

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

Writ Petition No. 2226/2021

Muhammad Zaheer Khan

Versus

Ayesha Bibi and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	24.06.2021	Malik Amjad Zaman, Advocate for the Petitioner.

Through the instant writ petition, the petitioner has impugned order dated 25.01.2021 of the learned Judge Family Court, whereby order for payment of interim maintenance was passed.

02. Brief facts of the case are that petitioner was married with the respondent No. 1 on 19.08.2016, according to Muslim Rights and Ceremonies and from wedlock of the parties, one minor daughter/respondent No. 2 was born, who is residing with respondent No. 1/mother.

03. Respondent No. 1/mother of the minor filed a suit for dissolution of marriage, recovery of dowry articles and grant of

maintenance allowance @ Rs. 20,000/- per month for minor/respondent No. 2. On 25.01.2021, the learned Judge Family Court fixed the interim maintenance of minor/respondent No. 2 @ Rs. 10,000/- per month and being aggrieved by the interim/impugned order, the instant writ petition has been filed.

04. Learned counsel for the petitioner, *inter alia*, contends that impugned order is not maintainable in the eyes of law; the order for maintenance allowance passed by learned Judge Family court is too harsh, excessive, exorbitant, inflated, steep and over-priced.

05. That the learned family judge, while passing the impugned order has ignored the pleading of the parties regarding the fact of income of the petitioner mentioned in his written statement and it is quite impossible for the poor petitioner to maintain the minor at such excessive rate.

06. Impugned order for interim maintenance is based on misreading and non-reading of the pleading of both the

parties.

07. Arguments heard, record perused.

08. It is mentioned in Section 14(3) of the West Pakistan Family Courts Act, 1964 that:

“No appeal or revision shall lie against an interim order passed by a Family Court.”

09. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled as **“President All Pakistan Women Association, Peshawar Cantt V. Muhammad Akbar Awan and others (2020 SCMR 260)”**, that:

“It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the

Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision.” (Emphasis supplied)

10. In another case titled as **"Chief Executive MEPCO and others V. Muhammad Fazil and others (2019 SCMR 919)"**, the Hon'ble Supreme Court of Pakistan has held that:

"Where the Court or the Tribunal has jurisdiction and it determines specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."

11. It has been held by the Hon'ble Supreme Court of Pakistan in case titled as **"Chairman, NAB V. Muhammad Usman and others (PLD 2018 SC 28)"**, that:

"The powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate

court/Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner. The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:

- (i) Brig (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142)
- (ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677)
- (iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281)

12. Reference in this regard may also be made to the following case laws:

- (i) In the case of **Syed Saghir Ahmad Naqvi vs. Province of Sindh (1996 SCMR 1165)**, it has been held as follows:

"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The

party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

(ii) In the cases of **Mumtaz Hussain alias Butta vs. Chief Administrator of Augaf, Punjab (1976 SCMR 450)**, it has been held as follows:-

"As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitle dthe petitioner to prosecute a writ petitioner despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law."

13. Learned counsel for the petitioner has failed to point out as to how the impugned/interim order passed by the learned family judge was the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

14. In view of the above prospective, the instant writ petition has no merits and the same is **dismissed in limine.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh