

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 4552 of 2021

Shaheryar

VS

Asma Sheryar and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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17.02.2022. Mr. Riffat Hussain Malik, Advocate
for the Petitioner.
Ch. Zubair Younas, Advocate for
Respondents.

Through the instant petition, the
Petitioner has assailed the Order dated
13.10.2021 (***Impugned Order***) passed by
the learned Judge Family Court-East,
Islamabad, whereby, interim
maintenance allowance of Rs.8,000/- per
month has been fixed for Respondent
No.2.

2. Facts, in brief, are that the
Petitioner and the Respondent No.1 were
married on 24.09.2016 against paid
dower of Rs. 2000/- and Rs. 100,000/-
deferred and 03 tola gold ornaments. The
parties were blessed with a daughter i.e
Respondents No. 2. Respondents No.1 &
2 filed suit for dissolution of marriage on
the basis of khulla, recovery of dower,

dowry articles and maintenance allowance.

3. The learned Judge, Family Court, East-Islamabad, vide the Impugned Order fixed the interim monthly maintenance of Respondent No.2 as mentioned above. The Petitioner has assailed the order through an application for appropriate order regarding reduction of the interim maintenance before the learned Trial Court which was dismissed vide order dated 25.11.2021, hence the instant petition.

4. Learned counsel contended that the impugned order is not tenable inasmuch as the interim maintenance fixed by the learned trial Court is beyond the financial status of the petitioner and learned Trial Court has not considered and appreciated this fact and prayed for setting aside of the Impugned Order. Learned counsel has relied on the judgments titled *Dr. Aqueel Waris Vs. Ibrahim Aqeel Waris*, 2020 CLC 131, *Basharat Ali Vs. Additional District Judge, Multan and 4 others*, 2018 MLD 785 and *Memoona Ilyas Vs. Additional District Judge and others*, 2017 CLC 1747.

5. On the other hand, learned counsel for the respondent vehemently opposed the instant petition and submitted that

the petition is not maintainable as the interim order fixing the maintenance is temporary which could be modified later being not a final order adversely affecting the Petitioner. He has placed on record all the order sheets of the learned trial Court along with all exhibits, whereby it has been revealed that only Rs. 11000/- have been paid as interim maintenance on 22.12.2021. Learned counsel for the Respondents has further stated that remaining interim maintenance is still pending despite strict directions of the learned Family Court, hence the instant petition is liable to be dismissed.

6. Argument heard, record perused.

7. The Impugned Order has been passed in pursuance of Section 17-A of the West Pakistan Family Courts Act, 1964, where under the Family Court has the jurisdiction to pass interim order for maintenance at any stage of the proceedings in a suit for maintenance. The purpose behind the provision of interim maintenance is to ensure that during the pendency of the legal proceedings, the minors are not faced with financial challenges.

8. Section 14 (3) of the West Pakistan Family Courts Act, 1964, bars an appeal

or revision against an interim order passed by a Family Court with the obvious purpose to avoid delays.

9. The Impugned Order is merely an interlocutory order. The maintenance fixed through such an order is only temporary. The quantum of maintenance may be modified after appraising the evidence produced at trial. An aggrieved party will have a right to agitate his grievance before the appellate Court when the interim order merges into a final order. Even otherwise, quantum of interim maintenance, being a factual dispute cannot be made a ground for invoking the Constitutional jurisdiction of this Court.

10. I am guided by the consistent view taken by different Honorable Benches of the Islamabad High Court, Islamabad in various matters including the reported cases of **Dr. Aqueel Waris versus Ibrahim Aqueel Waris, 2020 CLC 131; Minhaaj Saqib Vs. Najam Us Saqib, 2018 CLC 506; Mashkoor Ahmed Khokhar versus The Family Judge (East), Islamabad, 2019 CLC 1635; Muhammad Touseeq Danial Bhatti versus Ayesha Naeem, 2021 MLD 337; and Aamir Munir Puri versus Mst. Saima Naeem, 2021**

YLR 2166, wherein it has been held that interlocutory orders by the Family Court cannot be assailed in Constitutional jurisdiction even though they may be harsh in some instances. The instant petition is, therefore, not maintainable.

11. Caselaw relied upon by the learned counsel for the Petitioner does not advance his case. The cases of Basharat Ali (*Supra*) and Memoona Ilyas (*Supra*) do not pertain to orders regarding interim maintenance. As far as the case of Dr. Aqeel Waris (*Supra*) is concerned, the same does not support his contention, in fact has been relied upon by this Court as discussed above to reach the conclusion hereof.

12. Thus, in the light of above said discussion and keeping in view the above said observations by this Court in the aforementioned cases the Impugned Order dated 13.10.2021 passed by the learned Judge, Family Court, East-Islamabad, does not call for interference in writ jurisdiction. Consequently, this Writ Petition is hereby **dismissed**.

(SAMAN RAFAT TMTIAZ)
JUDGE