

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

**W.P No.394 of 2021**

Muhammad Zubair Paracha  
Vs  
Learned Family Judge, Islamabad, etc.

Petitioner by: Mr. Shahid Mehmood, Advocate  
Respondents by : Malik Qamar Abbas Advocate  
Date of Hearing: 29.03.2021

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**Ghulam Azam Qambrani, J:** Through this petition, the petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer:-

*“In the above circumstances, it is prayed that by accepting the instant petition the impugned order dated 25.01.2021 passed by learned Family Judge, Islamabad may kindly be set aside and proper direction may kindly be issued to the respondent No.1 for fixing the maintenance according the financial capacity of the petitioner in the best interest of justice.*

*Any other relief, which this Hon'ble Court deems just and proper may also be granted in the best interest of justice.”*

2. Briefly stated, facts of the instant petition are that the respondents No. 3 & 4 filed a suit for maintenance through their mother/respondent No.2 against the petitioner. On notice, the petitioner appeared and contested the suit by filing written statement. That on 25.01.2021, the learned Judge Family Court-West, Islamabad without hearing the petitioner has fixed the interim maintenance at the rate of Rs.50,000/- per month for each minor as interim maintenance, which is too harsh. Feeling aggrieved from the order dated 25.01.2021, the petitioner has filed instant writ petition.

3. Learned counsel for the petitioner has contended that the impugned order for interim maintenance for the respondents No. 3

& 4 is illegal, unlawful and against the law and facts of the case; that while fixing interim maintenance of respondents/minors, learned Family Court without hearing the petitioner and without recording evidence, passed the impugned order, therefore, the impugned order is result of misreading and non-reading of record; that the fixation of Rs. 50,000/- per month for each minor is higher than the petitioner's total monthly income and is against the principles of natural justice; that the learned Family Judge without keeping in view the petitioner's financial capacity has passed the impugned order, who himself is a heart patient, bearing his medical expenses as well as treatment of his ailing wife, who is suffering from cancer. Further contended that the learned trial Court only on the pleadings of respondent believed that the petitioner is earning at a higher rate and on the request of respondents has fixed the monthly maintenance, which is highly exorbitant. Lastly, prayed for acceptance of writ petition.

4. Conversely, learned counsel for respondents has opposed the contention of learned counsel for the petitioner and has contended that the order impugned before this Court is of interlocutory nature, therefore, the petition in its present form is not maintainable; that it is the duty of petitioner being father of the minors to maintain them and to provide all the requisites of life including education, food, clothing, shelter to the minors and the petitioner being father is not providing the necessities to them; that the petitioner has contracted second marriage and is not interested in the welfare of minors. Lastly, urged for dismissal of petition.

5. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

6. Perusal of the record reveals that the respondents No. 3 & 4 filed suit for maintenance through their mother i.e. respondent No.2, who are residing with custody of their mother. The learned Trial Court has tentatively assessed an amount of Rs.50,000/- each per month as maintenance for the financial needs of the minors as interim maintenance allowance.

7. The learned Judge Family Court passed the impugned order dated 25.01.2021 in terms of the provisions of Section 17-A of the

West Pakistan Family Courts Act, 1964, which was added to the Pakistan Family Courts Act, 1964 vide Ordinance IV of 2002. Under Section 17-A Ibid, a Family Court has the jurisdiction to pass an interim order for maintenance at any stage of the proceedings in a suit for maintenance. The relevant section is reproduced as under:-

*“At any stage of proceedings in a suit for maintenance, the Family Court may pass an interim order for maintenance, whereunder the payment shall be made by the fourteenth of each month, failing which the Court may strike off the defence of the defendant and decree the suit.”*

8. The law has vested discretion with the Family Court for fixation of interim maintenance which will be merged into final decision of the Trial. The purpose behind section 17-A of the enactment is to ensure that during the pendency of suit, financial needs faced by the minors are to be fulfilled. There is no specific provision of law on the basis of which the Family Court is to exercise its discretion with regard to fixing the interim maintenance of the minor. In case titled “Abrar Hussain v. Mehwish Rana” (PLD 2012 Lahore 420) as well as “Mst. Sitwat Chughtai v. Judge, Family Court, Lahore” (PLD 2009 Lahore 18), It has been observed that the Family Court should broadly look into financial position of the father and his capacity to meet the day to day needs of the minors. It is the natural duty of the father to maintain his minor children and if he is negligent to pay the same and the matter is brought to the notice of the learned Family Court, then it is the duty of the learned Family Judge to pass appropriate order with regard to maintenance of the minor keeping in view the financial status of the father and the daily needs of the minor.

9. 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 order 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.*

The impugned order does not suffer from any illegality or irregularity. 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 minors.

10. Learned counsel for the respondents assures that the respondents will produce all the witnesses before the learned Trial Court and there will be no delay on their part.

11. In view of the above, the instant writ petition being devoid of force is **dismissed** with a direction to the learned Judge Family Court to proceed with the case expeditiously and conclude the same within the period of two months strictly in accordance with law.

**(Ghulam Azam Qambrani)**  
**Judge**