

Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Writ Petition No. 3860/2021

Anwar Zeb

Versus

Mst. Bushra and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(03)	23.11.2021	Mr. Rashad ul Musawar, Advocate for the Petitioner. Mr. Qaiser Imam Ch., Advocate for the respondents. Respondents No. 1 to 6, in person.

Through the instant writ petition, the petitioner has assailed order dated 25.09.2021, passed by learned Senior Civil Judge-II (Guardian), East-Islamabad, whereby interim maintenance of the minors at the rate of Rs. 10,000/- for each minor has been fixed.

02. Brief facts of the case are that the petitioner contracted marriage with respondent No. 1, from the wedlock of the parties, five children i.e. respondent No. 2 to 6 namely Maryam, Muhammad Hashim, Muhammad Aryan, Amama and Hareema

were born on 02.02.2014, 22.02.2015, 22.02.2015, 27.07.2017 and 25.11.2020 respectively.

03. Relations between the parties became strain, so the respondent No. 1 / mother of the minors filed a suit for recovery of maintenance allowance claiming therein maintenance of Rs. 30,000/- per month for herself and Rs. 7,500/- per month for respondent No. 2 to 5 and Rs. 15,500/- per month for respondent No. 6 with 10% annual increase.

04. Learned Judge Family Court vide impugned order dated 25.09.2021, fixed interim maintenance allowance of each minor @ Rs. 10,000/- per month and the total maintenance of five minors becomes Rs. 50,000/-, per month.

05. Being aggrieved from order of interim maintenance of minors, instant writ petition has been filed.

06. Learned counsel for the petitioner *inter alia* contends that the impugned order dated

25.09.2021 is against the facts and circumstances; learned trial Court while passing the impugned order overlooked the prayer of the respondents, as they only demanded @ Rs. 7500/- per month for each minor, however the direction with regard to payment of Rs. 10,000/- per month as interim maintenance to the minors is beyond the pleadings; learned trial Court has not appreciated true facts of the case, as the suit instituted by the respondents is a counter blast to the criminal case / FIR registered against respondent No. 1; respondent No. 1 is a criminal minded women, who stole different cheques of the petitioner and encashed the same. Learned counsel has further contended that marriage between the parties is still intact and respondents No. 1 to 6 are residing in the house of petitioner; it is also a principle of natural justice that no one should be overburdened than his sources / means and has prayed for setting aside the impugned order dated 25.09.2021.

07. Arguments heard, record perused.

08. It is mentioned in Section 14(3) of the West Pakistan Family Courts Act, 1964 that:

“No appeal or revision shall lie against an interim order passed by a Family Court.”

09. It has been held by the Hon’ble Supreme Court of Pakistan in a case titled as **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260)**, 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.”
(Emphasis supplied)

10. In another case titled as **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919)**, the Hon’ble Supreme Court of Pakistan has held 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.”

11. It has been held by the Hon’ble Supreme Court of Pakistan in case titled as **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28)**, 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).

12. Reference in this regard may also be made to the following case laws:

(i) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR**

1165), that:

"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."

(ii) It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab (1976 SCMR 450)**, that:

"As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitled the petitioner to prosecute a writ petitioner despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law."

13. Learned counsel for the petitioner has

failed to point out as to how the impugned / interim order passed by the learned Senior Civil Judge-II (Guardian), East-Islamabad, was the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

14. In view of the above prospective, the instant writ petition has no merits and the same is **dismissed.**

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-