

Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No. 365 of 2022

Muhammad Ashfaq

VS

Judge Family Court and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(1)	03.02.2022.	Dr. G.M Choudhary, Advocate for the Petitioner.

Through instant petition, the Petitioner has assailed Order dated 20.11.2021 (“Impugned Order”) passed by the learned Judge Family Court-East, Islamabad, whereby, interim maintenance allowance at the rate of Rs.8,000/- per month per child has been fixed for Respondents No.3 & 4 .

2. Facts, in brief, are that the Petitioner and the Respondent No.2 were married on 05.05.2012 against the dower amount of Rs. 505,525/- and five (5) tola gold ornaments to be paid by the Petitioner to Respondent No. 2 within one year after marriage. The parties were blessed with two children i.e., Respondents No. 3 & 4. Respondents No.2 to 4 filed suit for Recovery of Maintenance & Dower on 07.07.2021 on the allegation that the Petitioner is not paying for the monthly expenditure of the aforementioned Respondents.

3. The learned Judge, Family Court, East-Islamabad, vide the Impugned Order fixed the interim monthly maintenance of Respondent No. 3

& 4 as aforesaid to be paid w.e.f the date of the Impugned Order and further held that in case of failure Petitioner's right of defense will be closed. The Petitioner has assailed the order through instant petition.

4. Learned counsel for the Petitioner submitted that the learned Trial Court has not considered and appreciated the financial status of the Petitioner and that the parties are living in the same house as may be seen from the addresses given in the title of the Plaint filed by the Respondents No. 2 to 4. It has been submitted that the Petitioner is maintaining the said Respondents and also his first wife and their children therefore, cannot afford to pay the interim maintenance fixed by the Court and as such has prayed for setting aside of the Impugned Order.

5. 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.

6. 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.

7. 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.

8. 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; [], 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.

9. 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 20.11.2021 passed by the learned Judge, Family Court, East-Islamabad, does

not call for interference in writ jurisdiction.
Consequently, this Writ Petition is hereby
dismissed in limine.

(~~SAMAN~~ SAMAN RAFAT IMTIAZ)
JUDGE

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