

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT).

Writ Petition No. 2613 of 2021

Zahid Mehmood

Versus

Additional District Judge, East-Islamabad and 05 others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	17.01.2022	Mr. Muhammad Ashfaq Shahid, Advocate for the petitioner. Mr. Tariq Mahmood Tarar, Advocate for respondent No.3 to 6.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgments and decrees dated 01.02.2021 and 08.12.2020, passed by learned Additional District & Sessions Judge-III, East-Islamabad and learned Judge Family Court, East-Islamabad, respectively, whereby family suit filed by contesting respondents was decreed and appeal was dismissed.

02. Succinctly stated, facts mentioned in the writ petition are that respondents No.3 to 6 filed suit for recovery of maintenance which

was partially decreed in favor of respondents. The petitioner contracted marriage with respondent No. 3, according to the Muslim Rites and Ceremonies. From the wedlock, three children respondents No.4 to 6 were born who were studying in government schools in Class 7, 3 & 1 respectively. They are getting free education. The suit was contested by the petitioner but the learned trial Court without going through and appreciating the material evidence of the petitioner passed an interim order for payment of Rs. 10,000/- per month for each minor.

03. After recording the evidence, learned trial Court has passed impugned judgment and decree dated 08.12.2020, whereby, suit of respondents No.3 to 6 to the extent of dowry articles of Rs. 80,000/-, recovery of monthly maintenance of respondent No.3 at the rate of Rs. 10,000/- per month from the date of institution of suit till Iddat period and to the extent of maintenance allowance of respondent No.4 to 6 at the rate of Rs. 10,000/- per month for each minor from March

2019 till their legal entitlement with 10% annual increase, was decreed.

04. The petitioner filed an appeal against the judgment and decree which has also been dismissed by the Court of learned Additional District & Sessions Judge-III, East-Islamabad vide judgment and decree dated 01.12.2021. Against the concurrent findings of both the learned lower Courts, the petitioner has filed the instant writ petition.

05. Learned counsel for the petitioner, *inter alia*, contends that both the impugned judgments and decrees passed by learned lower Courts are not sustainable in the eyes of law as the learned Courts below badly failed to consider the important facts of law, hence both the impugned judgments and decrees are liable to be set aside.

06. Learned counsel for the contesting respondents has controverted the arguments advanced by learned counsel for the petitioner and stated that impugned judgments and decrees are passed in accordance with law and evidence produced by the parties; in the writ

petition concurrent findings cannot be interfered and has prayed for dismissal of instant writ petition.

07. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondents No.3 to 6 have been heard and record has been perused with their able assistance.

08. The petitioner being father of the minors is bound to pay maintenance; deciding of Rs. 10,000/- per month for each minor is very nominal; the petitioner is also liable to pay maintenance to his ex-wife from her desertion till Iddat period; the amount regarding dowry articles was also decided according to evidence produced by the parties.

09. Learned counsel for contesting respondents has also pointed out that the petitioner has not paid the maintenance according to impugned judgments / decrees and learned executing court has issued arrest warrants of the petitioner.

10. Learned counsel for the petitioner has failed to point out any illegality in the

impugned judgments and decrees. 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. In this regard, reliance is placed upon the cases titled as **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155), President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260), Chief Executive**

MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919), Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28) and Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).

11. 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).**

12. For what has been discussed above, impugned judgments and decrees dated 01.02.2021 and 08.12.2020, passed by learned Additional District & Sessions Judge-III, East-Islamabad and learned Judge Family Court, East-Islamabad, respectively, are in accordance with law and facts of the matter, hence do not require any interference by this Court.

13. In view of above prospective, the instant writ petition has no merits and the same is **dismissed** with no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh