

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3951 of 2021
Ziafat Mehmood Abbasi

Versus

Learned Additional Sessions Judge Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.11.2021	Mr. Majad Ali Butt, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Ziafat Mehmood Abbasi, impugns the judgment and decree dated 21.10.2021, passed by the Court of the learned Additional District Judge, Islamabad (East), whereby his appeal against the order dated 20.10.2020 passed by the learned Judge Family Court, was dismissed as without any merit. Vide order dated 20.10.2020, the learned Family Court had closed the petitioner's right of defence and suit of respondent No.3 to the extent of maintenance for minors / respondents No. 4 and 5 was decreed under Section 17-A of the West Pakistan Family Court Act, 1964 ("the 1964 Act").

2. Learned counsel for the petitioner submitted that the petitioner was employed abroad in a hotel which was closed due to Covid-19 pandemic; that the petitioner had been facing financial problems since then; that after his return to Pakistan, he got a job at an organization called Zameen.com where his monthly salary is Rs.37,158/-; that respondent No.3 had admitted the salary of the petitioner to be his only source of income; that prior to the outbreak of Covid-19, the petitioner had been paying the interim maintenance for the two minors at the rate of Rs.10,000/- per month

each as per order of the learned Judge Family Court; that after becoming unemployed the petitioner moved an application for reduction of the maintenance which was rejected by the learned Family Court vide order dated 15.09.2020; that while passing the impugned judgment and decree 20.10.2020, the learned Family Court enhanced the monthly maintenance allowance for the two minors from Rs.20,000/- to Rs.30,000/- which is nearly equal to the petitioner's monthly income; that the learned Courts below did not take into account the current financial status of the petitioner; that mother of the children *i.e.* respondent No.3 has sufficient financial means as she is employed at Sui Northern Gas Company Limited; that the petitioner had previously purchased a plot in the name of respondent No.3 which he had now asked her to sell to accumulate finances, but she refused; and that impugned judgments and decrees are violative of law. In making his submissions, learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court reported as PLD 2018 SC 819. Learned Counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. The record shows that on 14.09.2020, the petitioner filed an application for reduction of the interim maintenance allowance fixed by the learned Family Court. The said application was dismissed vide order dated 15.09.2020. The petitioner assailed the said order dated

15.09.2020 before this Court in W.P.No.2774/2020 which was dismissed *in limine* vide order dated 30.09.2020 with the following observations:-

“5. Record reveals that interim maintenance allowance of the two minors was fixed at the rate of Rs.10,000/- per month each in September, 2019 and the petitioner paid the same for initial six months till February 2020 and thereafter came-up with the application for reduction of the interim maintenance after six months. It is manifest from the record that he requested for waiver of interim maintenance for a period of six months. During the said period, the petitioner did not pay even Rs.5000/- per month as he prayed through the instant writ petition in terms of maintenance to the minors to show his readiness and left the minors unattended in those hard days which cannot be considered as an excuse to absolve him from his duty. It is settled principle that it is the bounden duty of the father to maintain his children irrespective of the fact that they are residing with their mother.”

(Emphasis added)

5. Despite dismissal of his earlier writ petition by this Court, the petitioner did not pay the interim maintenance and obtained adjournments from learned Family Court on the account of the pendency of writ petition before this Court. He had also not annexed with the instant petition a copy of the order dated 30.09.2020 passed in writ petition No. 2774/2020.

6. Perusal of the interlocutory order dated 06.10.2020 passed by the learned Judge Family Court shows that the petitioner did not disclose the fact of dismissal of his earlier writ petition. However, in the said order dated 06.10.2020, the learned Family Court observed that since the petitioner did not produce copies of an injunctive order passed by this Court, he shall pay the interim maintenance

failing which the suit would be decreed under Section 17-A of the 1964 Act. Despite the said notice under Section 17-A of the 1964 Act, the petitioner did not pay the maintenance allowance, therefore, the suit was decreed in terms of the impugned judgment and decree dated 20.10.2020 to the extent of respondents No.4 and 5 / plaintiffs No.2 and 3. In the plaint, the private respondents claimed maintenance for the minors at the rate of Rs.20,000/- each however, the learned Family Court took a lenient view and decreed the monthly maintenance at the rate of Rs.15,000/- each.

7. Now, since the petitioner did not show compliance with the order for the payment of interim maintenance to the minors / respondents No.4 and 5, the learned Family Court did not commit any jurisdictional error by invoking the penal provision of Section 17-A of the 1964 Act against the petitioner. Even otherwise given the inflation at this day and age, the maintenance fixed by the learned Family Court for the petitioner's own two minor children is just and reasonable. The case law cited at bar pertains to distinct question of law and facts and in the present case statutory provision of Section 17-A of the 1964 Act is involved.

8. In view of the above, the instant petition is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE