

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 3730 of 2021

Akhtar Mehmood

Versus

Mst. Sana Siddiq and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	21.10.2021	Mr. Imran Zahoor Mughal, Advocate for the petitioner.

The petitioner through the instant writ petition has called in question the legality and validity of impugned judgment and decree dated 27.04.2021, passed by the learned Senior Civil Judge-III (Judge Family Court) West-Islamabad as well as Judgment and decree dated 07.09.2021, passed by the learned Additional District Judge, West-Islamabad to the extent of issue No.1, whereby respondent No.1/plaintiff was held entitled for recovery of maintenance allowance at the rate of Rs. 10,000/- per month w.e.f May 2017 till expiry of her iddat period.

02. Brief facts of the case are that respondent No.1/plaintiff filed suit against the petitioner / defendant for recovery of maintenance allowance alongwith dower amount and dowry articles before the learned Judge Family Court, Islamabad.

03. Petitioner was married with respondent No.1 on 16.06.2011; dower amount was fixed as Rs. 325,000/- out of which Rs. 25,000/- were paid at the time of Nikah and remaining amount of Rs. 3,00,000/- was payable on demand. After Nikah, Rukhsati of respondent No.1 took place on the same day. Few months after the marriage, relations between the parties became strain; the petitioner threw out respondent No.1 from his house and since then neither the petitioner contacted her nor paid any maintenance allowance / Haq Mehr.

04. Suit filed by respondent No.1 / plaintiff Mst. Sana Siddiq for recovery of maintenance allowance, dower amount and dowry articles was decreed and respondent No.1/plaintiff was held only entitled to receive maintenance allowance at the rate of Rs. 10,000/- per

month w.e.f. May 2017, till expiry of her iddat period. The amount paid by the defendant if any, during the said period shall be deducted from arrears of maintenance allowance fixed by the Court. Suit filed by the respondent No.1/plaintiff to the extent of recovery of dower was dismissed.

05. Petitioner filed an appeal against the impugned judgment and decree dated 27.04.2021, which was also dismissed by the Court of learned Additional District Judge, West-Islamabad vide judgment and decree dated 07.09.2021.

06. Learned counsel for the petitioner, *inter alia*, contends that impugned judgments and decrees passed by learned Judge Family Court and learned Additional District Judge to the extent of issue No.1 are against law and facts of the case; impugned judgments and decrees have been passed by ignoring the material parts of evidence and are based on conjecture and surmises, hence both are liable to be set aside.

07. Arguments heard, record perused.

08. It is admitted in the evidence produced by the parties that respondent No.1 was married with the petitioner and she was thrown out by the petitioner in May, 2017; according to the law, wife is entitled for receiving the maintenance from her husband; respondent No.1 / plaintiff claimed maintenance allowance at the rate of Rs. 35,000/- per month but keeping in view the financial status of the petitioner, learned Judge Family Court has fixed the maintenance allowance at the rate of Rs. 10,000/- per month w.e.f. May, 2017 till expiry of iddat period of respondent No.1.

09. There are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of evidence. It has been laid down in a case titled as **"Syed Arif Ali Sabri Vs. Abdul**

Samad through L.Rs. and 2 others” (2008 YLR 2309)’ that:

“When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence”. The same view has also been taken in a case titled as “Sadruddin Vs. Aslam Madad Ali and others” (PLD 2008 Karachi 2005).

10. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and

not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155)"**, it is held by the Hon'ble Supreme Court that:

"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law."

If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."

(ii) In a case titled as **"President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others" (2020 SCMR 260)**, it

is held by the Hon'ble Supreme Court that:

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the

same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

(iii) In a case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others" (2019 SCMR 919)**, it is held by the Hon'ble Supreme Court that:

"Where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."

(iv) In a case titled as **"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28)**, it is held by the Hon'ble Supreme Court that:

"The powers of judicial review vested in High Court under Article 199 of

the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court / Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner". The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:

(i) Brig (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142).

(ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677).

(iii) Malik Shaukat Ali
Dogar v. Ghulam Qasim
Khan Khakwani (PLD
1994 SC 281).

(v) In a case titled as **"Shajar**
Islam Vs. Muhammad
Siddique and 2 others" (PLD
2007 SC 45), it is held by the

Hon'ble Supreme Court that:

"The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in

writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal”.

11. For what has been discussed above, the impugned judgment and decree dated 27.04.2021, passed by the learned Judge Family Court-West, Islamabad as well as Judgment and decree dated 07.09.2021, passed by the learned Additional District Judge, West-Islamabad are in accordance with law and facts of the matter and do not require interference by this Court. The writ petition is not maintainable, hence **dismissed in limine** being meritless.

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**