution to ensure that trial courts throughout Pakistan adhere to the statutory mandate for expeditious adjudication of complaints under the Act, having regard to Articles 10-A, 24 and 37(d) of the Constitution.

#### HOLDING

The Court held that the word 'shall' in the first part of section 5(2) is directory in nature insofar as it permits the Trial Court to extend the sixty-day timeframe in exceptional circumstances; however, the word 'shall' in the latter part, requiring the recording of sufficient reasons for delay, is mandatory. The decade-long pendency in the present case violated Articles 10-A and 37(d) of the Constitution and the Act itself. Invoking Article 187, the Court issued six binding directions to all trial courts exercising jurisdiction under the Act, including day-to-day hearings, recording of specific reasons for delay, prohibition on routine adjournments, periodic monitoring by Member Inspection Teams/Director General District Judiciary, ensuring witness presence, and continuation of trial absent a restraining order from a higher forum. The petition was dismissed as not pressed.

#### LEGAL SIGNIFICANCE

The judgment establishes a uniform national framework for the implementation of section 5(2) of the Illegal Dispossession Act, 2005 by characterizing the sixty-day deadline as directory yet binding, and the obligation to record reasons for delay as strictly mandatory. By invoking Article 187 to bind all trial courts and High Courts, the Court has converted what was perceived as a soft timeline into an enforceable supervisory regime. The directions specifically curb the practice of trial courts suspending proceedings sua sponte upon the mere filing of a challenge to an interim order before a higher forum, and require monitoring by Member Inspection Teams/DG District Judiciary, marking a significant institutional intervention in the enforcement of expeditious justice for property-grabbing victims.

#### LEGAL PROPOSITIONS (VERBATIM)

— *The use of the word 'shall' in the first part of section 5(2) requires the Trial Court to conduct proceedings on a day to day basis and to conclude the case within sixty days, but it does not strip the Court of its power to extend this timeframe.*

— *However, the word 'shall' used in the latter part of section 5(2), requiring the recording of sufficient reasons for any delay, is mandatory in nature, leaving the Court with no option but to record reasons whenever the*

*prescribed period is exceeded.*

— *In case any party challenges an interim order of the Trial Court before a higher forum, the Trial Court must proceed with the trial, unless a restraining order is passed by a higher forum.*

#### LEGAL PRINCIPLES EXPOUNDED

**Section 5(2) of the Illegal Dispossession Act, 2005 prescribes summary proceedings designed to give effect to the constitutional guarantee of fair trial and due process by ensuring expeditious resolution of dispossession disputes.**

*Source:* The sixty day time frame and day to day hearing mandated by the section are intended to safeguard the fundamental right to a fair trial and due process guaranteed by the Constitution, while ensuring expeditious resolution of disputes between the parties to the lis.

*Authority:* Section 5(2), Illegal Dispossession Act, 2005; Articles 10-A, 24 and 37(d) of the Constitution

**The directory character of the sixty-day timeline does not render it optional; extensions must be confined to exceptional circumstances supported by recorded reasons.**

*Source:* As such, the word 'shall' is directory in nature, but such direction must not be taken lightly or rendered toothless by treating it as merely optional.

*Authority:*

**If a trial court were to allow indefinite pendency of a complaint under the Act, the very legislative scheme of summary proceedings would be defeated.**

*Source:* If the Trial Court were to sit indefinitely on a complaint under the Act, the result would be directly inconsistent with the entire scheme of the legislature, rendering the special law ineffective.

*Authority:* Illegal Dispossession Act, 2005

**Under Article 187 of the Constitution, the Supreme Court may issue binding directions to all executive and judicial authorities, including the High Courts, to ensure effective implementation of statutory mandates and regulation of the judicial process.**

*Source:* This constitutional power obligates all executive and judicial authorities including the High Courts, throughout Pakistan to act upon the directions of the Supreme Court to ensure effective implementation of statutory mandates for the purpose of regulating judicial process.

*Authority:* Article 187, Constitution of Pakistan, 1973

#### OPERATIVE ORDER

*Thus, in view of the above, the petition is dismissed as not pressed. The Trial Court is directed to proceed with the matter expeditiously on day to day basis and decide the same within a period of sixty working days from the date of receipt of this order. The parties and their counsel should cooperate with the Trial Court. No unnecessary adjournment shall be granted to either of the parties. In case the trial could not be concluded within the stipulated period, the Trial Court shall record sufficient reasons in this behalf. Let a copy of this order be transmitted to all the Registrars of all the High Courts for information, necessary action, and strict compliance.*

■ [View Full Judgment](#)

**Lahore High Court**

4 judgments

**SECTION 512 CRPC — ADMISSIBILITY OF ABSCONDER-ERA DEPOSITIONS****Taj Din v. The State, etc.****APPEAL ALLOWED; APPELLANT ACQUITTED ON BENEFIT OF DOUBT**

*CrI. Appeal No.318/2022 | 2026 LHC 3617 · Bench: Justice Muhammad Amjad Rafiq · Decided: Reserved on 29.04.2026; announced in open Court on 09.06.2026 · Uploaded: 15-06-2026*

**FACTS**

FIR No.266/85 dated 28.10.1985 was registered at Police Station Khanpur under sections 302/307 PPC. The complainant Muhammad Bilal alleged that, following a morning altercation in which Akhtar Ali (his brother) had humiliated the accused Taj Din with a shoe, Taj Din returned at about 5:00 p.m. armed with a 12-bore gun and fired upon Akhtar Ali and Riaz Din (the accused's own brother), causing their deaths, and also injured Muhammad Tufail (complainant's father) and Sharif Masih. The accused absconded, and proceedings under section 512 CrPC were conducted in which 18 prosecution witnesses were examined in his absence. He was arrested on 02.10.2015. At trial, only seven witnesses were re-examined; the remaining eleven, including the doctor (PW-13) who had conducted the post-mortems and medico-legal examinations, were not summoned. The appellant was convicted under section 302(b) PPC on two counts and sentenced to imprisonment for life, with additional conviction under section 172 PPC. He appealed.

**LEGAL ISSUE**

Whether depositions of witnesses recorded under section 512 of the Code of Criminal Procedure, 1898 during the appellant's abscondence are admissible in trial against him without prior proof of the witnesses' death, incapacity or unavailability, and whether section 509 CrPC and Articles 47, 92, 102, 152 and 154 of the Qanun-e-Shahadat Order, 1984 permit reliance on the medical officer's section 512 deposition in the absence of his testimony before the trial court in the presence of the accused.

**HOLDING**

The Court held that section 512 CrPC is a special provision premised on the principle that an absconder forfeits certain normal rights, but admissibility of his absentia-recorded statements requires the prosecution first to prove, under Article 120 of the Order 1984, that the witness is dead, incapable, or otherwise unavailable. No such proof was offered, nor were certified depositions tendered. Section 509 CrPC and Article 47 of the Order 1984 expressly demand that the deposition be recorded in the presence of the accused; this safeguard was not satisfied. The post-mortem and medico-legal records were never requisitioned from the hospital, so Articles 92 and 102 did not assist the prosecution, and Article 71 required testimony from the opinion-holder. The non-appearance of the doctor and accompanying police official also defeated Article 152. *Arbab Tasleem (PLD 2010 SC 642)* and *Riffat Hussain (PLJ 2026 SC (Cr.C.) 81)* were distinguished. The ocular account suffered fatal contradictions, the FIR was delayed, motive was unsubstantiated, recovery of the gun was inconsequential as it was never sent to PFSA, and abscondence was not proved through any order under section 87(3) CrPC. The case was held to be fraught with doubt; the appeal was allowed and the appellant acquitted.

**LEGAL SIGNIFICANCE**

The judgment provides a structured restatement of the evidentiary preconditions for using section 512 CrPC depositions at trial after the absconder's arrest, harmonizing the provision with Articles 47, 120, 131, 152 and 154 of the Qanun-e-Shahadat Order, 1984 and Rules 2 and 4 of Chapter 15, Part-B, Volume-III of the High Court Rules & Orders. The Court emphasises that an adversarial criminal court cannot, *sua sponte*, requisition such evidence in the absence of a provision analogous to Order XIII Rule 10 CPC. It further clarifies that section 509 CrPC and Article 47 cannot rescue medical evidence unless the deposition was originally recorded in the presence of the accused. The decision is significant for prosecutions in long-pending absconder cases, especially where the medical witness has died or is unavailable, by foreclosing reliance on absentia depositions absent strict statutory compliance.

**LEGAL PROPOSITIONS (VERBATIM)**

— Section 512 of the Code is a special provision, carved out as a deviation from the ordinary regime of recording evidence, and rests on the principle that an absconder forfeits certain normal rights.

— Section 509 of the Code and Article 47 of the Order 1984, make it clear that admissibility hinges upon the accused party being present at the time of recording. In the absence of such compliance, reliance on these provisions is misplaced.

— In an adversarial system, the court cannot, of its own accord, requisition such evidence unless requested by a party. Moreover, the Code of Criminal Procedure contains no provision analogous to Order XIII Rule 10 of the Code of Civil Procedure, 1908, which empowers a civil court to call for records on its own initiative

— It is a settled principle of criminal jurisprudence that the benefit of doubt must always go to the accused. Importantly, it is not necessary that such doubt should arise from a multitude of circumstances; even a single reasonable doubt, if found sufficient to shake the foundation of the prosecution case, entitles the accused to acquittal not as a matter of grace but as of right.

#### LEGAL PRINCIPLES EXPOUNDED

**Before depositions recorded under section 512 CrPC may be used at the trial of an arrested absconder, the prosecution must first prove the death, incapacity or unavailability of the witness through admissible evidence.**

*Source:* Evidence recorded in his absence may be treated as admissible, but only if the prosecution first establishes that the witness whose testimony is sought to be relied upon is either dead, incapable of giving evidence, or that his attendance cannot be procured without unreasonable delay, expense, or inconvenience in the circumstances of the case.

*Authority:* Section 512 CrPC; Rule 2, Chapter 15, Part-B, Volume-III, High Court Rules & Orders; Article 131 and Article 120 of the Qanun-e-Shahadat Order 1984

**Section 509 CrPC and Article 47 of the Qanun-e-Shahadat Order 1984 condition admissibility of a medical officer's deposition on its having been recorded in the presence of the accused.**

*Source:* both provisions of law unequivocally stipulate that such statements are admissible only if recorded in the presence of the accused party. The safeguard of presence is a mandatory requirement, ensuring the accused's right to confrontation and cross-examination.

*Authority:* Section 509 CrPC; Article 47, Qanun-e-Shahadat Order 1984

**Presumption of genuineness under Article 92, and exclusion of oral evidence by documentary proof under Article 102, do not arise where post-mortem and medico-legal records were never requisitioned from the hospital and the opinion-holder is unavailable.**

*Source:* the record of postmortem and medico-legal reports was never requisitioned by the Court from the concerned hospital. Consequently, the genuineness of such reports cannot be presumed automatically.

*Authority:* Articles 71, 92 and 102, Qanun-e-Shahadat Order 1984

**Arbab Tasleem and Riffat Hussain are confined to their facts and do not authorise reliance on absentia depositions where statements were never recorded in the presence of the accused and the witnesses were never cross-examined.**

*Source:* the factual situations in those cases were entirely distinct.

*Authority:* Arbab Tasleem v. State, PLD 2010 SC 642; Riffat Hussain v. Zahida Bibi, PLJ 2026 SC (Cr.C.) 81

**Abscondence must be proved through admissible evidence including an order under section 87(3) CrPC and the testimony of relevant witnesses; mere assertion is insufficient.**

*Source:* such abscondence was neither proved on record through the testimony of relevant witnesses nor supported by any order under Section 87(3) of the Code

*Authority:* Section 87(3) CrPC

#### OPERATIVE ORDER

Consequently, the titled appeal is allowed and Taj Din (accused/appellant) is acquitted of the charge. He is confined in jail, shall be released forthwith if not required in any other case. The case property if any shall be disposed of as directed by the trial court and the record of the trial court be sent back immediately.

■ [View Full Judgment](#)

**BANKING MOHTASIB ORDERS — ALTERNATE STATUTORY REMEDY****Askari Bank Limited v. Banking Mohtasib Pakistan & others****WRIT PETITION DISMISSED IN LIMINE FOR NON-MAINTAINABILITY**

*Writ Petition No.1846/2026 | 2026 LHC 3609 · Bench: Justice Syed Ahsan Raza Kazmi · Decided: 03.06.2026 · Uploaded: 15-06-2026*

**FACTS**

Respondent No.2 maintained a bank account with the petitioner Askari Bank Limited. On 28.11.2022, online transactions aggregating Rs.1,370,253 were carried out through electronic payment channels including IBFT, RAAST and FBR payment mechanisms. Respondent No.2 disputed the transactions and complained to the Bank, which after internal investigation treated them as customer-authorized. Respondent No.2 then approached the Banking Mohtasib, whose order dated 05.12.2024 accepted the complaint. The Bank's representation to the President of Pakistan was dismissed on 18.07.2025. The Bank filed W.P. No.2634/2025 which was allowed on 11.09.2025 and the matter was remanded to the Banking Mohtasib for fresh decision after due opportunity and obtaining relevant record. On remand, by order dated 26.12.2025, the Banking Mohtasib again accepted the complaint and directed the Bank to credit Rs.1,370,253 to respondent No.2's account. The Bank challenged this fresh order directly through the present constitutional petition under Article 199.

**LEGAL ISSUE**

Whether a Constitutional Petition under Article 199 of the Constitution is maintainable against a fresh adjudicatory order of the Banking Mohtasib passed after remand, in the presence of the alternate, adequate and time-bound statutory remedy of representation to the President of Pakistan under section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013, and whether the petitioner may, by characterising the petition as one seeking enforcement of an earlier remand order, circumvent the statutory mechanism and the limitation period prescribed by law.

**HOLDING**

The Court held that the petition is not maintainable. A constitutional petition cannot be converted, by mere argument, into proceedings for contempt or enforcement of a remand order, particularly after the insertion of clause (1A) in Article 199 by the Constitution (Twenty-Sixth Amendment) Act, 2024, which confines High Court jurisdiction to matters properly brought in accordance with law. The fresh order of the Banking Mohtasib carries its own legal consequences and remains amenable to the specialised statutory mechanism. Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013 provides a complete, expeditious and self-contained remedial structure, including a thirty-day period to file a representation to the President, an automatic sixty-day suspension of the impugned order on filing of representation, and a ninety-day timeline for decision. The doctrine of exhaustion of remedies, as reaffirmed in *Sana Jamali v. Mujeeb Qamar* (2023 SCMR 316) and *Cantonment Board Peshawar v. RACO Advertisers* (2023 SCMR 2075), bars direct invocation of constitutional jurisdiction. No patent lack of jurisdiction, coram non iudice or fundamental-rights violation of requisite magnitude was shown. The petition was dismissed in limine, with liberty to avail the appropriate statutory remedy.

**LEGAL SIGNIFICANCE**

The judgment is one of the first published Lahore High Court decisions to expressly apply the newly inserted Article 199(1A), introduced by the Constitution (Twenty-Sixth Amendment) Act, 2024, to limit the High Court's constitutional jurisdiction and reinforce statutory exclusivity. It firmly entrenches the doctrine of exhaustion of remedies for orders of the Banking Mohtasib and articulates in detail the architecture of section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013, including the automatic sixty-day suspension on filing of a representation. By holding that a fresh post-remand order revives the statutory remedy and cannot be challenged in constitutional jurisdiction on the pretext of non-compliance with the remand directions, the Court closes a recurring avenue by which banks have sought to bypass the President's representation forum.

**LEGAL PROPOSITIONS (VERBATIM)**

— A litigant cannot, by mere argument, convert one statutory proceeding into another when the law prescribes distinct jurisdictions, procedures, and prerequisites for each.

— Moreover, after the insertion of clause (1A) in Article 199 of the Constitution through the Constitution (Twenty-Sixth Amendment) Act, 2024, the constitutional jurisdiction of the High Court remains confined to matters properly brought before it in accordance with law and does not permit expansion of jurisdiction in disregard of the statutory scheme established by the legislature.

— The extraordinary constitutional jurisdiction of this Court cannot be invoked to circumvent statutory limitations, avoid prescribed forums, or obtain indirectly what the law requires to be pursued directly through the procedure specifically enacted by the legislature.

**LEGAL PRINCIPLES EXPOUNDED**

**Article 199(1A), as inserted by the Constitution (Twenty-Sixth Amendment) Act, 2024, confines the High Court's constitutional jurisdiction to matters properly brought in accordance with law and forecloses its expansion in disregard of the statutory scheme.**

**Source:** after the insertion of clause (1A) in Article 199 of the Constitution through the Constitution (Twenty-Sixth Amendment) Act, 2024, the constitutional jurisdiction of the High Court remains confined to matters properly brought before it in accordance with law and does not permit expansion of jurisdiction in disregard of the statutory scheme established by the legislature.

**Authority:** Article 199(1A), Constitution of Pakistan, 1973 (as amended by the Constitution (Twenty-Sixth Amendment) Act, 2024)

**Section 14 of the Federal Ombudsmen Institutional Reforms Act, 2013 establishes a complete, specialised and time-bound remedial framework against orders of the Banking Mohtasib, including a thirty-day representation period, automatic sixty-day suspension of the impugned order upon filing, and a ninety-day timeline for decision.**

**Source:** The provision does not merely create a formal right of representation; rather, it establishes a complete, specialized and time-bound remedial framework against decisions, findings, recommendations and orders passed by an Ombudsman.

**Authority:** Section 14, Federal Ombudsmen Institutional Reforms Act, 2013

**The doctrine of exhaustion of remedies precludes a litigant from invoking constitutional jurisdiction where a special law has created a forum providing a complete remedial structure.**

**Source:** the doctrine of exhaustion of remedies prevents a litigant from seeking a remedy in a new court or jurisdiction until the remedies available under the original statutory framework have been fully pursued and exhausted.

**Authority:** Sana Jamali v. Mujeeb Qamar, 2023 SCMR 316; Cantonment Board Peshawar v. RACO Advertisers, 2023 SCMR 2075

**A fresh adjudicatory order passed by the Banking Mohtasib after remand carries its own legal consequences and once again becomes amenable to the statutory representation remedy, which cannot be bypassed on a plea of non-compliance with remand directions.**

**Source:** after the remand order dated 11.09.2025, a fresh adjudicatory order was passed by the Banking Mohtasib. Such order carries with it its own legal consequences and remains subject to the statutory appellate or representative mechanism specifically provided by law.

**Authority:** Section 14, Federal Ombudsmen Institutional Reforms Act, 2013

**OPERATIVE ORDER**

For the foregoing reasons, the present writ petition is not maintainable and the same is dismissed in limine. However, petitioner Bank may avail its appropriate remedy before the appropriate forum.

■ [View Full Judgment](#)

**MINOR'S MAINTENANCE AND INHERITANCE RIGHTS NON-WAIVABLE****Muhammad Waleed Arshad v. District Judge, etc.****DISMISSED AS WITHDRAWN; PROTECTIVE GUIDELINES ISSUED***Family 54280/2022 | 2026 LHC 3604 · Bench: Mohsin Akhtar Kayani, J. · Decided: 03.06.2026 · Uploaded: 15-06-2026***FACTS**

The petitioner Muhammad Waleed Arshad assailed judgments and decrees dated 26.07.2022 and 19.05.2022 of the courts below concerning maintenance and delivery expenses of his minor daughter. During pendency, the parties reached a compromise before the executing court (placed on record as 'Mark-A') under which the respondent Beenish Rasheed agreed to keep the newborn daughter and not claim any future maintenance, delivery expenses, or past arrears, and further agreed that the minor would not claim any share in the inheritance of the father; in exchange, the father undertook not to initiate any legal proceedings for custody. On the basis of this compromise the petitioner's counsel sought to withdraw the writ petition, whereupon the Court examined the validity of the stipulations affecting the minor's rights.

**LEGAL ISSUE**

Whether the parents of a minor child, either by private contract or by a compromise recorded before a family court, can validly surrender or extinguish the minor's future right of maintenance and the minor's future right of inheritance from the father's estate; and whether a family court can lawfully record and give effect to such a compromise.

**HOLDING**

The Court held that the answer must be in the negative. A minor is a person under legal disability and is under the special protection of the courts; the welfare of the minor is the paramount consideration. The rights of a child are independent rights and cannot be bartered away by parents in settlement of their personal disputes. Under Islamic law, maintenance is a continuing legal, moral and religious obligation of the father, and the right of maintenance belongs to the child, not to the mother, who is merely a guardian/custodian/next friend and has no authority to waive it. Inheritance opens only upon the death of the propositus; a mere expectancy cannot be transferred or relinquished in advance, and mandatory rules of succession cannot be defeated by private arrangement. The stipulations also offend Articles 9, 14, 25(3), 35, 2-A and 227 of the Constitution. The family court, when a compromise affects a minor, assumes protective jurisdiction and cannot act as a mere recording agency; judicial approval cannot validate an unlawful stipulation. The petition was dismissed as withdrawn, and directions/practice guidelines were issued for civil courts, family judges, guardian courts and appellate courts on receiving compromises affecting minors' rights.

**LEGAL SIGNIFICANCE**

The judgment lays down binding guidance for family, guardian, civil and appellate courts on the treatment of compromise deeds affecting minors. It expressly declares void and unenforceable any clause that waives, restricts or extinguishes a minor's future maintenance, and declares void ab initio any clause that purports to surrender future inheritance rights of a minor. It crystallises the family court's protective/parens patriae jurisdiction, requiring courts to independently examine welfare implications and record specific reasons before accepting any settlement affecting a child, and to test such settlements against the Constitution, the Family Courts Act, the Guardians and Wards Act, principles of Muslim personal law and the welfare doctrine. The decision strengthens the autonomy of a child's substantive rights against parental settlement and provides a ready template for striking down offending clauses in compromise deeds.

**LEGAL PROPOSITIONS (VERBATIM)**

- Any clause purporting to waive or extinguish the future rights of maintenance of minor is void and un-enforceable.
- Any clause purporting to surrender, relinquish or extinguish the future inheritance rights of minor is void ab-initio and without legal fact.
- Such clauses shall not operate as a bar against any future claim instituted by or on behalf of minor.

— No compromise affecting a minor shall be accepted solely on the basis of consent of parents.

#### LEGAL PRINCIPLES EXPOUNDED

**The welfare of the minor is the paramount consideration and a child's rights are independent rights, not negotiable claims that parents may barter away in settlement of their personal disputes.**

*Source:* The welfare of the minor is not merely one consideration amongst many; it is the paramount consideration. The rights of a child are independent rights and cannot be treated as negotiable claims capable of being bartered away by parents for the purposes of settlement of their personal disputes.

*Authority:*

**Under Islamic law maintenance is a continuing obligation of the father, the right vests in the child, and the mother (as guardian/custodian/next friend) has no authority to waive, surrender or extinguish the minor's future maintenance.**

*Source:* Under Islamic law, the maintenance of a minor child is a continuing legal, moral, and religious obligation of the father. The rights of maintenance belong to the child and not to the mother. The mother may act as a guardian, custodian, or next friend in pursuing such claim, but she does not become the owner of the right. Consequently, she possesses no lawful authority to permanently waive, surrender, or extinguish the future right of maintenance vested in the minor.

*Authority:*

**Under Muslim law inheritance opens only on the death of the propositus; a mere expectancy cannot be relinquished in advance and mandatory rules of succession cannot be defeated by private arrangement between parents.**

*Source:* Under Muslim law, inheritance opens only upon the death of the propositus. No heir acquires a vested right during the lifetime of the owner of the estate. A mere expectancy cannot be transferred, relinquished, or surrendered in advance. The mandatory rules of succession prescribed by Islamic law cannot be defeated by private arrangement between parents.

*Authority:* Muslim personal law

**Stipulations depriving a child of maintenance or inheritance are inconsistent with the constitutional duty of the State to protect children's dignity, welfare and interest, and with the Islamic-injunctions clause governing law-making and legal proceedings.**

*Source:* Articles 9, 14, 25(3), and 35 of the Constitution obligate the State and its institutions to protect the dignity, welfare, and interest of children. Articles 2-A and 227 further require that laws and legal proceedings remain consistent with the injunctions of Islam. Any agreement seeking to permanently deprive a child of maintenance or inheritance rights runs contrary to these constitutional guarantees.

*Authority:* Articles 9, 14, 25(3), 35, 2-A and 227, Constitution of Pakistan

**A family court is not a mere recording agency; whenever a compromise affects a minor's rights it assumes protective jurisdiction and must independently examine its legality, fairness and welfare implications, and consent of parents cannot validate an otherwise unlawful arrangement.**

*Source:* The family court was not acting as a mere recording agency. Whenever a compromise affects the rights of a minor, the Court assumes protective jurisdiction. The Court is under a duty to independently examine the legality, fairness, and welfare implications of the proposed settlement. Judicial approval cannot transform an unlawful stipulation into a lawful one. Consent of parents cannot validate an arrangement which is otherwise contrary to law, public policy, or the welfare of the child.

*Authority:*

#### OPERATIVE ORDER

6. In view of the above reasons, this Court comes to an irresistible conclusion that some directions are required to be followed/circulated amongst the learned civil courts, family judges, guardian courts, as well as appellate courts for the purposes of future guidance while receiving any compromise document executed between rival parties, especially the parents in a family court with regard to the minor's rights. (i) The custody arrangement, if otherwise beneficial to the minor may stand. (ii) Any clause purporting to waive or extinguish the future rights of maintenance of minor is void and un-enforceable. (iii) Any clause purporting to surrender, relinquish or extinguish the future inheritance rights of minor is void ab-initio and without legal fact. (iv) Such clauses shall not operate as a bar against any future claim instituted by or on behalf of minor. 7. In addition to the above, the family court shall also consider the following guidelines as a practice direction in the trial: (a) No compromise affecting a minor shall be accepted solely on the basis of consent of parents. (b) Before recording any settlement concerning a minor, the Court shall independently determine whether the arrangement serves the welfare and best interest of the child. (c) The Court shall record

*specific reasons demonstrating that the compromise is beneficial to the minor. (d) No compromise shall be accepted which permanently waives, restricts, or extinguishes the future right of maintenance of a minor child. (e) No compromise shall be accepted whereby a parent, guardian, or custodian purports to surrender or relinquish the future inheritance right of a minor. (f) Whenever a compromise concerns the substantive right of a child, the Court shall expressly examine its consistency with the Constitution, the Family Courts Act, the Guardians and Wards Act, principles of Muslim personal law, and the welfare doctrine governing minors. (g) Any clause found detrimental to the welfare of the child shall be excluded from the compromise and shall not form part of any decree or order. 8. Dismissed as withdrawn.*

■ [View Full Judgment](#)

## SUIT ON DISHONoured CHEQUE AGAINST LEGAL HEIRS

### Muhammad Tufail (deceased) through Legal Heirs v. Hawaldar Nek Muhammad

**APPEAL DISMISSED; TRIAL COURT DECREE UPHELD**

R.F.A. No.108/2016 | 2016 LHC 4887 · Bench: Muhammad Sajid Mehmood Sethi, J. · Decided: 08.06.2026 · Uploaded: 16-06-2026

#### FACTS

The respondent Hawaldar Nek Muhammad instituted a suit under Order XXXVII CPC asserting that Muhammad Tufail, predecessor-in-interest of the appellants, had borrowed Rs.6,00,000/- and in discharge of that liability issued cheque No. T13496732 dated 16.08.2011 drawn on Habib Bank Limited, Bunga Hayat Branch, Pakpattan, which on presentation was dishonoured. Muhammad Tufail having died on 10.08.2012, the suit was instituted against his legal heirs, who contested it on the plea that the cheque was a blank instrument issued for a much lesser liability of Rs.65,500/- relating to purchase of goods, allegedly adjusted during the deceased's lifetime. After framing issues and recording evidence, the Additional District Judge, Pakpattan, by judgment and decree dated 31.10.2015, decreed the suit. The legal heirs preferred this regular first appeal.

#### LEGAL ISSUE

Whether a suit under Order XXXVII CPC on the basis of a dishonoured cheque instituted directly against the legal heirs of a debtor who had died prior to its institution is competent; whether the appellants successfully rebutted the statutory presumption of consideration under Section 118 of the Negotiable Instruments Act, 1881, in light of the admission that the cheque was issued by the deceased albeit allegedly blank; and the extent to which legal heirs are liable for the pecuniary obligations of the deceased.

#### HOLDING

The Court dismissed the appeal and upheld the trial court's decree. It held that documents (Exh.P3-P5 and Exh.D1-D3) produced through the statements of counsel did not stand legally proved and carried no independent evidentiary value, but their exclusion did not affect the controversy. DW-1's candid admission that the cheque had been issued by his father in favour of the plaintiff (though asserted to be blank) substantially undermined the defence; once issuance was admitted, the evidential burden shifted to the appellants to establish the alleged underlying transaction and discharge, which they failed to do. The statutory presumption under Section 118 of the Negotiable Instruments Act, 1881 came into operation, and was not rebutted by cogent independent evidence. The objection of non-maintainability for want of impleadment of the deceased was misconceived because the legal heirs were impleaded from inception, fully contested the suit, filed written statement, led evidence and suffered no prejudice; and the heirs were liable to the extent of the inherited estate, which the respondent (PW-1) stated comprised a residential house and agricultural land — an assertion unrebutted by the appellants. Issues 2-7 (cause of action, locus, Order VII Rule 11, falsity, clean hands, estoppel) were rightly answered against the appellants. The appeal was dismissed.

#### LEGAL SIGNIFICANCE

The judgment reinforces three lines of jurisprudence frequently arising in commercial recovery practice: (i) the rigorous evidentiary rule that documents must be produced and proved by the party itself and cannot be exhibited through the statement of counsel under the Qanun-e-Shahadat Order, 1984; (ii) the operation and rebuttal of the Section 118 NI Act presumption of consideration, including that even a blank signed cheque, voluntarily handed over, attracts legal consequences once the presumption is un rebutted; and (iii) the principle that pecuniary obligations of a deceased promisor are enforceable against legal representatives to the extent of the inherited estate, and that where heirs are impleaded ab initio and fully contest the suit on merits, the proceedings are not rendered a nullity by the debtor's prior death. The judgment is a useful precedent for banks and creditors enforcing dishonoured cheques against estates and for defining the shifting evidential burden once execution is admitted.

#### LEGAL PROPOSITIONS (VERBATIM)

— *Mere production or tendering of documents by counsel does not dispense with the legal requirement of proof under the Qanun-e-Shahadat Order, 1984, nor can such documents be treated as duly exhibited without being proved through competent witnesses.*

— *Once execution of the cheque stood either admitted or sufficiently proved through oral and documentary evidence, the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881 came into operation, whereby every negotiable instrument is presumed to have been drawn for consideration.*

— *It is well-settled that even a blank signed cheque, if voluntarily handed over, carries legal consequences under the Negotiable Instruments Act once consideration is presumed and not disproved.*

— *It is settled law that legal representatives step into the shoes of the deceased for purposes of civil liability to the extent of estate inherited.*

#### LEGAL PRINCIPLES EXPOUNDED

**Documents produced through the statement of counsel are not legally proved and have no independent evidentiary value; they must be produced by the party itself with a fair opportunity to cross-examine.**

**Source:** *It is well-settled that the documents sought to be tendered in evidence could not have been exhibited through the statement of learned counsel, as such mode of proof does not satisfy the mandatory requirements of law. Mere production or tendering of documents by counsel does not dispense with the legal requirement of proof under the Qanun-e-Shahadat Order, 1984, nor can such documents be treated as duly exhibited without being proved through competent witnesses.*

**Authority:** *Rustam and others v. Jehangir (deceased) through LRs. (2023 SCMR 730); Manzoor Hussain (deceased) through L.Rs. v. Misri Khan (PLD 2020 SC 749); Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik (PLD 2021 SC 715); Mst. Rasoolan Bibi v. Province of Punjab (2023 CLC 1171); NHA v. Muhammad Afzal Bhatti (2024 CLC 1246); Qanun-e-Shahadat Order, 1984*

**Although the legal burden remains on the plaintiff, the evidential burden shifts to the defendant once certain facts are admitted; an admission of issuance of the cheque casts on the defendant the burden to establish the circumstances of issuance and any alleged discharge.**

**Source:** *Once the issuance of the cheque in favour of the plaintiff stood admitted, the evidential burden shifted upon the defendants to establish, through cogent and admissible evidence, the circumstances in which the cheque was allegedly issued and to substantiate their plea that the underlying liability had already been discharged.*

**Authority:** *Mst. Nazeeran and others v. Ali Bux and others (2024 SCMR 1271)*

**Under Section 118 of the Negotiable Instruments Act, 1881 every negotiable instrument is presumed to have been drawn for consideration; the maker must rebut the presumption by independent and cogent evidence, and even a blank signed cheque voluntarily handed over carries legal consequences once the presumption is un rebutted.**

**Source:** *Once execution of the cheque stood either admitted or sufficiently proved through oral and documentary evidence, the statutory presumption under Section 118 of the Negotiable Instruments Act, 1881 came into operation, whereby every negotiable instrument is presumed to have been drawn for consideration... It is well-settled that even a blank signed cheque, if voluntarily handed over, carries legal consequences under the Negotiable Instruments Act once consideration is presumed and not disproved.*

**Authority:** *Section 118, Negotiable Instruments Act, 1881; Muhammad Azizur Rehman v. Liaquat Ali (2007 SCMR 1820)*

**A pecuniary obligation of a deceased promisor is enforceable against his legal representatives to the extent of the estate of the deceased in their hands; where heirs are impleaded from inception and fully contest the suit, prior death of the debtor does not render the suit a nullity.**

*Source:* It is settled law that legal representatives step into the shoes of the deceased for purposes of civil liability to the extent of estate inherited... The record reveals that Muhammad Tufail was not impleaded as a living person; rather, the suit was instituted against him through his legal heirs, who were before the Court from the very inception of the proceedings and fully contested the claim on merits.

*Authority:* Messrs Summit Bank Limited v. Messrs Qasim and Co. (2015 SCMR 1341)

**Mala fides and lack of clean hands are questions of fact which must be proved by leading evidence; vague allegations are insufficient to dislodge a properly supported claim.**

*Source:* It is by now a well settled proposition of law that malice and mala fide are questions of fact which have to be proved by leading evidence in absence of which no adverse presumption could be drawn qua proceedings initiated under the law and order passed by the competent authority. Mere vague allegation of mala fides would be of no avail to the petitioner.

*Authority:* Tabassum Shahzad v. I.S.I. and others (2011 SCMR 1886)

#### OPERATIVE ORDER

20. In light of the findings on all the above issues, this Court finds that the learned Trial Court rightly decreed the suit with costs. The appellants have failed to point out any material illegality, legal infirmity, misreading or non-reading of evidence warranting interference under appellate jurisdiction. Resultantly, this appeal is dismissed. The judgment and decree dated 31.10.2015, passed by the learned Additional District Judge, Pakpattan, are upheld. No order as to costs.

■ [View Full Judgment](#)

## Sindh High Court

4 judgments

### CONSTRUCTIVE TRUST, BONA FIDE PURCHASER, SPECIFIC PERFORMANCE

#### Bashir Akhtar (Deceased) through legal heirs v. Y.R. Enterprises & Others

APPEAL ALLOWED; DAMAGES ENHANCED; DECREE EXTENDED

H.C.A 259/2005 | 2026 SHC KHI 1318 · Bench: Mr. Justice Muhammad Faisal Kamal Alam and Ms. Justice Sana Akram Minhas (Author) · Decided: 15-06-2026 · Uploaded: (15-06-2026 — SHC portal does not expose upload date)

#### FACTS

After his 1987 retirement, the Appellant invested in real estate through Respondents No.1 to 3 (real estate consultants). In March 1997, they offered him a 200 sq. yd. commercial plot at C-7-C, Khyaban-e-Sehar, Phase 7, DHA, Karachi, representing Respondent No.5 (Seller) as owner. The Appellant paid Rs.4.3 million — Rs.3.5 million cash and Rs.0.8 million through UBL Pay Order No.669851 dated 10.4.1997 drawn in favour of the Seller — and a further Rs.5 million for two other plots. Upon inquiry from DHA, the Appellant discovered forged documents on the other plots and that the suit plot had been transferred to Respondent No.4 (Buyer/Brother-in-law of Respondent No.2) using the very same UBL Pay Order. The Single Judge by Judgment dated 26.8.2005 found fraud against Respondents No.1 to 3 and decreed Rs.14.3 million with 15% mark-up but refused specific performance and confined liability to Respondents No.1 to 3.

#### LEGAL ISSUE

Whether the consideration for the Commercial Suit Plot flowed from the Appellant and, if so, whether Respondent No.4 (transferee) and/or Respondent No.12 (alleged financier) can claim protection as bona fide purchasers for value under Section 41 of the Transfer of Property Act, 1882; whether the Single Judge was justified in refraining from adjudicating specific performance and instead awarding monetary compensation; and whether Respondents No.4 and 12 are liable under the decree, and whether the monetary relief warrants enhancement to ensure complete restitution under Section 82 of the Trusts Act, 1882.

#### HOLDING

The Court held that the only contractual consideration recorded in the Sale Agreement was traceable to the Appellant's UBL Pay Order, and the Buyer/Brother-in-law's and Respondent No.12's pleas of bona fide purchase for value failed at the threshold under Section 41 TPA 1882, as they neither furnished consideration from their own resources nor produced any documentary corroboration. The transaction being investment-driven and commercial in character, and there being no direct agreement with the Seller, specific performance was refused as a discretionary equitable remedy. However, applying Section 82 of the Trusts Act, 1882, restitutionary liability was fastened upon Respondents No.4 and 12. The damages of Rs.5 million were enhanced to Rs.150 million with 15% mark-up from 9.5.1998 till realization, and the decree was extended jointly and severally to Respondents No.1 to 3, 4 and 12. No complicity of the Seller (Respondent No.5) was found.

#### LEGAL SIGNIFICANCE

The judgment is a substantial restatement of the equitable doctrine of constructive trust under Section 82 of the Trusts Act, 1882, and of the threshold ingredients of Section 41 TPA 1882 protection. It confirms that a transferee who has not furnished consideration from his own resources but has merely utilised the funds or payment instrument of another cannot claim the status of a bona fide purchaser for value. The decision also reinforces the oral evidence rule under Articles 102-103 Qanun-e-Shahadat Order 1984, holding that oral assertions of enhanced consideration cannot displace the written terms of a Sale Agreement. Significantly, the judgment expands the measure of damages in fraud cases involving prolonged deprivation of appreciating commercial property, holding that complete and realistic restitution requires accounting for asset appreciation, inflation and currency depreciation — here justifying a thirty-fold enhancement from Rs.5 million to Rs.150 million.

#### LEGAL PROPOSITIONS (VERBATIM)

— *A person who knows that he has not paid the purchase price, yet accepts transfer of valuable immovable property in his own name, can scarcely claim the status of an innocent purchaser for value.*

— *Once the parties have reduced their bargain into a clear written instrument, its terms constitute the best evidence of the transaction and cannot be varied, contradicted or supplanted by oral testimony.*

— *A beneficiary of a tainted transaction who fails to establish independent lawful consideration cannot, in equity, be permitted to retain such benefit at the expense of the defrauded party; equity in such cases operates not only against the primary wrongdoers but also against those within the chain of unjust enrichment.*

— *Where fraud, misappropriation, or wrongful deprivation of immovable property is established, the measure of compensation must reflect the actual loss suffered by the injured party and not merely the amount originally paid.*

#### LEGAL PRINCIPLES EXPOUNDED

##### **Bona fide purchaser protection under Section 41 TPA 1882 fails at the threshold where consideration did not proceed from the transferee.**

**Source:** *Once the very consideration underlying the transfer is shown to have proceeded from the Appellant, and not from the Buyer/Brother-in-law or on his behalf, the essential ingredient of a transfer for consideration, so far as the Buyer/Brother-in-law is concerned, stands unproved.*

**Authority:** *Section 41, Transfer of Property Act, 1882; PLD 2011 SC 296 (Tassaduq Hussain v. Lal Khatoon)*

##### **Oral evidence cannot displace the express written terms of a Sale Agreement recording 'full and final sale consideration'.**

**Source:** *The evidentiary principles stipulated in Articles 102 and 103 of Qanun-e-Shahadat Order, 1984, and the oral evidence rule bar reliance on oral assertions to displace or rewrite the contents of a written contract.*

**Authority:** *Articles 102 and 103, Qanun-e-Shahadat Order, 1984; 1988 SCMR 753 (Akhtar Hussain Zaidi v. Muhammad Yaqinuddin)*

##### **Constructive trust under Section 82 Trusts Act, 1882 attaches where consideration is furnished by one but title is taken in the name of another.**

**Source:** *Section 82 of Trusts Act, 1882 embodies the equitable principle that where the consideration for acquisition of property is furnished by one person while title is taken in the name of another, the beneficial interest ordinarily follows the consideration.*

*Authority:* Section 82, Trusts Act, 1882; PLD 2021 Sindh 88 (Feroze Sajan v. Farzana Sajan)

**Specific performance remains a discretionary and equitable remedy and may be refused for investment-driven transactions where monetary compensation is adequate.**

*Source:* Where the transaction was essentially motivated by investment and anticipated financial gain rather than by the acquisition and enjoyment of the subject property, the equitable relief of specific performance does not warrant exercise in favour of the Appellant.

*Authority:* Section 22, Specific Relief Act, 1877; PLD 2014 SC 506 (Liaqat Ali Khan v. Falak Sher)

**Damages for prolonged wrongful deprivation of appreciating commercial property must account for appreciation and currency depreciation to achieve complete restitution.**

*Source:* Any assessment based solely upon historical valuation incapable of achieving complete restitution... any award confined to the original transaction value or a nominal enhancement would result in a manifest failure of justice and permit the wrongdoers to benefit from the passage of time.

*Authority:* PLD 2010 SC 952 (Mehmooda Begum v. Hassan Sajjad); 2017 SCMR 1696 (Muhammad Abdur Rehman Qureshi v. Sagheer Ahmad)

**OPERATIVE ORDER**

*In view of the foregoing, the Impugned Judgment and Decree are modified as under: i) The damages awarded under the Impugned Judgment are enhanced from Rs.5 million (Rupees Five Million) to Rs.150 million (Rupees One Hundred And Fifty Million), carrying mark-up at the rate of 15% per annum, as directed by the learned Single Judge, to be calculated from the date of institution of the Suit (i.e. 9.5.1998) till realization. ii) The monetary decree (comprising the refunded amount of Rs.9.3 million together with the enhanced damages awarded hereinabove), is extended to Respondents No.4 and 12, and the entire decretal amount shall be recoverable jointly and severally from Respondents No.1 to 3, Respondent No.4, and Respondent No.12. The Appeal is allowed to the above extent, and the Impugned Judgment and Decree are modified accordingly, with costs throughout.*

■ [View Full Judgment](#)

**FAMILY MAINTENANCE, CHILD-MEETING ARRANGEMENTS, DOWRY ARTICLES**

**Zubair Ahmed Shaikh v. Mst. Uzma**

**PETITION DISPOSED OF ON AGREED TERMS**

Const. P. 432/2025 | 2026 SHC LAR 1309 · Bench: Mr. Justice Muhammad Hasan Akber · Decided: 15-05-2026 · Uploaded: (15-05-2026 — SHC portal does not expose upload date)

**FACTS**

The petitioner (husband/father) impugned the Judgment dated 08.10.2025 passed in Family Appeal No.28 of 2025 by the Additional District Judge-V Larkana, which partly upheld the Judgment and decree dated 24.05.2025 passed in Family Suit No.01 of 2025 (Mst. Uzma v. Zubair Ahmad) by the Family Judge-I Larkana for recovery in multiple heads. The issues involved were maintenance of the minors (Rs.7,000/- per month from date of decree), iddah period (Rs.30,000/-), past maintenance of the wife (Rs.30,000/-), one tola gold (decreed by trial Court), and meetings of the children with the petitioner/father. In the wife's deposition, no receipt or document for dowry articles, including the one tola gold, was produced. The wife present in Court admitted no receipts were obtained at purchase nor produced in evidence. It also transpired that meetings of the minors with the father were not being held.

**LEGAL ISSUE**

Whether a Family Appellate Court's decree for one tola gold (dowry article) can be sustained in the absence of any receipt or documentary evidence; whether the outstanding decretal amount across multiple heads can be settled on agreed instalment terms; and whether the High Court, exercising jurisdiction in loco parentis with a child-centric approach, may frame a comprehensive consensual arrangement for regular meetings, vacations, education and cooperation between parents in the best interests of the minors.

**HOLDING**

The High Court set aside the impugned decrees only to the extent of the 'one tola gold' for being without any evidence or record. On the outstanding decretal amount, on the joint statement of counsel under instructions, the total outstanding of Rs.88,000/- (after deduction of Rs.140,000/- already deposited) was directed to be paid by the petitioner at Rs.10,000/- per month with the Executing Court in Execution Application No.16 of 2025 starting 01.06.2026, with liberty to the Executing Court to initiate penal proceedings on non-compliance. Future maintenance was fixed at Rs.7,000/- per month per child with 10% annual increment, first increment from 01.06.2027. Exercising jurisdiction in loco parentis and following a child-centric approach guided by Arif Fareed and Dr. Muhammad Asif, the Court framed a detailed consensual meeting/education/cooperation arrangement and made it the order of the Court. Both impugned Judgments were otherwise upheld.

#### LEGAL SIGNIFICANCE

The judgment exemplifies the Sindh High Court's evolving template for child-centric family dispute resolution by formalising a comprehensive consensual order covering regular meetings, birthdays, Eid, summer/winter vacations, education monitoring, gifts, mutual cooperation and reconciliation efforts. It reinforces that in family litigation, the High Court may use its constitutional jurisdiction to fashion holistic arrangements rather than piecemeal relief, drawing on Arif Fareed v. Bibi Sara (2023 SCMR 413), Dr. Muhammad Asif v. Dr. Sana Sattar (CRP No.458/2024) and the UN Convention on the Rights of the Child 1989. The decision also reiterates the evidentiary requirement that dowry article claims must be supported by receipts or documentary proof and cannot be sustained on bare assertion alone.

#### LEGAL PROPOSITIONS (VERBATIM)

- *Meetings of children with both parents are always conducive and healthy for the mental development of the children themselves.*
- *Considering the children's age, both parents are required to act sensibly, being conscious of their serious responsibility towards the children, and they shall not do any act which may prejudice the minds of the children towards the other parent.*

#### LEGAL PRINCIPLES EXPOUNDED

##### **A decree for dowry articles cannot be sustained in the absence of receipts or documentary evidence.**

*Source:* Upon perusal of the evidence of the plaintiff/wife, the same shows that no receipt was produced with respect thereto... the impugned decrees, only to the extent of 'one tola gold', being without any evidence or record, are set aside.

*Authority:*

##### **The High Court exercises jurisdiction in loco parentis with a child-centric approach in family matters.**

*Source:* This petition was therefore heard expeditiously 'in loco parentis' while considering the valuable expressions by Justice Aminuddin Khan of the Honourable Supreme Court in 'Arif Fareed v. Bibi Sara and others' (2023 SCMR 413) and the guidelines for a 'child-centric approach'.

*Authority:* Arif Fareed v. Bibi Sara and others (2023 SCMR 413); Dr. Muhammad Asif v. Dr. Sana Sattar (CRP No.458/2024); UN Convention on the Rights of the Child 1989

##### **Meetings of children with both parents are conducive and healthy for their mental development, and the petition warrants expeditious hearing on that footing.**

*Source:* Needless to mention that meetings of children with both parents are always conducive and healthy for the mental development of the children themselves.

*Authority:* Mst. Madiha Younus v. Imran Ahmed (2018 SCMR 1991)

#### OPERATIVE ORDER

*In view of the above, both the Judgments impugned are therefore upheld, in addition whereof, the above arrangement between the parties is made the Order of the Court, and the learned Executing Court shall follow the same formula, as noted above. The petition stands disposed of in the above terms, along with the pending applications. The agreed arrangement made part of the order comprises: (A) Total outstanding decreed amount against the Petitioner till date on all four heads, after deduction of Rs.140,000/- already deposited, comes to Rs.88,000/-, payable at Rs.10,000/- per month with the Executing Court in Execution Application No.16 of 2025*

starting 01.06.2026 until satisfied; in case of non-compliance the Executing Court is at liberty to initiate penal proceedings without disturbing other arrangements. (B) Future maintenance of the minors starting 01.06.2026 at Rs.7,000/- per month per child with 10% annual increment; first increment from 01.06.2027. (i) The impugned Judgments by both the learned Courts below are upheld. (ii) Regular Meetings: 2nd and 4th Saturday of every month, 10 am to 12 pm. (iii) Each Child's Birthday: 12 pm to 1 pm. (iv) Father's Birthday: 12 pm to 1 pm. (v) Eid-ul-Fitr: first working day after Eid, 10 am till 12 pm. (vi) Eid-ul-Azha: first working day after Eid, 10 am till 12 pm. (vii) Cost: father shall deposit Rs.500/- transportation cost per meeting in Court. (viii) Venue: all regular meetings within the premises and under supervision of the concerned Family Court. (ix) Summer vacations: every 2nd and 4th Friday during summer vacations, father shall pick up the minors at 10 am under supervision of the Family Court and shall return them the next day at 11 am in Court. (x) Winter vacations: 1st Friday during winter vacations, father to pick up the minors at 10 am under supervision of the Family Court and return them the next day at 11 am in Court. (xi) Alterations only by express mutual consent of children and parents. (xii) Education: (a) periodic reports every three months by Respondent before Guardian Court, monitored by the Court; (b) both parents may attend important school meetings/functions. (xiii) Gifts from father delivered to children personally through Guardian Court. (xiv) Mutual Cooperation: both parents to act sensibly and not prejudice the minds of children against the other parent, and fully cooperate on all matters/documentation required by school, NADRA, Union Council, Immigration or any forum/department/authority; Guardian Court may pass appropriate Orders for implementation. (xv) Reconciliation: Guardian Judge from time to time to initiate positive reconciliation efforts. (xvi) Implementation: parties to approach the concerned Guardian Court. (xvii) Action: Guardian Judge may take action against the non-cooperating party found in deliberate avoidance. (xviii) 'Court' means the concerned Family Judge-II, Larkana at present, and for the future includes the Family Court having jurisdiction under the Guardian and Wards Act, the Family Courts Act 1964 and the Rules thereunder; the Guardian Court may make further Orders in the interests of the minor as deemed appropriate.

■ [View Full Judgment](#)

## MURABAHA FINANCING, NOVATION, MARK-UP BEYOND AGREED SALE PRICE

### National Investment Trust Limited v. Textile Management (Pvt.) Limited

**APPEAL DISMISSED; IMPUGNED JUDGMENT UPHELD**

*H.C.A 205/2001 | 2026 SHC KHI 1317 · Bench: Mr. Justice Muhammad Faisal Kamal Alam (Author) and Ms. Justice Sana Akram Minhas · Decided: 15-06-2026 · Uploaded: (15-06-2026 — SHC portal does not expose upload date)*

#### FACTS

The Appellant (NIT) extended a Murabaha (Purchase and Sale Agreement) finance facility of Rs.8.207 million dated 23.05.1996 to the Respondent (Textile Management Pvt. Ltd.) against pledge of 104,400 shares of Muhammad Farooq Textiles Mills Ltd. The amount was payable in three instalments, the final due on 20.01.1997, with a payable figure of Rs.7,402,500/-. The first two instalments were paid timely on 20.07.1996 and 20.10.1996. Upon the Respondent's failure to pay within the stipulated period, requests were made for extension; by letter dated 13.04.1996 the Respondent sought rollover of Rs.7 million for nine months from expiry of the finance facility, which the Appellant accepted by letter dated 06.05.1996 at 23% mark-up against the same pledged shares. The Respondent thereafter made various payments — including Rs.765,000/- through Cheque No.863756 dated 23.10.1997 received under covering letter of 24.10.1997 and Rs.1,695,893/- on 14.06.1999 (the latter computed by the Respondent at 18% mark-up covering 01.02.1999 to 31.05.1999). The Respondent sued, asserting that under the Subject Agreement it was liable only for the agreed sale price of Rs.8,207,500/- and that no further liability survived. The Single Judge decreed the suit by Judgment dated 12.05.2001 in Suit No.1659 of 1999, against which NIT preferred this Appeal.

#### LEGAL ISSUE

Whether the undisputed correspondences relied upon by the Appellant created a novation of the Subject (Murabaha) Agreement under Section 62 of the Contract Act, 1872, so as to entitle the Appellant to charge variable mark-up on the outstanding liability beyond the agreed sale price; and whether the impugned Judgment considered the record and applied the law governing Islamic modes of finance and BCD Circular No.13 dated 20 June 1984 correctly.

**HOLDING**

The Court held that the correspondences merely reflected the Respondent's requests for additional time to discharge the outstanding liability and the Appellant's willingness to accommodate such requests; no fresh Murabaha transaction, no fresh Purchase and Sale Agreement, no fresh sale price, no fresh securities and no fresh financing cycle were brought into existence. The so-called rollover represented mere deferment of an already crystallised liability and could not, by any recognised principle of Islamic finance, be equated with a fresh Murabaha transaction. Once the sale price under a Murabaha transaction stood determined and goods delivered, the customer's liability became fixed and ascertainable, and on default the unpaid portion was recoverable only as debt; mere extension of time could not convert the existing debt into a new profit-generating transaction. Charging mark-up beyond the agreed sale price — whether at 23% or a reduced rate — amounts to mark-up upon mark-up, defeating BCD Circular No.13 of 20 June 1984. Estoppel could not operate against law nor could acquiescence validate an otherwise impermissible demand. The Appeal was dismissed with no order as to costs.

**LEGAL SIGNIFICANCE**

The decision is an important reaffirmation of the doctrinal limits of Murabaha financing under Pakistan's non-interest-based banking framework, holding that the agreed sale price (incorporating the profit component) under a Murabaha contract cannot be supplemented by additional mark-up upon extension of time, and that a rollover or rescheduling is not a novation under Section 62 of the Contract Act, 1872. It also reiterates that estoppel cannot operate against law and that acquiescence in an impermissible demand does not legitimate it. The judgment relies on BCD Circular No.13 dated 20 June 1984 and the Court's earlier decision in *Habib Bank v. Messrs Qayyum Spinning Ltd.* (2001 MLD 1351) and circumscribes appellate interference with single-judge decrees to cases of misreading, non-reading or manifest error of law.

**LEGAL PROPOSITIONS (VERBATIM)**

- *Mere indulgence, extension of time for performance, rescheduling of payment, or acceptance of delayed performance does not, by itself, amount to novation unless the original rights and obligations stand replaced by fresh contractual obligations; specially, in a non-interest based finance, as is the present case.*
- *It is a settled principle that estoppel cannot operate against law nor can acquiescence validate a demand which is otherwise impermissible under the governing legal framework.*
- *Once the sale price under the Murabaha transaction stood determined and the goods were delivered, the liability of the customer became fixed and ascertainable. Upon default, the unpaid portion of the agreed sale price merely remained recoverable as debt. The mere extension of time for repayment could not convert the existing debt into a new profit-generating transaction.*

**LEGAL PRINCIPLES EXPOUNDED****Extension of time or rollover under a Murabaha facility does not amount to novation under Section 62 of the Contract Act, 1872.**

**Source:** *The Correspondence exchanged between the Parties did not bring into existence any fresh Murabaha transaction or independent finance facility, as argued. The record does not disclose execution of a fresh Purchase and Sale Agreement, fixation of a fresh sale price, creation of fresh securities, or any other arrangement suggesting substitution of the original contract.*

**Authority:** *Section 62, Contract Act, 1872*

**Mark-up cannot be charged upon mark-up in an Islamic mode of finance, and the agreed sale price under a Murabaha exhausts the permissible profit component.**

**Source:** *It is a settled rule, in such type of financial transactions that a Financial Institution is not allowed to charge markup upon markup... charging/demanding markup either at the rate of 23% or even at a lesser rate means that an additional markup is being charged and demanded from the Respondent. This act defeats the very purpose of the afore-referred statutory Circular.*

**Authority:** *BCD Circular No.13 dated 20 June 1984; Habib Bank v. Messrs Qayyum Spinning Ltd. (2001 MLD 1351)*

**Estoppel cannot operate against law; acquiescence does not validate an impermissible claim.**

**Source:** *It is a settled principle that estoppel cannot operate against law nor can acquiescence validate a demand which is otherwise impermissible under the governing legal framework.*

**Authority:**

**Appellate Court will not ordinarily interfere with a single-judge decree unless findings are contrary to the evidence, based on misreading or non-reading, or suffer manifest error of law.**

**Source:** *It is by now a settled proposition that an appellate Court would not ordinarily interfere with a judgment and decree merely because another view of the matter may also be possible. Interference is warranted only where the findings recorded by the Court below are shown to be contrary to the evidence on record, based upon misreading or non-reading of material evidence, or suffering from a manifest error of law.*

**Authority:**

**OPERATIVE ORDER**

*Points for determination are answered as under: (i) The undisputed Correspondences relied upon by the Appellant did not create any novation of the Contract. They merely reflected an extension of time for payment under the existing Murabaha transaction and did not constitute a fresh Finance Facility Agreement authorizing the charging of further markup beyond the agreed sale price. (ii) The impugned Judgment has correctly considered the record and properly applied the relevant law and principles governing Murabaha financing and does not suffer from any legal or factual infirmity warranting interference by this Court. (iii) Consequently, this Appeal is dismissed, with no order as to costs.*

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**CHILD CUSTODY, REAL MOTHER VS STEPMOTHER, WELFARE OF MINORS**

**Mst. Sanam Bibi v. Sardar Ali Shah**

**PETITION DISPOSED OF; COMPREHENSIVE CHILD-CENTRIC ARRANGEMENT**

*Const. P. 464/2025 | 2026 SHC LAR 1310 · Bench: Mr. Justice Muhammad Hasan Akber · Decided: 14-05-2026 · Uploaded: (14-05-2026 — SHC portal does not expose upload date)*

**FACTS**

The petitioner (mother) impugned the Judgment dated 03.11.2025 passed in Family Appeal No.17 of 2025 by the Additional District Judge-III Shikarpur, which upheld the Judgment and decree dated 12.08.2025 passed in Guardian and Wards Application No.20 of 2024 (Sardar Ali Khan v. Mst. Sanam Bibi) by the Family Judge-I Garhi Yasin. The couple, married around 12 years earlier, have five children. Three (Bibi Mariam, Amir Ali Shah and Bibi Khadijah) reside with the father; two (Bibi Fizza and Karam Ali Shah @ Asghar Ali Shah) reside with the mother. An earlier Guardianship Application No.5/2024 by the father had been decided on 09.09.2024 giving custody to the mother, which attained finality. Within days the father moved a fresh application under sections 7, 12 and 25 of the Guardian and Wards Act 1890 seeking guardianship and permanent custody of the two minors with the mother — which was allowed by the Guardian Court and upheld in appeal. The father is a schoolteacher and has contracted a second marriage; the mother has not remarried and pleads sacrifice for the children's welfare. The father argued the mother's poverty and the children's lack of education in her custody; the mother pleaded against displacement to a stepmother's care.

**LEGAL ISSUE**

Whether the poverty and lower literacy of a real mother are valid grounds to deprive her of the custody of her minor children, particularly where the father has contracted a second marriage and the children would be raised by a stepmother; whether the welfare of the minors and a child-centric approach in loco parentis warrant restoration of custody to the mother; and whether a comprehensive consensual scheme governing meetings, vacations, education, gifts, transportation and cooperation between the parents may be made the order of the Court under section 12 of the Guardian and Wards Act 1890 and section 17-A of the Family Courts Act.

**HOLDING**

The Court held that poverty cannot be a valid ground to disentitle a real parent of custody, and a stepmother can never be a substitute for the real mother. Findings of both courts below, which had ignored the aspect of the stepmother taking care of the children and the settled principles regarding poverty and literacy of a parent, were unsustainable. Exercising jurisdiction in loco parentis with a child-centric approach and

considering the Constitution, the CRC 1989, CEFL principles, and Supreme Court authority, the Court accepted both parties' joint formula at the hearing: the existing custody arrangement of three children with the father and two with the mother was retained, but an elaborate scheme for regular meetings, birthdays, Eid prayers, summer/winter vacations, Friday prayers, transportation cost, education (including the father's undertaking to admit the mother's two children in Indus Public School Dakhan and bear all educational expenses), gifts, mutual cooperation, monthly maintenance with 10% annual increment, reconciliation, implementation and action against non-cooperating parties was made the order of the Court. The Court also strongly recommended legislative/rules reform to introduce a Mandatory Preliminary Hearing in every family case to tentatively decide all child-related issues at the first hearing.

#### LEGAL SIGNIFICANCE

The judgment is a significant reaffirmation of the principle that the real mother's right to custody cannot be defeated by poverty or comparative illiteracy, particularly where the father has remarried and would necessarily delegate day-to-day care to a stepmother. The Court draws extensively on *Mst. Feroze Begum v. Lt.-Col. Muhammad Hussain* (1978 SCMR 299) and a long line of provincial authorities to hold that a stepmother is no substitute for the real mother. The judgment is also notable for its systemic recommendation that section 12 of the Guardian and Wards Act 1890 and section 17-A of the Family Courts Act be modified/aligned with the Constitution, the UN CRC, and the Supreme Court's guidelines in *Arif Fareed and Dr. Muhammad Asif*, by introducing a Mandatory Preliminary Hearing template covering custody, maintenance, meetings, education, health and reconciliation in every family case — a template intended to reduce multiplicity of litigation, protect the child's psychological welfare and standardise discretion across Family Courts.

#### LEGAL PROPOSITIONS (VERBATIM)

- *A stepmother can never be a substitute for the real mother. Real mother has inherent right to keep her minor children close to her bosom.*
- *Poverty could not be a valid ground to disentitle a real parent to the custody of the minor.*
- *A mother is the best guardian for her minor children unless it is proved that she has married a man who is not closely related to the minor, or she lives a life of open immorality, or her occupation be such as to make it difficult for her to look after the child properly.*
- *For the determination of the question of custody of a minor, the paramount consideration is the welfare of the minor.*

#### LEGAL PRINCIPLES EXPOUNDED

##### **Poverty and comparative illiteracy of the real mother are not valid grounds to deprive her of the custody of her minor children.**

**Source:** *On the arguments that the mother's poverty and illiteracy be considered per se to deprive her of her children, I am therefore not convinced by the Respondent's line of argument, since abundant case law is available in our own jurisdiction on the subject of the removal of custody of a minor from that of a real mother to the care of a stepmother.*

**Authority:** *Mst. Feroze Begum v. Lt.-Col. Muhammad Hussain* (1978 SCMR 299); *Muhammad Nazir v. Additional District Judge, Mianwali* (2009 CLC 1010)

##### **A stepmother cannot substitute for a real mother where the father has contracted a second marriage.**

**Source:** *A stepmother by no stretch of imagination can be considered to be a sympathiser of a step child, and a minor cannot be left at the mercy of a woman who is otherwise a stranger to the minor, while the father remains away in connection with his job.*

**Authority:** *Masroor Hussain v. Additional District Judge, Islamabad* (2011 CLC 851); *Muhammad Jameel v. Azmat Naveed* (2010 MLD 1388)

##### **The paramount consideration in custody is the welfare of the minor.**

**Source:** *For the determination of the question of custody of a minor, the paramount consideration is the welfare of the minor.*

**Authority:** *Safdar Hussain v. Mst. Parveen Umar* (PLD 2004 SC 357)

**Inter-parental conflict during litigation has serious adverse psychological impact on children and warrants a child-centric, holistic judicial approach.**

**Source:** Extensive Research and Studies conducted around the world on the adverse impact of inter-parental conflicts on their children conclude that if parental conflicts are not resolved privately and within a shorter period, the children suffer psychological distress with increased risk of developing fear, anxiety, sadness, depression, insecurity, instability, emotional dysregulation, mood swings and impulsivity.

**Authority:** Arif Fareed v. Bibi Sara (2023 SCMR 413); Dr. Muhammad Asif v. Dr. Sana Sattar (CRP No.458/2024); UN Convention on the Rights of the Child 1989

**Section 12 G&W Act and section 17-A Family Courts Act require regulated guidelines and a Mandatory Preliminary Hearing template to comprehensively address all child issues at the outset.**

**Source:** The exercise and procedure under section 12 of G&W Act and section 17-A of the Family Courts Act and rules are, therefore, required to be modified and aligned in consonance with the Constitution of Pakistan, the CRC, the guidelines enunciated by the Justice Aminuddin Khan in the case of 'Arif Fareed v. Bibi Sara and others' (2023 SCMR 413), and by Justice Mansoor Ali Shah of the Honourable Supreme Court in the case of 'Dr. Muhammad Asif Vs. Dr. Sana Sattar and others'.

**Authority:** Section 12, Guardian and Wards Act 1890; Section 17-A, Family Courts Act 1964; Constitution of Pakistan 1973 (Articles 35, 25A, 11(3), 37(e), 25); UN CRC 1989

**OPERATIVE ORDER**

After discussing the above-discussed circumstances and welfare of all five children/spouses, and acting in a highly prudent and sensible manner, both parties present in Court agree to the following formula with respect to all issues concerning all five children: i. Custody: The permanent custody of the three children already with the father shall continue to remain with the father. Likewise, the custody of the two children already with the mother shall continue to remain with the mother. ii. Regular Meetings: all five children shall meet both their parents on 2nd and 4th Saturday of every month, from 10 am to 12 pm. iii. Each Child's Birthday: meeting of each child on his/her Birthday, with the non-custodial parent, from 12 pm to 1 pm. iv. Father's Birthday: all five children shall meet the father from 12 pm to 1 pm. v. Mother's Birthday: all five children shall meet the mother from 12 pm to 1 pm. vi. Venue: All above Meetings [para (ii) to (v)] shall be conducted within the premises and under the monitoring and supervision of the concerned Family Court. vii. Cost: For each of the above meetings HELD in Court, the father shall deposit a total Transportation Cost of Rs.500/- in the Court, payable to the mother. viii. Summer vacations: On every 2nd and 4th Friday of every month during summer vacations, father will pick up the two children (in mother's custody) at 10 am, and the Mother will pick the three children (in father's custody), under the supervision of the learned Family Court, and all children shall return on the next day at 11 am, in Court. Father to pay Rs.1000/- Transportation cost in Court, for mother. ix. Winter vacations: On 1st Friday during winter vacations, the same above formula shall be observed. x. Eid-ul-Fitr Prayers: All male children to attend Eid prayers with Father and will rejoin the mother at 11 am. xi. Eid-ul-Azha Prayers: All male children are to attend Eid prayers and participate in sacrifice, if any, with the father, and will rejoin the mother at 12 noon. xii. Eid-ul-Fitr meeting: all five children shall meet their non-custodial parent on the first working day after Eid, from 10 am till 12 pm in Court. xiii. Eid-ul-Azha meeting: all five children shall meet their non-custodial parent on the first working day after Eid, from 10 am till 12 pm in Court. xiv. Friday Prayers: All male children may attend weekly Friday prayers with the father for an hour and will rejoin the mother after prayers. xv. Transportation: For all meetings at clauses (x) to (xiv), Pick and drop will be arranged by the father. xvi. Alterations: The above days, timings, venue or occasions etc. can be altered or improved, with the express mutual consent of both the parents and the children. xvii. Education: (a) Father has undertaken in this Court to arrange for the admission in Indus Public School, Dakhan (or if not possible, in any other proper school) and to pay all other educational expenses/admission fee/uniforms/transportation/pocket money/extra tuition, etc. for the two children who are in mother's custody, so that all five children could study together and the education of the two children could also improve. The mother has undertaken in Court, not to hamper such schooling arrangements. (b) Both parents may attend important school meetings, other school functions, or any other activity of the children, as required, only to improve the confidence, better personality and education of the Children. xviii. Gifts: All Gifts from the father and the mother to their respective non-custodial children shall be delivered personally, through the Guardian Court. xix. Mutual Cooperation: (a) Considering the children's ages, both parents are required to act sensibly, being conscious of their serious responsibility towards the children, and they shall not do any act which may prejudice the minds of the children towards the other parent [2018 SCMR 1991]. (b) Hence, in the best interests of all five Children, both parents shall fully cooperate with each other on all matters and documentation(s), etc., as, when and wherever required by the Children's school, or NADRA, or Union Council, or Immigration, concerned Doctor, or any other Department/Authority/forum etc. In this regard, the learned Guardian Court may pass appropriate Orders for its implementation to compel the non-cooperating parent. xx. Monthly maintenance: the father shall continue to deposit

*the monthly maintenance of the two children with the Family Court with 10% annual increment starting from 01.06.2026. xxi. Reconciliation: During their meetings, the learned Guardian Judge, from time to time, shall also initiate positive reconciliation efforts to reduce the relationship gap, presently created between the respective parents and their non-custodial children. xxii. Implementation: For the implementation of this Order, as well as for all matters and guidance concerning the rights and welfare of the Children, the parties shall approach the concerned learned Guardian Court. xxiii. Action: The learned Guardian Judge may take action against any of the non-cooperating parties found involved in deliberate avoidance of any term of this Order. xxiv. Court: the term 'Court' wherever used in this Order, shall mean the concerned learned Family Judge-I, Shikarpur at present, and for the future, shall also include the Family Court having jurisdiction under the Guardian and Wards Act, the Family Courts Act 1964 and the Rules thereunder. The above arrangement between the parties is therefore made the Order of the Court, and the learned Family/Executing Court shall follow the same formula, as noted above. The petition, therefore, stands disposed of in the above terms.*

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