

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 4314 of 2021

Ch. Waqar Younas

Versus

Mst. Aqeela Waqar and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(01)	03.12.2021	Rana Muhammad Yousaf Siddique, Advocate for the Petitioner.

Through the instant writ petition, the petitioner has sought modification and setting aside of orders dated 09.11.2020 & 22.01.2021, respectively passed by learned Judge Family Court, East-Islamabad, whereby the interim maintenance allowance of minor was fixed at the rate of Rs. 20,000/- per month, vis-a-vis an application to reduce the interim maintenance from 20,000/- to 5,000/- per month, was dismissed.

02. Brief facts of the case are that the petitioner contracted marriage with respondent No. 1, from the wedlock of the

parties, one child namely Hasnain Waqar aged about three year was born.

03. Relations between the parties became strain, so the respondent No. 1 / mother of the minor filed a suit for recovery of maintenance allowance, dower amount, gold ornaments or alternate amount of Rs. 13,000,00/- and cash amounting to Rs. 7,000,00/-.

04. Learned Judge Family Court vide impugned order dated 09.11.2020, fixed interim maintenance allowance of minor @ 20,000/- per month.

05. Being aggrieved from the said order, the petitioner filed an application to reduce the interim maintenance of minor from 20,000/- to 5,000/- per month, which was dismissed vide order dated 22.01.2021, with the direction to pay the complete interim maintenance of four months amounting to Rs. 80,000/-, otherwise the right of defense was liable to be closed U/S 17-A of Family Court Acts.

06. Thereafter, the petitioner filed another application before the learned Judge Family Court to allow him to pay the unpaid / remaining interim maintenance in installments at the rate of Rs. 5,000/- per month along with running interim maintenance, which was disposed of by the learned Trial Court vide order dated 04.02.2021, in a manner that petitioner will pay running interim maintenance along with installment of remaining / unpaid interim maintenance at the rate of Rs. 10,000/-; till the clearance of unpaid / remaining interim maintenance, petitioner will pay an amount of Rs. 30,000/- each month.

07. Perusal of record further reveals that the petitioner has also filed a suit for declaration, cancellation of Nikkahnama and permanent injunction which is pending adjudication before the learned Trial Court.

08. Being aggrieved from orders dated 09.11.2020 (*for its modification*) and 22.01.2021 (*for its setting aside*), passed by learned Judge Family Court, East-Islamabad,

instant writ petition has been filed.

09. Learned counsel for the petitioner *inter alia* contends that the petitioner is doing job in *bykea rider* to meet day to day expenses and is unable to pay maintenance to the minor as directed by learned Judge Family Court; learned Trial Court fixed a huge amount of Rs. 20,000/- as interim maintenance of the minor without considering the financial status of the petitioner; the impugned orders are based upon surmises and conjectures and learned Judge Family Court has not applied his judicial mind while deciding the application; the impugned orders of learned Trial Court are against the law and facts; learned Trial Court has failed to appreciate the principle of natural justice while passing the impugned order and has prayed for modifying and setting aside the impugned orders dated 09.11.2020 and 22.01.2021, respectively.

10. Arguments heard, record perused.

11. 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.”

12. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled as

President All Pakistan Women Association, Peshawar Cantt Vs. 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)

13. In another case titled as **Chief Executive MEPCO and others Vs. 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."

14. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Chairman, NAB Vs. 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).

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

(i) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165)**, that:

"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) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab (1976 SCMR 450)**, that:

"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 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.”

16. Learned counsel for the petitioner has failed to point out as to how the impugned / interim orders passed by the learned Judge Family Court were the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

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

**(TARIQ MEHMOOD JAHANGIRI)
JUDGE**

Bilal /-