

ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. NO.2212/2019

OMER FAROOQ MALIK

Versus

FAMILY JUDGE-EAST, ISLAMABAD, ETC.

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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**11.02.2020 Mian Muhammad Zafar Iqbal, Advocate for
Petitioner.
Mr. Moazzam Habib, Advocate for
Respondents.**

Petitioner has filed instant petition assailing order dated 07.05.2019, whereby, the learned Judge Family Court, East-Islamabad has fixed the interim maintenance of the minor/Respondent No.3 @ Rs. 20,000/- per month.

2. Learned counsel for the Petitioner, *inter-alia*, submitted that the interim maintenance fixed by the learned Judge Family Court, Islamabad (East) is exorbitant and unreasonable; that the Petitioner has migrated to Canada and is currently jobless. Learned Counsel further submitted that the quantum of maintenance is to be determined after considering means and financial position of father, whereas, impugned order has been passed in a slipshod manner without appreciating the law settled by the superior courts on the subject. Learned Counsel in support of his contentions placed reliance on the cases reported as **PLD 2004 LHR 349, 2006 PLR 1194 (HC LHR) and 2007 MLD 41 (HC LHR).**

3. Learned Counsel for Respondent Nos.2 & 3, in the very beginning of his arguments, contended that instant petition is not maintainable under the law as the interim maintenance is a temporary arrangement during the pendency of suit so that the welfare and needs of the minor be taken care of, whereas, it is now well settled through the pronouncements of superior courts of the country that writ petition is not maintainable against interim maintenance order passed under section 17-A of the West Pakistan Family Courts Act, 1964. Learned Counsel to strengthen his arguments referred the judgments reported as **(2019 CLC 1635 IHC), (2018 CLC 506 IHC), (2017 YLR 870 IHC), (2016 MLD 742 HC KHR) and (2013 YLR 1839 HC LHR).**

4. I have heard the learned Counsel for the parties and have also perused the relevant record with their able assistance.

5. After going through the judgments cited by both the learned counsel, I am of the view that it has now been a consistent view of the superior Courts that the writ petition against an interlocutory order fixing interim maintenance of the minor in terms of section 17-A of the West Pakistan Family Courts Act, 1964, is not maintainable as controversy relating to source of income of father and his capacity to maintain the child, being a factual controversy, cannot be resolved by the High Court while exercising its Writ Jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan.

6. In this regard it is pertinent to refer judgment of this Court reported as **2020 CLC 131**, wherein Section 17-A, Section 5 and schedule of Family Courts Act, 1964, with reference to Holy Quran and Sunnah has thoroughly been discussed

and certain principles, to be followed by Judge Family Court while fixing interim maintenance of the minor are laid down, which are as follows:

"17. 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 Courts 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 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."

7. For the reasons discussed hereinabove, titled writ petition arising from an interlocutory order of learned Judge Family Court, being misconceived and not maintainable is accordingly dismissed. However, the learned trial Court is

directed to decide the suit within a period of one month from the date of receipt of this order, positively.

(LUBNA SALEEM PERVEZ)
JUDGE

Adnan/-