

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

No. IHC/Judl.Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP-3049-14

Titled. Sardar Muhammad Jahangir Vs Judge Family Court and 2 other

- a) Judgment approved for reporting ✓
Yes/No
- b) Judgment any comment upon the conduct of the Judicial officer for quality of the impugned judgment Is desired to be made. Yes/No

(In case the answer is affirmative separate confidential note may be sent to the Registrar drawing his attention to the particular aspect).

Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

WRIT PETITION NO.3049/2014

Serial No. of order of proceeding.	Date or order of proceedings	Order with signatures of judge, and that of parties or counsel, where necessary.
1	2	3

3- The minors alongwith their mother filed a suit for recovery of past maintenance with enhancement and during the proceedings; petitioner filed an application for production of additional documents pertaining to payment of maintenance and other expenditures of minors. The learned Trial Court after hearing both the sides dismissed the application vide impugned order.

4- Learned counsel *inter alia* submits that order of the learned Trial Court is violative of the law on the subject because the evidence sought to be produced has significant bearing over the subject matter as most of the documents were not in possession of the petitioner at the time of filing of written statement.

5- It is added that under Section 7 of the Family Court Act, 1964, the learned Trial Court is empowered to allow additional evidence which is necessary for just and fair decision of the case.

6- In support of her submissions, learned counsel refers case of "Malik Furkan Ahmad Vs Judge Family Court Lahore" [2003 MLD 1641 Lahore], "Haibat Nawaz Khan Vs Mst. Najma Bibi alias Najma Parveen etc" [2006 CLC 554 Lahore], "Mst. Bakht-e-Rawaida Vs Ghulam Habib etc" [PLD 1992 Karachi 46], "Khalid Akhtar Vs Mst. Robina etc" [1991 MLD 2349 Lahore], "Lt. Col. Mohsin Shah Vs Mst. Qaseema Wahid etc" [1995 MLD 1032 Lahore], "Malik Irfan Ahmed Gheba Vs Zubi Irfan etc" [2004 MLD 635] "Pakistan Defence Officers Housing Authority, Karachi Vs Shamim Khan etc" [PLD 2005 SC 792] & "**Zar Ali Shah Vs. Yousaf Ali Shah Etc**" 1992 SCMR 1778.

7- Learned counsel for private respondents resisted the petition with the assertion that the petition is not maintainable as the same assails an *interlocutory Order* which is not appealable and petitioner is using the delaying tactics just to prolong the litigation and the intended documents have no bearing upon the case as the plaintiffs sought enhancement of maintenance.

8- Learned counsel further states that there is no provision in Family Court Act 1964, for empowering the Family Court to admit the documents in evidence which were neither appended with the written statement nor relied upon. She added that most of the documents sought to be produced carry no relevance with the dispute involved in the case.

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9- Heard & record perused.

10- It is settled principle that the High Court can issue writ of *certiorari* in all appropriate cases of jurisdictional error or utter illegality. An interlocutory Order can be examined in Constitutional Jurisdiction where no alternate remedy is available specifically where the Order assailed would render the subsequent proceedings point-less, therefore, the challenge to the maintainability of the petition is repelled.

11- Perusal of impugned Order reveals that the application for production of additional documentary evidence was rejected **solely** on the pretext that the Family Court Act, 1964 does not empower the family court to admit documents at a belated stage. It is pertinent to note that learned Court did not record a single observation regarding relevance of proposed additional evidence upon the matter in controversy.

12- So far as the conclusion regarding admissibility of evidence at a belated stage is concerned, it is wrong to presume that additional evidence not given in the list alongwith the written statement cannot be allowed to be taken under any circumstances or to infer that discretion of family Court is fettered in any manner because Proviso to Section 7(2) Family Court Act, 1964 clearly confers discretion to the Family Court to secure the ends of Justice, referred proviso to section 7 (2) is reproduced hereunder;

*Provided that the **parties** may, with the permission of the Court, call any witness at any later stage, if the Court considers such evidence expedient in the interest of justice.*
[Emphasis provided]

13- Above provision clearly states that the evidence at a belated stage can be taken. Guidance

is sought from case of “**Mst. Yasmin Vs Ghulam Hussain**” [2000 YLR 1905 Shariat Court AJ&K].

14- At this juncture it is vital to clarify that application of the aforementioned proviso to Section 7 (2) is not confined to complaints only because the expression “*parties*” used in the proviso shows the intent of legislature whereby the same has been made applicable equally to the plaintiff and defendant.

15- Even otherwise it is not correct to draw the conclusion that only plaintiff is allowed to produce evidence beyond the list appended with the complaint and the same discretion cannot be exercised in favour of the defendant.

16- Adverting to the merits of the application, it is reiterated that learned trial Court did not give opinion upon the relevance of documents sought to be produced in evidence, therefore, in conjunction with the observations recorded hereinabove, it cannot be considered to be a valid decision.

17- In view of above, instant petition is allowed. Impugned Order dated 21.05.2014 is set-aside and the matter is remanded to the learned Trial Court to decide the application afresh after giving audience to both the sides in the light of above observations. No orders as to costs. —

Umar

CHIEF JUSTICE

APPROVED FOR REPORTING