

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

W.P.No.2431 of 2021  
Muhammad Akhtar Abbasi

**Versus**

Learned Judge Family Court (East) Islamabad and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>07.07.2021</b>	<b>Mr. Asad Hussain Ghalib, Advocate for the petitioner.</b>

Through the instant writ petition, the petitioner, Muhammad Akhtar Abbasi, impugns (i) order dated 21.11.2020 passed by the learned Judge Family Court, Islamabad whereby interim maintenance of Rs.10,000/- per month was fixed for each of his minor children, and (ii) order dated 02.06.2021 whereby the petitioner's application for the reduction of the interim maintenance was dismissed and he was directed to pay the interim maintenance between December 2020 and June 2021 on the next date of hearing, failing which the suit for maintenance filed by his former wife and minor children would be decreed under Section 17-A of the West Pakistan Family Courts Act, 1964 ("the 1964 Act").

2. Both the orders assailed in the instant writ petition are interlocutory orders. The petitioner's primary grievance is that he cannot afford to pay maintenance at the rate of Rs.10,000/- per month for each of his own minor children. The petitioner's conduct is most inequitable since it has candidly been admitted that no amount had been paid by him as interim maintenance between December 2020 and June 2021. This is reason enough for the instant petition to be dismissed. It may be mentioned that given the inflation at this day and age interim maintenance of Rs.10,000/- per month for each child is the very

least that the learned Family Court could have fixed. It is the legal, moral and religious obligation of the petitioner to provide adequate maintenance to his own children.

3. As Section 14(3) of the 1964 Act expressly bars a right of appeal or revision against an interim order passed by a Family Court, the same cannot be circumvented by challenging such an interim order in the Constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a Family Court passes a final order and then to challenge it in an appeal. This is because an interim order merges into the final verdict. The purpose behind barring an appeal or a revision against an interim order of the Family Court is to avoid delays in disposal of the cases by the Family Court. Since the suit instituted against the petitioner by his *ex-wife* and minor children is for recovery of maintenance, etc., the final decree that may be passed by the learned Judge Family Court would be appealable under Section 14 of the 1964 Act. Reference in this regard may be made to the following case law:-

- (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 case Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, 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 entitled the petitioner to prosecute a writ petition 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.”*

(iii) In the case of Mst. Maham Shabbir Vs. Salman Haider (2014 CLC 330), the Hon'ble Islamabad High Court held as follows:-

*“9. ... High Court in exercise of its writ jurisdiction is not sitting as a Court of appeal, or court of revision. Its jurisdiction to interfere on the point of fact is limited. Interlocutory order if does not suffer from any illegality, malafide or is not in excess of jurisdiction or lack of exercise of jurisdiction or not based on misreading, misconstruing or discarding of the evidence and material on record cannot be challenged in constitutional jurisdiction. Nevertheless, the facts of each case are to be considered separately and no uniform principle can be determined for exercising the writ jurisdiction.”*

4. It is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, *malafide*, void or *coram-non-judice*. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Family Court. The impugned order is neither without jurisdiction nor *malafide*, void or *coram-non-judice* so as to warrant interference in the Constitutional jurisdiction of this Court under Article 199 of the Constitution.

5. The impugned orders, being purely interlocutory in nature, could not be subjected to

challenge by filing a Constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 14(3) of the 1964 Act. Therefore, I am not inclined to interfere in the said interlocutory orders passed by the learned Judge Family Court.

6. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned orders dated 21.11.2020 and 02.06.2021 to be satisfied in the case at hand, the instant writ petition is not maintainable, consequently the same is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

*Sultani\**