

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.3926/2018

Usama Farooq

versus

Judge Family Court (West), Islamabad, etc.

Petitioner by:	Mr. Mazhar Akram Awan and Mirza Irfan Ghazanfar, Advocates.
Respondents by:	Mr. Shahzad Siddique Alvi, Advocate.
Date of Decision:	20.12.2019

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed the order dated 06.10.2018, passed by learned Judge Family Court (West), Islamabad, whereby interim maintenance allowance of minor daughter was fixed @ Rs.8,500/- per month.

2. Learned counsel for petitioner contends that learned trial Court has fixed the maintenance allowance without considering the minimum standard to maintain balance as well as other expenditures of the petitioner who is also looking after his other family members including the parents and by fixing the interim maintenance at high rate would deprive the petitioner from his legitimate right to defend himself, the same is also against the concept of fair trial; that trial Court be directed to review the order of interim maintenance allowance while considering the income as well as needs of the petitioner.

3. Conversely, learned counsel for respondent No.2 Naida Usama contends that petitioner is working in a private bank having handsome salary and he can easily afford the maintenance allowance for single minor daughter; that order regarding interim maintenance allowance could not be assailed in the

constitutional jurisdiction as law has not provided remedy only to shorten the litigation.

4. Arguments heard, record perused.

5. Perusal of record reveals that the petitioner and respondent No.2 were blessed with minor daughter Elaya Fatima and due to matrimonial dispute, respondent No.2 filed suit for recovery of maintenance allowance, dower and gold ornaments before the Family Court.

6. Learned Judge Family Court vide impugned order dated 06.10.2018, passed the following order:-

5. *As far as interim maintenance is concerned, learned counsel for the plaintiff during arguments stated that defendant is serving in a private bank, his monthly salary is more than Rs.80,000/- and can easily pay the maintenance allowance. On the other hand, defendant in para No.7 of written statement stated that the defendant is working on operational side of bank and has no concern with deposit. Defendant also produced the copy of salary slip and as per salary slip his salary is Rs.31,038/- only.*

6. *Admittedly, plaintiff No.2 (minor) is daughter of defendant and admittedly defendant is working in a private bank, either on operational or deposit side. Keeping in view the facts, high rocketing prices of items and financial capacity of the defendant Rs.8,500/- (Eight Thousand and Five Hundred Only) per month is hereby fixed as interim maintenance allowance of plaintiff No.2 (minor) namely Alaya Fatima which shall be paid by the defendant before 14th of each calendar month with effect from this month. As far as maintenance of this month is concerned defendant is directed to pay the maintenance on next date of hearing.*

7. The above mentioned background reveals that maintenance of minor was fixed @ Rs.8,500/- per month, whereas petitioner's take home salary at that time was Rs.31,038/-, however, during the pendency of instant writ petition petitioner has submitted his pay slip issued by Soneri Bank Ltd. for the month of September, 2018, which confirms the stance taken by petitioner, however, this Court cannot go beyond the legislative intent as interlocutory order, 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 the Islamic Republic of Pakistan, 1973 as held in 2018 CLC Note 43 (Shameneh Haider, etc. vs. Haider Ali Khan), 2011 MLD 1105 Lahore (Amir Mehmood Hussain vs. Niha Amir Syed), 2015 YLR 2364 (Tahir Ayub Khan vs. Miss Alia Anwar), PLD 2012 Lahore 420 (Ibrar Hussain vs. Mehvish Rana, etc.), and PLD 2013 Lahore 64 (Muhammad Shahbaz Khalid vs. Judge Family Court, Lahore) while applying the legal principles, referred above. It is the duty of this Court to consider the legal aspect of the question raised from the intention of the legislature, who has specifically prohibited filing of appeal against interim order and allowing constitutional petition would tantamount to defeating and diverting intent of the legislature. Even otherwise, there is no bar under the law to challenge the *void ab initio* orders, which are without jurisdiction. Learned counsel for respondents has also explained the principle of interlocutory order while relying upon judgment reported as 1999 SCMR 1447 (Mohtarma Benazir Bhutto vs. The State), wherein it has been held that orders at interlocutory stages should not be brought to higher courts to obtain pragmatic orders as it intends to harm the advancement of fair trial, curtailing remedies available under the law, and even reducing the right of appeal.

8. The epitome of entire discussion gives a complete insight that father should not be punished by way of interim maintenance allowance order so that he would not be able to pay the maintenance and resulted into consequences provided in Section 17-A of the Family Court Act, 1964, therefore, it is the imperative duty of the Family Court to adopt a pragmatic approach and fix the interim maintenance on the following principles:

- i. Financial status of father shall be kept in view, which should be based upon salary slips, bank statements, income tax record, and business income reflected on record or through any other documentary proof placed by either side in the Court.
- ii. Interim maintenance should be fixed not on hard and fast principles, rather based upon a tentative view.
- iii. Maintenance should not be fixed on a higher side, which may result into technical knockout of the father so that he could not be able to pay the interim maintenance, therefore, his option should also be considered for payment of interim maintenance, which he agrees to pay before the Family Court.
- iv. In cases, where father has not explained his monthly income or his financial status in the pleadings, rather concealed his income, the Family Court can rely upon the facts narrated in plaint or on the basis of attached documents *vis-a-vis* the needs of minor and the verbal stance given by father without reference to his written statement will not be considered justified, hence the Family Court shall exercise discretion to fix the interim maintenance while applying the above principles.
- v. In cases, where determination of adequacy or inadequacy of quantum of maintenance requires factual inquiry and evidence in trial, the maintenance should be fixed after consultation with the father and mother as well as keeping in view the day-to-day requirements of minor.
- vi. The needs of minor should be considered on the basis of social stratification of family in which minor has been brought up.
- vii. The financial status of father could also be considered on the basis of facts narrated in pleadings of the parties, which includes the living standard and previous matrimonial life of the parties in which the mother/wife has been provided with particular kind of living, housing facilities, transportation, gifts, immovable properties of husband and the lifestyle in which husband/father was living prior to separation or divorce or before the institution of suit for maintenance.
- viii. In cases, where father being civil servant or employee of any organization, department or company has not appended his salary slips or bank statements, the Family Court shall ask for

an undertaking or affidavit regarding his salary and thereafter shall fix the interim maintenance, however after the trial of the case, if the court comes to the conclusion that at the time of fixation of interim maintenance allowance the father/husband has stated a fact beyond his pleadings or undertaking, which is found to be false, such father be burdened with heavy costs and action of perjury may also be initiated against him.

- ix. The Family Court may also call the employer of father, HR department, admin department, bank managers, land revenue department, tax record, and banking details as well as salary details of the father directly from the relevant offices while deciding the question of interim maintenance for a *prima facie* view to fix the allowance in favour of minor so that no inadequacy is attributed while fixing the maintenance allowance.
9. While applying the above referred principles, Family Court would be in better position to resolve the controversy relating to maintenance, however, this Court does not indulge in issues relating to interim maintenance while exercising the powers under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 on the touchstone of reported judgment referred in para-7 above, therefore, instant writ petition is hereby dismissed with direction to the learned trial Court seized with the matter to conclude the same within a period of 02 months under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid.