

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3669 of 2019
Muhammad Asad Hanif
Versus
Nazish Fakhar and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.10.2019	Mr. Faisal Iqbal Khan, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Muhammad Asad Hanif, impugns the interlocutory order dated 21.09.2019 passed by the learned Family Court, Islamabad, whereby his right to defend the suit for the recovery of maintenance allowance, etc., was closed under Section 17-A of the West Pakistan Family Courts Act, 1964 ("the 1964 Act").

2. Learned counsel for the petitioner submitted that the impugned order dated 21.09.2019 was unduly harsh; that on 21.09.2019, the petitioner had paid Rs.20,000/- as maintenance allowance for the minor (Moman Asad); that the order dated 27.06.2019, whereby the learned Family Court had ordered for maintenance allowance to be paid to respondent No.1 (Nazish Fakhar) had been assailed in a writ petition before this Court; and that even though the said order dated 27.06.2019 had not been suspended by this Court, the learned Civil Court could not have invoked the penal measure under Section 17-A of the 1964 Act. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. It is not disputed that vide order dated 27.06.2019, the learned Family Court had directed maintenance allowance to be paid to respondents No.1 and 2. The petitioner was also warned by the learned Family Court that if the interim maintenance was not paid to respondents No.1 and 2 before the 14th of each month, orders under Section 17-A of the 1964 Act would be passed.

5. Although the said order dated 27.06.2019 is said to have been assailed by the petitioner in a writ petition filed before this Court, till date the said order dated 27.06.2019 has not been suspended. Consequently, the petitioner was bound to show compliance with the said order by paying maintenance to respondents No.1 and 2. Order dated 21.09.2019 shows that the petitioner did pay maintenance for respondent No.2, but till date the order for the payment of interim maintenance for respondent No.1 has not been complied with. It is well settled that mere filing of a writ petition against an order for the payment of the interim maintenance does not operate as a suspension of such an order. Since the petitioner did not show compliance with the order for the payment of interim maintenance to respondent No.1, the learned Family Court did not commit any jurisdictional error by invoking the penal provision of Section 17-A of the 1964 Act against the petitioner.

6. In view of the above, the instant petition is dismissed in limine. Since the suit for recovery of maintenance, etc. is pending since 19.10.2018, it is expected that the learned Trial Court would decide the said suit expeditiously.

(MIANGUL HASSAN AURANGZEB)
JUDGE