

Form No: HCJD/C-121  
ORDER SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

**Writ Petition No. 614 of 2021**

Afzaal Ahmed

Versus

Mst. Sadia Safdar and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(04)	21.10.2021	Ch. Muhammad Asad Raan, Advocate for the petitioner. Mr. Imtiaz Haider, Advocate for respondent.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed the legality and validity of impugned judgment and decree dated 10.12.2019, passed by the learned Judge Family Court-West, Islamabad as well as Judgment and decree dated 07.12.2020, passed by the learned Additional District Judge, West-Islamabad.

02. Succinctly stated, the facts mentioned in the writ petition are that the respondent No.1 / plaintiff filed suit for recovery of dower amount, maintenance and dowry articles on

08.07.2017. During the proceedings before the learned trial Court, the petitioner / defendant challenged the territorial jurisdiction of learned trial Court.

03. Out of divergent pleadings of the parties, the issues were framed; evidence of both the parties was recorded and the learned Judge Family Court decreed the suit of respondent No.1 / plaintiff on 10.12.2019, whereby relief was granted to respondent No.1 / plaintiff that she was entitled for maintenance allowance at the rate of Rs. 25,000/- per month for three months of her iddat period; she was also entitled for recovery of dowry articles as per list exhibited during the evidence or in alternate payment of Rs. 4,00,000/- from the defendant. Further, she was entitled for recovery of dower amount Rs. 5000/- from the petitioner/defendant.

04. Petitioner challenged the impugned judgment and decree dated 10.12.2019, by filing an appeal before the learned Additional District Judge, West-Islamabad which was also

dismissed vide impugned judgment and decree dated 07.12.2020.

05. Learned counsel for the petitioner has contended that the impugned judgment and decree has only been challenged to the extent of relief, whereby the respondent No.1/plaintiff was declared entitled for maintenance allowance at the rate of Rs. 25,000/- per month for three months of her iddat period.

06. Learned counsel for the petitioner, *inter alia*, contends that both the impugned judgments and decrees are illegal, against the law and not maintainable; both the learned Courts below did not apply their judicious mind and passed the impugned judgments on the basis of surmises and conjectures.

07. A clear objection was taken by the petitioner / defendant that respondent No.1 / plaintiff was not resident of Islamabad, hence, learned Judge Family Court could not entertain the suit in accordance with law and both the impugned judgments and decrees are liable to be set aside.

08. Learned counsel for the respondent No.1 has controverted the arguments advanced by learned counsel for the petitioner and has stated that both the judgments and decrees have rightly been passed in accordance with the dictums laid down by the Superior Courts of the country; in writ jurisdiction this Court cannot evaluate the evidence recorded by the learned Judge Family Court and has prayed for dismissal of instant writ petition.

09. Arguments heard, record perused.

10. The main emphasis of the petitioner is on the point that jurisdiction of learned trial Court was challenged on the ground that respondent No.1 was not resident of Islamabad, hence suit filed in the learned trial Court was not maintainable. In this regard learned Judge Family Court has framed issue No.4 and while deciding the suit, it has categorically mentioned in the issue that father of respondent No.1/plaintiff is an employee of Islamabad police service since decade and is residing in Islamabad; respondent No.1 /

plaintiff being non-working woman was residing with her father and the petitioner / defendant was failed to produce any legal and cogent evidence in support of his contention.

11. On the merits, learned counsel for the petitioner has made no arguments that how respondent No.1 / plaintiff is not entitle for maintenance allowance at the rate of Rs. 25,000/- per month for three months of her iddat period.

12. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of the evidence. It has been laid down in a case titled as **"Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others"** **(2008 YLR 2309)** that:

***"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be***

***interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".*** The same view has also been taken in a case titled as **"Sadruddin Vs. Aslam Madad Ali and others"** **(PLD 2008 Karachi 2005).**

13. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155)"**, it is held by the Hon'ble Supreme Court that:

***"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached***

***a different conclusion as to the controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."***

(ii) In a case titled as **"President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others" (2020 SCMR 260)**, it is held by the Hon'ble Supreme Court 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."***

(iii) In a case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others" (2019 SCMR 919)**, it is held by the Hon'ble Supreme Court 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."***

(iv) In a case titled as **"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28)**, it is held by the Hon'ble Supreme Court 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).*

(v) In a case titled as **"Shajar Islam Vs. Muhammad**

**Siddique and 2 others” (PLD 2007 SC 45)**, it is held by the

Hon'ble Supreme Court that:

***"The High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal".***

14. For what has been discussed above, the impugned judgment and decree dated

10.12.2019, passed by the learned Judge Family Court-West, Islamabad as well as Judgment and decree dated 07.12.2020, passed by the learned Additional District Judge, West-Islamabad are in accordance with law and facts of the matter and do not require interference by this Court. The writ petition is not maintainable, hence **dismissed** being meritless with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**