

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 3776/2021

Muhammad Abdul Satar

Versus

Mst. Rabia Azad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	25.10.2021	Mr. Khurram Manzoor Ch., Advocate for the Petitioner.

Through the instant writ petition, the petitioner has assailed order dated 28.07.2021, passed by learned Judge Family Court, East-Islamabad, whereby interim maintenance @ 3000/- per month each minor was fixed by the learned Family Court.

02. Brief facts of the case are that the marriage between the petitioner and respondent No. 1 was solemnized according to Shariat-e-Mohammadi on 21.08.2005, from the wedlock of the parties, three children i.e. respondent No. 2, 3 & 4 namely Maryam, Muhammad Ahmed and Muhammad Zakkria were born on 05.12.2006, 23.09.2011 and 16.03.2009, respectively.

03. Thereafter, the relations between the parties became strain, respondent No. 1 was thrown out from house of the petitioner and she is residing along with minors at her parent's house. That respondents No. 1 to 4 filed suit for maintenance allowance, whereby learned Judge Family Court vide order dated 29.03.2019 fixed the interim maintenance @ 3000/- per month to be paid to the minors.

04. Lateron, respondent No. 1 moved an application to clarify order dated 29.03.2019, which was clarified in a manner that Rs. 3000/- per month each minor was fixed by Court, which comes to Rs. 9000/- as total maintenance of the three minors.

05. Learned counsel for the petitioner *inter alia* contends that the monthly salary of the petitioner is Rs. 10,000/- and he is unable to pay such an exorbitant maintenance to the minors; the maintenance has not been fixed according to the financial status of the petitioner, as he is Imam Masjid and has very limited source of income; petitioner is unable to pay such a huge amount to the minors and

has prayed for setting aside the impugned order dated 28.07.2021.

06. Arguments heard, record perused.

07. It is mentioned in Section 14(3) of the West Pakistan Family Courts Act, 1964 that:

“No appeal or revision shall lie against an interim order passed by a Family Court.”

08. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled as

“President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260)”, 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.”
(Emphasis supplied)

09. In another case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919)"**, the Hon'ble Supreme Court of Pakistan has held 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."

10. It has been held by the Hon'ble Supreme Court of Pakistan in case titled as **"Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28)"**, 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. GhulamQasim Khan Khakwani(PLD 1994 SC 281).***

11. Reference in this regard may also be

made to the following case laws:

(i) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "**Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165)**,"

that:

"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

(ii) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as "**Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab**" **(1976 SCMR 450)**, that:

"As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitle dthe petitioner to prosecute a writ petitioner

despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law.”

12. Learned counsel for the petitioner has failed to point out as to how the impugned/interim order passed by the learned Judge Family Court was the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

13. In view of the above prospective, the instant writ petition has no merits and the same is **dismissed in limine.**

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**