

*Form No.HCJD/C-121*  
**ORDER SHEET**  
**ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**W.P NO. 381/2021/2020**

**SQ. LDR. MUHAMMAD ATIF.**

**Vs.**

**MS. MADIHA ASHRAF, ETC.**

Sr.No. of order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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**15.03.2021      Barrister Farooq Iqbal Khan for petitioner.  
Raja Inam Amin Minhas and Ch. Waqas  
Zamir, Advocates for Respondents.**

The petitioner, Muhammad Atif, through instant writ petition has assailed order dated 21.12.2020, passed by learned Judge Family Court, West-Islamabad, (*hereinafter referred to as **Trial Court***), whereby the learned Trial Court directed the petitioner to pay monthly interim maintenance at the rate of Rs.20,000/- to Respondent Nos.2 & 3 (total Rs. 40,000/-).

2.      Learned counsel for the petitioner contended that the interim maintenance fixed is beyond his capacity and he cannot afford to pay Rs. 40,000/- per month as interim maintenance of the Respondents No. 2 & 3 on the ground that he is a government servant dependent on salary of Rs. 80,000/- per month and has no other source of income. He submitted that the learned Trial Court has failed to appreciate the said facts and has passed the impugned order by imposing exorbitant interim maintenance for the children.

3.      On the other hand, learned counsel for Respondents while supporting the impugned order

submitted that the petitioner is a man of means who is responsible for taking care of the needs of his children and prayed for dismissal of present petition.

4. Arguments of the learned counsel for the parties have been heard and available record including the impugned order has also been perused.

5. The learned Trial Court, vide impugned order dated 21.12.2020 has fixed interim maintenance for 2 children of the petitioner, which he has assailed herein by invoking the constitutional jurisdiction of this court under Article 199(1)(a)(ii) of the Constitution of Pakistan, 1973, and has prayed for setting-aside of the impugned interim order, whereby, the learned Trial Court has passed order in terms of section 17-A of the Family Court Act, 1964 (*hereinafter referred to as the Act, 1964*) which provision empowers the learned Family Court to fix a provisional monthly maintenance keeping in view the income of the father during the proceedings in the suit of maintenance till its decision. The findings of the learned Family Court in the impugned order are only tentative in nature and not final. Whereas, proper quantum of the maintenance allowance is fixed by the learned Family Court, after recording of evidence as the issue of final maintenance requires probe into the facts regarding financial status and source of income and the High Courts should refrain from involving in determination of facts, being beyond the scope of Article 199 (1)(a)(ii) of the Constitution, 1973, for

the reason that such jurisdiction is exercised only against the act done or proceedings taken by the functionary which are without lawful authority and of no legal effect. Guidance in this regard has been sought from the case law reported as *Ghulam Muhammad and another versus Mst. Noor Bibi and others* (1980 SCMR 933), *Benedict F.D Souza versus Karachi Building Control Authority and others* (1989 SCMR 918) and *Federation of Pakistan and others versus Major (Retd.) Muhammad Sabir Khan* (PLD 1991 SC 476).

6. A learned Single Bench of this Hon'ble Court in a similar case titled as *Dr. Aqueel Waris versus Ibrahim Aqueel Waris* (2020 CLC 131) has held that interlocutory orders of Family Court cannot be assailed in constitutional jurisdiction of the High court. Moreover, father should not be punished by way of interim maintenance allowance for a period more than one month. Relevant portion of the said judgment is reproduced hereunder:-

*“18. While applying the above principles in present scenario, when the petitioner/father has taken the plea that since he is left with 555 in his hand after deduction of tax and payment of other expenses, he could not pay the interim maintenance of Rs.50,000/- per month to the minor/respondent No.1, which prima facie seems to be on higher side at this stage, but this Court, in constitutional jurisdiction, is not able to determine this factual aspect of adequacy or inadequacy of the interim maintenance allowance on the basis of principles laid down by the superior Courts, where such order could not be assailed in constitutional jurisdiction. However, in order to avoid any conflict, the Judge Family Court is directed to decide the pending maintenance suit within the period of one month while recording the evidence on day to day basis so that the father/petitioner could only be burdened with the interim maintenance of Rs.50,000/- for a month, which would be subsequently merged into the final*

*judgment or in case it may be decreased or otherwise on the basis of evidence.”.*

7. Thus, in the light of above of above said discussion and keeping in view the the above said observations recorded by a learned Single Bench of this Hon’ble Court in case *supra*, instant petition is hereby **dismissed**. However, the Family Court is directed to conclude the trial and finalize the suit within a period of thirty days from the date of receipt of this order.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**