

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.3442 of 2019

Ms. Faiza Mir and 03 others.

Versus

Civil Judge/Family Judge, East Islamabad and another.

Petitioners By : Mir Aurangzaib, Advocate.

Respondents By : Syed Adil Safdar Gardezi, Advocate for respondent No.2.

Date of Decision : 17.12.2019

AAMER FAROOQ, J. - This petition calls in question orders dated 25.05.2019 and 29.05.2019, whereby permission was granted to respondent No.2 to pay the interim maintenance.

2. The facts, leading to filing of the instant petition, are that the petitioners filed a suit for recovery of maintenance allowance against respondent No.2. In the said suit, an order for interim maintenance was passed, whereby the amount of maintenance was to be deposited by or before 14th of every month. It seems that respondent No.2 did not make the payments timely and on the said basis has been making applications for permission to deposit the maintenance after the expiry of prescribed time and the petitioners are aggrieved of the same and seek setting aside of the said orders and also striking off of the defence of respondent No.2.

3. Learned counsel for the petitioners, *inter-alia*, contended that under Section 17A, if the order regarding deposit of the interim maintenance is not complied with the natural corollary of the same is striking off of the defence. It was contended that the orders passed by the learned Trial Court granting time to respondent No.2 for deposit of the interim maintenance are without jurisdiction.

4. Learned counsel for respondent No.2, *inter-alia*, contended that all the receipts have been appended with the reply indicating that respondent No.2 has been following the orders and paying interim maintenance to the petitioners.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The facts, leading to filing of the instant petition, have been mentioned hereinabove, therefore, need not be reproduced.

7. The learned Trial Court passed order under Section 17A of the Family Courts Act, 1964 against respondent No.2, whereby, he was directed to pay the interim maintenance by or before 14th of every month. Respondent No.2 though had been making the payments in compliance of the order but belatedly. In order to resolve the controversy whether, under the facts and circumstances, the defence of respondent No.2, who is defendant in the suit filed by the petitioners, is to be struck off; the examination of Section 17A, the Family Courts Act, 1964 is essential. For ease of convenience, the said provision is reproduced below:-

“17A. Suit for maintenance.– (1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteen day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.

(2) In a decree for maintenance, the Family Court may:

(a) fix an amount of maintenance higher than the amount prayed for in the plaint due to afflux of time or any other relevant circumstances; and

(b) prescribe the annual increase in the maintenance.

(3) If the Family Court does not prescribe the annual increase in the maintenance, the maintenance fixed by the Court shall automatically stand increased at the rate of ten percent each year.

(4) For purposes of fixing the maintenance, the Family Court may summon the relevant documentary evidence from any organization, body or authority to determine the estate and resources of the defendant.”

The bare perusal of Section 17A *ibid* shows that where order is passed for interim maintenance, the payment has to be made by fourteenth day of each month. The word used in Section 17A is 'shall', however, the consequence of failure to pay the requisite amount of interim maintenance attracts striking off the defence and the word used is 'may' for the said purpose. The striking off of the defence is not mandatory but rather discretionary. Interpreting the said provision in case reported as "*Muhammad Khalid Javeed vs. Mst. Shahida Parveen and 4 others.*" **(2007 YLR 1366)**, it was observed that striking off of the defence of the defendant in all suits is illegal and un-lawful. However, where default is continuing the learned Trial Court may keeping in view the conduct of the defendant and strike off the defence at any stage.

8. In the instant case, the learned Trial Court so far has not struck off the defence of the defendant/respondent No.2 but has been granting time for deposit of the maintenance. The case is at stage of evidence and it would be appropriate to conclude the trial. However, if respondent No.2 persist with the defaults, his conduct may be kept in view by respondent No.1 and the penal effect of Section 17A of the Family Courts Act, 1964 be attracted.

9. In view of the above, the instant petition is **dismissed** as the orders impugned do not warrant interference. Respondent No.1 is also directed to conclude the trial within a period of two (02) months from the date of this order.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua