

(Judgment Sheet)
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3166 of 2020

Aamir Munir Puri
Versus
Mst. Saima Naeem, etc.

Petitioner by: Mr. Mudassar Rizwan, Advocate.
Respondents No.1 to 4 by: Rao Shaheryar, Advocate.

Date of hearing: 01.02.2021

GHULAM AZAM QAMBRANI, J.:- This judgment shall dispose of instant writ petition bearing No.3166 of 2020 as well as writ petition No.3878 of 2020, as these have been arisen out of same impugned order dated 03.10.2020, passed by the learned Judge, Family Court, Islamabad-East, whereby on the basis of tentative assessment, a sum of Rs.12000/- per month for each minor has been fixed as interim maintenance.

2. Through these petitions, the petitioners have invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, wherein, facts, in brief, relevant for their disposal, are that the petitioner, Aamir Munir Puri (hereinafter be referred to as “**petitioner**”) and Saima Munir Puri/ respondent (hereinafter be referred to as “**respondent**”) were married to each other on 15.10.1999, in accordance with Shariah-e-Muhammadi. Out of wedlock, the couple was blessed with three children, respondents No.2 to 4, who are in custody of respondent (Saima Naeem). It was added that the respondent was a disobedient and disloyal wife, who always tried to humiliate the petitioner and his parents but always the situation was compromised by the petitioner for the sake of minors; that the petitioner purchased a plot in Media Town Islamabad with his own source of income and after getting loan from HBL, constructed a house on the said plot and till date the respondents No.1 to 4 are living in the said house; that respondent

filed a suit for recovery of maintenance against the petitioner and upon receipt of summons, the petitioner appeared in the court and submitted written statement on 03.10.2020; that on the same day the learned trial court vide order dated 03.10.2020 fixed the monthly interim maintenance of each minor at the rate of Rs.12,000/-, feeling dissatisfied with the same, the petitioner, Aamir Munir Puri, has filed the instant writ petition against the respondents.

3. That the respondent, Saima Aamir Puri, has filed writ petition No.3878 of 2020, against the petitioner (her husband) with the prayer for setting aside the impugned order dated 03.10.2020 on the ground that no monthly maintenance has been fixed for the respondent, herself, and that the interim maintenance fixed for minors/ respondent No.2 to 4 may be enhanced @ Rs.30,000/- for each.

4. Learned counsel for the petitioner (Aamir Munir Puri) argued that the interim maintenance ought to have been fixed proportionate to the income of the petitioner and the rate so fixed by the learned Family Court is exorbitant and disproportionate to the sources of the income of the petitioner who was employed in Habib Bank Ltd., but unfortunately his services were terminated in December 2019 and since then he is jobless; that old and sick widow mother of the petitioner is also dependent upon him, who mostly remains hospitalized; that petitioner is unable to pay Rs.36,000/- per month; that the learned Family Court blindly fixed the maintenance of one of the child who is major and impugned order to this extent is totally unjustified and liable to be reversed; that the impugned order is unjust, harsh and not according to facts and circumstances of the case and economic competence of the petitioner, hence the same may be set aside.

5. *Per Contra*, learned counsel for the respondents submitted that payment of maintenance to the minor children is the primary responsibility of their father/ petitioner; that the rate of interim maintenance fixed by the learned trial Court is not in accordance with financial position of the petitioner towards his minor children

whereas, the petitioner is holding valuable assets, therefore, the learned trial Court failed to fix the maintenance of the minors as per their requirements; that the maintenance allowance to the extent of respondent No.1 is against the facts and justice, because the petitioner is a billionaire, owned a lot of property and enjoying a high ranking position; that the petitioner is a reputed business man and has residential lands inherited from his late father, therefore, the maintenance allowance fixed for the minors is not appropriate in any manner.

6. I have considered the arguments advanced from both the sides and have gone through the material available on record, which reveals that the petitioner being father of minors, i.e. respondents No.2 to 4, is aggrieved with the order dated 03.10.2020, passed by the learned Family Judge, Islamabad-East, wherein interim maintenance allowance in favour of minors has been fixed @ Rs.12000/- each per month, which is alleged to be disproportionate to the income of the petitioner/ father.

7. While considering the divergent claims and pleadings of the parties, this Court has to address the proposition that what were guiding principles to fix the interim maintenance by the learned Judge Family Court? For addressing the above preposition, it is necessary to firstly consider the primary source of law being Muslim Citizen of Pakistan i.e. the Holy Quran, wherein, the subject has been dealt in detail particularly in Surah Baqrah, the Urdu version of which is reproduced hereunder:-

اور مائیں اپنے بچوں کو پورے دو سال دودھ پلائیں۔ یہ حکم اس شخص کے لیے ہے جو پوری مدت تک دودھ پلوانا چاہے اور دودھ پلانے والی ماؤں کا کھانا اور کپڑا دستور کے مطابق باپ کے ذمہ ہوگا کسی شخص کو اس کی طاقت سے زیادہ تکلیف نہیں دی جاتی نہ تو ماں کو اس کے بچے کے سبب نقصان پہنچایا جائے اور نہ باپ کو اس کی اولاد کی وجہ سے نقصان پہنچایا جائے اور اس طرح نان نفقہ بچے کے والد کے ذمہ ہے اور اگر تم اپنی اولاد کو دودھ پلوانا چاہو تو تم پر کچھ گناہ نہیں بشرطیکہ تم دودھ پلانے والیوں کو دستور کے مطابق ان کا حق جو تم نے دینا کیا تھا دے دو۔

8. In addition to the above guidance, this Court has also gone through the reported judgment of the Lahore High Court titled as “Ali

Adnan Dar Vs. Judge Family Court" (PLD 2016 Lahore 72), wherein, it has been held that "Father was under legal as well as moral obligation to maintain and support his minor daughter as per injunctions of Islam and that Family Court while passing the interim maintenance was required to give the bare minimum to the minor. It was also held in the judgment that interim maintenance must be sufficient to meet day to day expenses of minor.

9. Same view was taken by the Hon'ble Lahore High Court, in another reported judgment titled as "Amir Mehmood Husain V. Niha Amir Syed" (2011 MLD 1105 Lahore), wherein, it has been held that the interim maintenance has been fixed only after tentative assessment status of the petitioner and expense being incurred on the education and other necessities. The above proposition was also discussed by the Hon'ble Division Bench of this Court in case titled as "Minhaaj Saqib V. Najmul Saqib and others" (2018 CLC 506 Islamabad), wherein, the question of maintainability of writ petition against interim order was settled by observing that High Court could not interfere with interim order of lower Court for reducing maintenance allowance of minors.

10. The impugned order is an interlocutory in nature, as it does not dispose of the main case. Any order passed by the learned Judge Family Court under Section 17-A of the Act cannot be challenged being an interlocutory orders through the Constitutional petition unless the Court, passing the order lacks jurisdiction or the order otherwise is illegal. In the case reported as "Ali Adnan Dar through Attorney Vs. Judge Family Court and others" (PLD 2016 Lahore 73), it has been held as under:-

"It is clear from the preamble of the West Pakistan Family Courts Act, 1964 that the same has been established for protection and convenience of the weaker and vulnerable segments of the society, i.e. women and children. Therefore, interpretation of any and every provision of West Pakistan Family Courts Act, 1964 should be construed to advance the above stated purpose of law i.e. the convenience and protection of the women and children, so it would be convenient and facilitative to the safe administration of justice in the family matters to add and delineate further guidelines in addition to the above

stated, which are as follows:--

I. Maintenance allowance is indispensable right of the mother and children, so the order for grant of maintenance allowance must be passed at a "convenient stage" of the proceedings.

II. Although Section 17-A of the ibid Act empowers Family Court to pass an order for grant of interim maintenance allowance at any stage of the proceedings, in the normality of the circumstances, it must be passed after hearing "both of the, parties" unless the attitude and conduct of the defendant/father is evasive.

III. The order for grant of interim maintenance is made on the basis of tentative assessment of the material available on file and keeping in view the social status of the parties. Further, both the above, material available and social status, should be mentioned in the order for the grata of interim maintenance. Further the quantum of interim maintenance should be "bare minimum" to meet the day to day needs of the recipient in the narrow context.

IV. Although the family laws have been enacted to promote, protect and advance the rights of women and children yet at the interim stage, the version of the respondent/defendant be given a sympathetic or somewhat preferable consideration because, non-payment of interim maintenance allowance will cut throat of his invaluable right i.e. "right to defence" and in consequential effects, children/women would be the losing and deprived parties.

V. Further, if the case is not decided within the statutory period as given in Section 12-A of the West Pakistan Family Courts Act, 1964 either party may apply to the High Court for appropriate direction. However, the order for grant of interim maintenance shall hold the field unless reviewed by High Court under section 12-A or Family Court itself reviews it at any stage as observed below.

VI. Family Court, according to section 12-A of the West Pakistan Family Courts Act, 1964, is under legislative direction to decide the case within six months. Although this provision is directive as no penalty/consequences are

mentioned for non-compliance and in this regard reference is made to (2001 SCMR 1001). But in case the matter is not decided within six months and the delay is due to the plaintiff party, then Family Court either on its own motion or on the application of the defendant/father review its earlier order for grant of interim maintenance allowance.

11. In view of above discussion, this Court is of the view that interim orders qua fixation of monthly maintenance by the learned Judge Family Court could not be assailed in constitutional jurisdiction, even though in some of cases they are harsh but the determination of adequacy or inadequacy of the quantum of maintenance would certainly require factual evidence or inquiry, which cannot be made in the proceedings under Article 199 of the Constitution of Pakistan as held in reported cases titled as "Shameneh Haider and others Vs. Haider Ali Khan" (2018 CLC Note 43), Amir Mehmood Hussain Vs. Niha Amir Syed (2011 MLD 1105 Lahore), Tahir Ayub Khan Vs. Miss Alia Anwar (2015 YLR 2364), Ibrar Hussain Vs. Mehwish Ran and others (PLD 2012 Lahore 420) and Muhammad Shahbaz Khalid Vs. Judge Family Court Lahore (PLD 2013 Lahore 64). Although the underlining legal principles to consider this legal aspect is the intention of the legislature who has specifically prohibited filing of appeal against interim order. In view of the dictum laid down in the above citations, allowing constitutional petition would tantamount to defeat the intent of the legislature.

12. The petitioner/ father has taken the plea that he is jobless owing to which unable to payment of maintenance at the rate fixed by the Court is beyond his economic competence, but this Court in constitutional jurisdiction, is not able to determine this factual aspect of adequacy or inadequacy of the interim maintenance allowance on the basis of principles laid down by superior courts where such order could not be assailed in constitutional jurisdiction. However, in order to avoid any conflict, the learned Judge Family Court is directed to decide main suit within the period of one month while recording the evidence on day-to-day basis. At the time of final disposal of the

case, the impugned order shall be merged into the final decision by the learned Trial Court, which shall be passed after recording evidence of both the parties and keeping in view the financial status of the petitioner as well as the daily needs of the minor.

13. In view of above, the instant writ petition as well as connected writ petition bearing No.3878 of 2020, are hereby **dismissed** with the direction mentioned above.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on this 25th day of February, 2021.

JUDGE