

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

Writ Petition No. 339 of 2022

Shahbaz Ali

Versus

Mst. Sidra Shaheen, etc.

S. No. of order/ proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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02.02.2022 Rana Raza Tariq, Advocate.

The instant writ petition is arising out of order dated 23.12.2021, passed by the learned Senior Civil Judge/Judge Family-Guardian Court, East-Islamabad, whereby application of the petitioner for conducting DNA test of the minor was dismissed by observing that:-

"It appears that by filing application for DNA Test of the minor, the judgment debtor intends to earn a relief which cannot be granted in execution proceedings for which this Court has very limited jurisdiction".

2- Learned counsel for the petitioner contends that the petitioner and respondent No.1 got married in the year 2014 and out of their wedlock one daughter 'Zainab Khatoon was born. The respondent No. 1 lived with petitioner for almost 1-1/2 year but during this period, once she left the house of petitioner for three months without any reason and gone to her parents' home. After three months her mother forcefully sent her back to petitioner's home.

3- Further contends that after re-joining the petitioner, she disclosed that she is pregnant of one month, though she was not in physical relation with the petitioner. The same story was disclosed by petitioner before his family members, thereafter petitioner has filed a suit for declaration to the effect that the petitioner is not the biological father of the minor, which is pending before Senior Civil Judge, Islamabad. He added that minor namely Zainab Khatoon was not alive and minor living with respondent No. 1 is not the actual/real Zainab Khatoon, in this context petitioner has filed an application for the DNA test of the minor, which was dismissed vide impugned order. Hence, instant writ petition.

4- Arguments heard, record perused.

5- Record reveals that petitioner and respondent No. 1 was in matrimonial relationship and out of their wedlock, minor Zainab Khatoon was born. After birth of minor, petitioner denied the parentage of minor, whereupon respondent No 1 has filed a suit for recovery of maintenance allowance which was exparte decreed in her favour and the learned trial court fixed the monthly maintenance as Rs. 3500/- per month vide order dated 14.04.2018.

6- It is also a matter of record that the respondent No.1 filed a suit for recovery of maintenance on 30.07.2017. The petitioner had been contesting the same and on his failure to pay interim maintenance, his right of

defence was struck off by the learned Judge Family Court, Islamabad (East) vide order dated 14.04.2018. According to petitioner's own version, he has filed a suit for declaration to the effect that he is not the biological father of the minor. The impugned order is outcome of the proceedings being conducted by the learned Executing Court for the recovery of maintenance of the minor imposed upon the petitioner.

7- It appears that the petitioner is lingering on the matter just to avoid payment pursuant to decree of maintenance allowance. The relief being claim did not fall within the ambit of an Executing Court due to having limited scope wherein it has only to get execute the decree. If this practice is allowed to prevail, then there will be no end to the litigation and no decree will be executed. Filing of baseless applications would not only amount to abuse of process of law but also result in wasting precious time of the Court which can well be utilised for imparting justice to the aggrieved persons.

8- The impugned order in the attending circumstances of the case appears to be just, proper and does not call for any interference. Consequently, the instant writ petition is **dismissed in limine**.

(ARBAB MUHAMAMD TAHIR)
JUDGE

Kamran