

ORDER SHEET
ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3029/2021
Lehrasib
Vs.
Irum Shahzadi and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
---------------------------------	-------------------------------	--

**27.08.2021. Malik Karim Bakhsh, Advocate for the
petitioner.**

Through the instant writ petition, the petitioner, Lehrasib, assails the order dated 28.07.2021 passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the judgment dated 02.03.2020, passed by the Court of the learned Judge Family Court, was dismissed primarily on the ground of non-deposit of the maintenance. Vide the said judgment dated 02.03.2020, the learned Judge Family Court partially decreed respondents No.1 and 2's suit for recovery of maintenance against the petitioner. Each of the said respondents was held entitled for the maintenance at the rate of Rs. 10,000/- per month since December, 2018 till their legal entitlement with 10% annual increase.

2. The record shows that marriage between the petitioner and respondent No.1 was solemnized on 06.06.2010. Out of the said wedlock, the couple was blessed with a son, i.e. respondent No.2. Due to differences between the couple on 19.12.2018, respondents No.1 and 2 instituted a suit for recovery of maintenance against the petitioner. In the said suit, the petitioner filed contesting written statement. Out of the divergent pleadings, the learned Family Court framed the following issues:-

- “(i) Whether plaintiff No.1 is entitled to a decree for recovery of maintenance allowance? If so at what rate and for which period? OPP*
- (ii) Whether plaintiff No.2 is entitled to a decree for recovery of maintenance allowance? If so at what rate and for which period? OPP*
- (iii) What should the relief be?”*

3. During the evidence, respondent No.1 appeared as PW-1 while the petitioner recorded his statement as DW-1.

4. After hearing the arguments advanced at the bar, the learned Judge Family Court partially decreed respondents No.1 and 2's suit vide judgment and decree dated 02.3.2020. Feeling aggrieved of the said judgment and decree, the petitioner preferred an appeal. Learned Appellate Court vide order dated 31.10.2020 admitted the appeal and suspended the judgment and decree dated 02.03.2020 subject to the condition that the petitioner pays current maintenance allowance for respondent No.2, i.e. the minor at the rate of Rs. 10,000/- per month and also pays the outstanding maintenance in three equal installments. Afterwards the said appeal was fixed on fifteen occasions but the petitioner gave no regard to the order passed by learned Appellate Court. He paid the maintenance for the minor only twice i.e. on 07.11.2020 and 16.01.2020. The case was adjourned mostly for reasons attributable to the petitioner. Eventually, on 06.07.2021, the learned Appellate Court recorded warning and gave last opportunity to the petitioner to deposit balance maintenance and to argue the case which was fixed for 28.07.2021. On 28.07.2021, again the petitioner neither paid the maintenance nor addressed the arguments on his appeal, resultantly, the

appeal was dismissed for non-deposit of maintenance vide the impugned order. Hence this petition.

5. The learned counsel for the petitioner submitted that respondent No.1 left the matrimonial abode on her own choice and did not return despite all his efforts; that during the evidence before the learned Trial Court, respondent No.1 remained unable to bring evidence to prove the petitioner's financial capability to pay the quantum of maintenance sought by her; that the petitioner had provided for separate accommodation to respondent No.1 and paid her maintenance allowance at the rate of Rs.2500/- per month; that the petitioner applied for the school admission of respondent No.2 but due to suspension of educational activities in the wake of pandemic he could not get respondent No.2 admitted in the school; and that learned Trial Court as well as the learned Appellate Court did not consider the financial impact of Covid-19 upon the petitioner's ability to appear before the Court and to pay the maintenance. Learned counsel prayed for the petition to be allowed in terms of the relief sought therein.

6. I have heard the arguments of the learned counsel for the petitioner and perused the record.

7. Despite having been given the opportunity, the learned counsel could not establish from the record that the petitioner paid maintenance for the minor in accordance with the order dated 31.10.2020 passed by the learned Appellate Court. The petitioner's persistent default was despite the fact that maximum leniency was extended by the learned

Appellate Court in letting him pay maintenance only for the minor and relieving him from payment of maintenance for respondent No.1. The learned Appellate Court also reduced by half the quantum of installment of the minor's outstanding maintenance. Now a Family Court under Section 17(A) of the Family Court Act, 1964, is empowered to decree a suit for maintenance where the person obligated to pay the same fails to do so. The said power can also be exercised by the Court while hearing an appeal against the judgment and decree passed by the Family Court. This is so because an appeal is considered continuation of suit. The impugned order dated 28.07.2021 does not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court.

8. A writ of *certiorari* is not a writ of right, but one of discretion. Its object is to curb excess of jurisdiction, and to keep inferior Courts within their bounds. The grounds on which *certiorari* may be invoked is where there is an error of law apparent on the face of record and not every error either of law or fact which can be corrected by the appellate authority. It lies where the inferior Court has exceeded its jurisdiction or has not proceeded in accordance with the essential requirements of law which they were meant to administer. It is also issued when the inferior Court acts illegally in exercise of its jurisdiction. For instance, when it decides without giving any opportunity to the parties to be heard or violates the principles of natural justice. The High Court while issuing a writ of *certiorari* acts in exercise of a

supervisory and not appellate jurisdiction. Since I do not find any manifest legal or jurisdictional error in the impugned order and decree, therefore, the essential pre-requisite for the issuance of writ of *certiorari* are not satisfied in the instant case.

9. For the above reasons, the instant writ petition is dismissed *in limine*.

(MIANGUL HASSAN AURANGZEB)
JUDGE