

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO. 4012 OF 2020**

**Majid Hafeez**

**Vs.**

**Sadaf Siddique**

**Petitioner by       :**       **Mr. Sakhawar Hussain, ASC.**

**Respondent by:**       **Mr. Saira Khalid Rajput, AHC.**  
(Respondent Nos.1 to 3)

**Date of hearing   :**       **09.03.2021.**

**LUBNA SALEEM PERVEZ, J.**       The petitioner, Majid Hafeez, through instant writ petition has assailed order dated 20.02.2019, passed by learned Judge Family Court, East-Islamabad, (*hereinafter referred to as **Trial Court***), whereby the learned Trial Court directed the petitioner to pay monthly interim maintenance at the rate of Rs.12,000/- each for two minors (total Rs. 24,000/-).

2.     Learned counsel for the petitioner contended that the interim maintenance fixed is beyond his capacity and he cannot afford to pay Rs. 24,000/- per month as interim maintenance of the minors on the ground that he is a sales man at Al-Moez Traders on the monthly salary of Rs. 20,000/-. He submitted that the learned Trial Court has failed to appreciate this fact and has passed the impugned order by imposing exorbitant interim maintenance for the minors.

3.     On the other hand, learned counsel for the respondent Nos. 1 to 3 submitted that the writ petition for reducing the interim maintenance fixed by learned Judge Family Court, is not maintainable and in support of this contention she placed reliance on case laws reported as ***Mashkoor Ahmed Khokhar v. The Family Judge (East), Islamabad (2019 CLC 1635)***,

*Naveed Ahmed v. Mst. Mehwish Riaz (2019 CLC 511) and Dr. Aqueel Waris v. Ibrahim Aqueel Waris (2020 CLC 131)*. She prayed for dismissal of instant petition on the ground of maintainability.

4. Arguments heard. Record perused.

5. The learned Trial Court, vide impugned order dated 20.02.2019 has fixed interim maintenance for 2 minor children of the petitioner, which he has assailed herein by invoking the constitutional jurisdiction of this court under Article 199(1)(a)(ii) of the Constitution of Pakistan, 1973, as a writ of certiorari and has prayed for setting-aside of the impugned interim order, whereby, the learned Trial Court has passed order in terms of section 17-A of the Family Court Act, 1964 (*hereinafter referred to as the Act, 1964*) which provision empowers the learned Family Court to fix a provisional monthly maintenance keeping in view the income of the father during the proceedings in the suit of maintenance till its decision. The purpose of this section appears to be that the minors who are dependent and are the responsibility of the father should be saved from facing monetary difficulties and may be able to manage the routine necessary expenditures till the trial in the suit for maintenance is finalized, as such, the findings of the learned Family Court in the impugned order are only tentative in nature and not final. Whereas, proper quantum of the maintenance allowance is fixed by the learned Family Court, after recording of evidence as the issue of final maintenance requires probe into the facts regarding financial status and source of income and the High Courts should refrain from involving in determination of facts, being beyond the scope of Article 199 (1)(a)(ii) of the Constitution, 1973, for the reason that such jurisdiction is exercised only against the act done or proceedings taken by the functionary which are without lawful authority and of no legal effect. Guidance in this regard has been sought from the case law reported as *Ghulam Muhammad and another versus Mst. Noor Bibi and others (1980 SCMR 933)*, *Benedict F.D*

*Souza versus Karachi Building Control Authority and others (1989 SCMR 918) and Federation of Pakistan and others versus Major (Retd.) Muhammad Sabir Khan (PLD 1991 SC 476).*

6. Section 14 of the Act, 1964, provides for an appeal against the orders passed by learned Family Court. Sub-section (3) has been inserted in section 14 of the Act, vide Ordinance LV of 2002 which prohibits filing of appeal or revision against interim orders passed by the learned Family Court. Therefore, interference by this Court, exercising discretionary jurisdiction under Article 199 of the Constitution, against interim orders passed by the learned Family Court would defeat the purpose of insertion of sub-section (3) of section 14 of the Act, 1964. In view thereof, I am of the considered opinion that the learned Family Court has lawfully exercised its jurisdiction under section 17-A of the Act, 1964 for fixing interim maintenance for the minors, as such, no illegality has been committed by the learned Judge while passing impugned order dated 20.02.2019.

7. For what has been discussed above, the instant petition is held to be without any substance and is hereby, **dismissed**. However, the Family Court is directed to conclude the trial and finalize the suit within a period of thirty days from the date of receipt of this order.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

Announced in open Court on this \_\_\_\_ day of March, 2021.

**JUDGE**

*Adnan*