

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

Writ Petition No. 1003 of 2022
Muhammad Rafique
Versus
Judge Family Court, 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.
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14.03.2022 Raja Qaiser Kamal, Advocate for the petitioner.

The petitioner assails the order dated 19.01.2022 fixing interim maintenance for his 11 children at Rs.5,000/- each per month on the ground that the said quantum is excessive given that the children reside in the same house with him and that he incurs expenditure on their various requirements which has not been taken into account by the learned Judge, Family Court.

2 The petitioner's counsel refers to section 10(2) of the Family Courts Act, 1964, to assert that, on the date the impugned order was passed, the case was fixed for reconciliation/pre-trial proceedings and the Family Court could not have recorded the petitioner's statement in the absence of his counsel. I find no force in this submission because the impugned order notes that the case was fixed for both the reconciliation proceedings and arguments on fixation of interim maintenance (the latter, to cater for the contingency if the reconciliation failed) on the relevant date and the petitioner had his statement recorded without requesting the Court for his counsel to be present and, even if the counsel were present, I have not been shown what difference it would have made. Section 10(2) speaks of the Family Court *hearing the parties and their counsels*; hearing entails reducing into writing the substance of what was heard by the Family Court, and his counsel's presence was for the petitioner to ensure.

3 The impugned order notes that the petitioner expressed his willingness before the Family Court to pay Rs.35,000/- instead of Rs.55,000/- fixed by the Court. The impugned order notes that it was passed “[K]eeping in view the financial needs of plaintiffs No.01 to 11 as well as financial capacity and statement of the defendant....”

4 It is settled law that an interim order for maintenance cannot ordinarily be assailed in the Constitutional jurisdiction, for it entails delving into a factual controversy around the means of the husband/father and the needs of the wife/minors.¹ That is not to say that a Constitutional petition could never be maintainable; it might lie in extreme cases, for instance, where the interim maintenance awarded is so outrageous that no reasonable Court could have awarded it, but the assertion that the interim maintenance should be what the petitioner claims it should be without more cannot be looked at in a Constitutional petition.

5 In today’s time and age, Rs.5,000/- per child does not appear excessive. It translates into Rs. 55,000/- only because the petitioner chose to have 11 children (may they all be blessed) and the tab for their maintenance would naturally be high whether it came voluntarily or through an order of a Family Court. If the petitioner is spending somewhat more for his children, he is not doing anything which a dutiful father would not do. Further, the order is only of an interim nature; the Family Court is meant to go into a deeper financial means test while deciding the suit² and one of the principles it has to bear in view is that the minors cannot be unjustly enriched at the expense of the father. If the suit for maintenance is not decided within six months from the date of institution, the petitioner can always seek a review of the interim maintenance order at that stage.

¹ PLD 2016 Lahore 73

² PLD 2018 SC 819

5 For the foregoing reasons, this petition is meritless and is **dismissed in limine**.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

Imran