

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2645 of 2022.

MUHAMMAD ILYAS.

Vs.

**THE ADDITIONAL DISTRICT & SESSIONS JUDGE (WEST), ISLAMABAD
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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19.07.2022

**Sardar Rafiq R. Sanjrani, Advocate for the
Petitioner.**

The Petitioner has, by way of the instant Petition, assailed the Judgment dated 15.06.2022 (**“Impugned Judgment and Decree”**) passed by the learned Additional District Judge, (MCAC)- West, Islamabad, whereby the Petitioner’s appeal has been dismissed and Order dated 09.05.2022 passed by the learned Judge Family Court, whereby maintenance allowance of minors/Respondents No. 4 & 5 was fixed as Rs. 10,000/- per month each till their marriage has been upheld.

2. Brief facts of the matter are that the Respondents filed suit for Recovery of past and present maintenance against the Petitioner as well as for recovery of gold ornaments. The learned Judge Family Court vide order dated 10.02.2020 held the minor Respondents No. 3 & 4 entitled for recovery of Rs. 5,000/- each per month whereas Respondent No.5 was held entitled to receive Rs. 10,000/- per month as interim maintenance with immediate effect. The Petitioner failed to attend the Court on the scheduled date due to which the learned Judge Family Court passed partial order and decree dated 09.05.2022 to the extent of maintenance of Respondents No. 4 & 5 at the rate of Rs. 10,000/- per month in addition to the

previous and past amount of maintenance since, January, 2018. The Petitioner assailed the said order before the Additional District Judge, MCAC, West-Islamabad through appeal but the same was dismissed vide Impugned Judgment and Decree.

3. Learned counsel for the Petitioner submitted that the Impugned Order incorrectly recorded that he requested for further adjournment rather it was proxy counsel who made the request; that the Petitioner is willing to deposit the full amount of arrears if so directed by this Court. He pleaded that the valuable rights of the petition are at stake and the Impugned Order amounts to condemning the Petitioner unheard.

4. Arguments heard. Record perused.

5. Despite being questioned several times the learned counsel was neither able to give any reason for Petitioner's failure to comply with the order dated 10.02.2022 passed by the learned Judge Family Court for interim maintenance nor he was able to point out any illegality in the Impugned Order. The arguments raised by he learned counsel about not asking for adjournment before the learned Family Court constitutes factual disputes which cannot be adjudicated upon by this Court in exercise of its constitutional jurisdiction and even otherwise it does not explain the non-compliance of the order dated 10.02.2022.

6. It is also noted that the Petitioner was given notice under Section 17A of the Family Courts Act, 1964 due to non-payment of interim maintenance vide order dated 26-04-2022 to pay the interim maintenance despite which the Petitioner did not comply with order for payment of interim maintenance for the minor Respondents which is

not only his statutory obligation but also his religious and moral duty as father.

7. In the case of *Muhammad Sajid Vs. Judge Family Court*, 2020 CLC 1524, the Honorable Lahore High Court observed as follows:

“7. The use of the word "shall" in the amended Section 17-A of the Act whereby the word "may" has been replaced, clarifies the intention of the legislation that in case of non-compliance of order for payment of interim maintenance allowance within time fixed by the law, not only the defence is to be struck off but as a consequence thereof, the suit is to be decreed; therefore, the said provision is to be treated as mandatory in nature on the basis of the principles laid down in The Collector of Sales Tax, Gujranwala v. Super Asia Muhammad Din & Sons (2017 SCMR 1427), of course, subject to certain exceptions to be decided on case to case basis, whereas no such exception has been pointed out by the petitioner.

8. It is settled by now that where the law requires the thing to be done in a particular manner it should be done in that manner alone and such dictate of law cannot be termed as a mere technicality and would be non-compliance of the legislative intent. Reliance in this behalf is placed on Mst. Shahida Bibi and others v. Habib Bank Ltd. and others (PLD 2016 SC 995) and Zia ur Rehman v. Syed Ahmad Hassan (2014 SCMR 1015); therefore, by non-compliance of making payment within time as required by the law, the default had been committed and the court below was justified to strike off the defence of the petitioner and has rightly decreed the suit.”

8. In view of the foregoing, the learned Family Court correctly passed the Impugned Order in accordance with Section 17A of the Family Courts Act, 1964, which has rightly been upheld by the learned Additional District Judge, MCAC, Islamabad-West.

9. For all the foregoing reasons, instant petition is **dismissed in limine**.

(SAMAN RAFAT IMTIAZ)
JUDGE