

## **ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

### **Writ Petition No.4366/2021**

Muhammad Mazhar Abbasi.

***Versus***

Mst. Amna Parveen & others.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(03)	20.12.2021	Mr. Yasir Abbasi, Advocate for the petitioner.

The petitioner has impugned judgment and decree dated 28.10.2020 passed by the learned Judge Family Court and judgment and decree passed in appeal dated 18.10.2021 by the learned Additional District Judge (East), Islamabad.

2. The learned counsel for the petitioner contended that it was agreed between the parties during pre trial settlement negotiations that respondent No.1 would not press for recovery of maintenance for a period prior to filing of the suit. But that such trial settlement proceedings failed and subsequently the suit was decided on the basis of the trial conducted. He contended that infirmity in the impugned judgments and decrees was that maintenance had been fixed from October 2016, when the custody of the minor was handed over to respondent No.1, as opposed to from the date of filing of the

suit for recovery of maintenance. He pointed out that in para-11 of the impugned judgment dated 28.10.2020, passed by the learned Judge Family Court, it had been observed that respondent No.2 was entitled to recovery of maintenance from October 2018. But despite such observation, maintenance had been awarded from October 2016 by the learned Judge Family Court and this error appearing on the record had not been appreciated by the learned Additional District Judge either. He further contended that respondents had failed to establish that they have not received any maintenance from the petitioner after October 2016, which they were obliged to do as the onus for establishing failure of the petitioner to pay maintenance was on the respondents.

3. The reference to October 2018 in para-11 of the impugned judgment passed by the learned Judge Family Court dated 28.10.2020 appears to be a clerical mistake, as earlier in the said paragraph the learned Judge Family Court has observed that fact that respondent No.1 had got the custody of her minor son i.e. respondent No.2 through the Court in October 2016 is an admitted fact. The learned Judge Family Court also observed that receipts of certain money

orders in lieu of payment of maintenance were produced by the petitioner, but such money orders did not reflect any date and did not establish that maintenance had been paid by the petitioner to respondent No.1 since October 2016.

4. The impugned judgment and decree dated 28.10.2020 is a reasoned one, wherein after appreciation the evidence produced before the Court, it granted maintenance to respondents No.1 & 2 from the date from which handing over of custody of respondent No.2 to respondent No.1 had been admitted. It was in view of appraisal of the evidence as well as the reasoning of the learned Judge Family Court in her judgment dated 28.10.2020 that the learned Additional District Judge passed the judgment and decree dated 18.10.2021 upholding the judgment and decree of the learned Judge Family Court.

5. The learned counsel for the petitioner drew the attention of this Court to three money orders in the aggregate amount of Rs.10,000/- which are undated and have been referred to in the impugned judgment and decree passed by the learned Judge Family Court. The said receipts do not

establish that the petitioner has been paying maintenance for the upkeep of his son i.e. respondent No.2 since October 2016. The learned counsel for the petitioner has failed to point out any infirmity in the impugned judgments and decrees and has further failed to point to any record which has been mis-read or any evidence which has not been read by the learned Judge Family Court and the learned Additional District Judge while passing their receptive judgments.

6. In view of the above, the petition is without merit and is **dismissed** in *limine*.

**(BABAR SATTAR)**  
**JUDGE**