

**JUDGEMENT SHEET**

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

**Writ Petition No.3360/2021**

Zeeshan Maqsood.  
Vs.  
Family Judge (East), Islamabad & others.

PETITIONER BY: Mr. Iftikhar Ahmad Bajwa, Advocate.

RESPONDENTS BY: Ch. Ghulam Farid and Ms. Farah Naz  
Awan, Advocates for respondents  
No.2 and 3.

DATE OF DECISION: 04.10.2021.

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**BABAR SATTAR, J.-** The petitioner is aggrieved by an order dated 10.07.2021, pursuant to which the right of evidence was struck off by the learned Family Court (East), Islamabad due to his failure to pay the complete amount of interim maintenance.

2. The learned counsel for the petitioner stated that he was short of money on the said date, but now he has deposited the entire outstanding amount of interim maintenance and has appended the relevant challans. He further stated that it would be in the interest of justice if he is allowed to defend the suit before the learned Family Court. The learned counsel for the petitioner further submitted that due to situation emerging out Covid-19, courts were dysfunctional from March to September, 2020 due to which the petitioner was unable to deposit the interim maintenance in a timely manner. He further submitted that the petitioner is an electrician by profession with limited means and his conduct reflects that he has made an effort to

continue to pay some money, even if the entire amount could not be paid. He further submitted that the petitioner has a right to fair trial and in view of the language of Section 17A of the Family Courts Act, 1964 ("**Act**"), the impugned order is not maintainable. He further submits that in case penal action was called for, the learned Family Court ought to have, while striking off the right of the petitioner to defend the suit dismissed the same as well in which case the petitioner would have to remedy of filing an appeal against such order.

3. The learned counsel for respondents No.2 & 3 on the other hand submitted that the conduct of the petitioner does not entitle him to any discretionary relief from this Court. He submitted that the petitioner's conduct reflected that he intended to delay the adjudication of the maintenance suit from day one. He submitted that the suit was filed on 12.09.2019 and the petitioner did not appear before Court till a proclamation was issued on 03.12.2019. That the response was filed on 19.01.2020 and the interim maintenance order was passed on 25.02.2020 and the maintenance was fixed at Rs.45,00/- each per month for the minor daughter of the petitioner. He submitted that between 25.02.2020 to 23.09.2020 no maintenance was deposited despite the matter having been fixed at least eight times. He submitted that on 23.09.2020, the petitioner paid Rs.9,000/- and the matter was fixed for evidence on 14.10.2020. That on 02.11.2020 the learned Family Court had directed the petitioner to pay the outstanding arrears of the interim maintenance payable by the petitioner and also issued notice under Section 17A of the Act which requires that the

interim maintenance is to be paid by the 14<sup>th</sup> day of each month or else the defence of the defendant is to be struck off. He submitted that the matter was then fixed on 09.11.2020, 12.12.2020, 14.01.2021, 23.01.2021, 24.02.2021, 15.03.2021, 14.04.2021, 17.05.2021 and 29.06.2021. He submitted that the order sheets reflect that despite the direction of the court, the petitioner did not pay all outstanding arrears and the petitioner continued to pay Rs.9000 on alternative dates and finally on 10.07.2021 the impugned order was passed. He submitted that in view of the order sheet it is evident that the petitioner has continued to act in a delinquent manner despite explicit orders of the court learned Family and the said court had already indulged the petitioner long enough before passing the impugned order. He relied on **Dr. Aqueel Waris vs. Ibrahim Aqueel (2020 CLC Islamabad 131)**, **Mashkoor Ahmed Khokhar vs. The Family Judge (East), Islamabad (2019 CLC Islamabad 1635)** and **Minhaaj Saqib and others vs. Najam-us-Saqib and others (2018 CLC Islamabad 506)**, for the proposition that writ against interim order for maintenance is not maintainable.

4. A perusal of the order sheets reflects that the learned Family Court has granted repeated opportunities to the petitioner to pay out the interim maintenance. Section 17A of the Act states the following:-

***[17A. Interim Order for Maintenance.- 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 fourteenth day of each month, failing***

*which the Court may strike off the defence of the defendant and decree the suit.]*

5. The language in the statute creates an obligation for a defendant to automatically pay the maintenance before 14<sup>th</sup> day of each month, failing which the Court has been given the powers to impose penalty. The contention of the learned counsel for the petitioner that the court ought to have decreed the suit immediately after striking off the defence of the petitioner is misconceived. The jurisprudence that has been developed in relation to Section 17A of the Act as well as Order XVII and Rule 3 of CPC is that the court ought to strictly apply the penal provisions under such statutory provisions and the penal provision is a tool provided to the learned trial Court in order to move the trial to the next stage. And that it is an obligation of the court to pass a reasoned order in view of the material before the court including the pleadings filed by the parties. Consequently, the learned Family Court acted in accordance with law, when while striking down the right of the petitioner to adduce evidence, it fixed the matter for final arguments so as to enable the petitioner to present his grounds before the court to enable the Court to pass a reasoned order in accordance with the pleadings filed by the parties.

6. The order sheets reflects that the learned Family Court has already indulged the petitioner consistently over a period of almost one and half year reminding him and warning him again and again to discharge his obligation in accordance with Section 17A of the Act prior to taking penal action. And it was only due to the consistent and contumacious failure of the petitioner to

abide by the orders and directions of the learned Family Court, that the impugned order was passed. The order of the learned Family Court does not suffer from any infirmity. Even otherwise the conduct of the petitioner as reflected from the order sheet of the learned Family Court reflecting his refusal to pay interim maintenance for his own daughter disentitles him to any equitable relief by this Court in its constitutional jurisdiction.

7. For the aforesaid reasons, this petition is without merit is therefore **dismissed.**

**(BABAR SATTAR)**  
**JUDGE**