

JUDGMENT SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.371/2019.

Saima Arshad etc **Vs.** **Family Judge (East), Islamabad
etc.**

Petitioners by: Ms. Saira Khalid Rajput, Advocate.

Respondent No.2 by: Mr. Sajjad Haider Malik, Advocate.

Date of Decision: **28.10.2019.**

MOHSIN AKHTAR KAYANI, J:- Through this writ petition, the petitioners have assailed the order dated 17.09.2018, passed by learned Judge Family Court, Islamabad, whereby application for enhancement of maintenance allowance was allowed and maintenance allowance of each minor has been extended from Rs.5,000/- to Rs.8,000/- per month with 10% annual increase.

2. Learned counsel for the petitioners contends that the petitioners have earlier filed suit for recovery of maintenance, which was decreed vide judgment & decree dated 12.05.2006 and execution is pending before the learned Family Court; that the petitioners filed an application for enhancement of their maintenance on the ground that respondent No.2 has sufficient means to satisfy the decree while considering the needs of present petitioners, who have now grown up as original decree was passed on 12.05.2006 at the rate of Rs.5,000/- per month for each minor, which is insufficient at present time; that the application was contested by the respondent No.2 and the impugned order was passed ex-parte, whereby maintenance was increased to Rs.8,000/- per month for each petitioner; that the petitioners are aggrieved with the impugned order and challenge the same before this Court.

3. Conversely, learned counsel for respondent No.2 contends that he was not given opportunity of hearing and he intends to contest the said application on merit, however, he has drawn attention of this Court towards the prayer clause of instant writ petition, in which the petitioners themselves claim to set aside the impugned order and prayed for remand of the matter with direction to decide the application on merit.

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4. The petitioners' counsel has been confronted with the prayer clause of writ petition, whereby learned counsel for the petitioners under instruction of her clients contends that she has no objection if order passed by Family Judge is set aside with direction to decide question of enhancement of maintenance in accordance with law after hearing the petitioners and subject to recording of evidence. Be that as it may. Both the parties have agreed to contest enhancement of the maintenance application before the Executing Court after submission of their evidence, therefore, instant writ petition stands accepted, the impugned order dated 17.09.2018 is hereby set aside. The matter is remanded to learned Executing Court seized with the matter and the parties are directed to appear before the said Court on 09.11.2019, whereby respondent No.2 shall appear in person and submit his written reply to the application, where-after Court is at liberty to proceed in accordance with law and if the parties are interested to submit their evidence, they are permitted to produce such evidence. It is expected from the Court to decide the pending application within period of 03 months.

(MOHSIN AKHTAR KAYANI)
JUDGE

R.Anjam