

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 2782 of 2021**

Zaib Un Nisa

***Versus***

Additional District Judge, Islamabad-West and others

**Writ Petition No. 2911 of 2021**

Malik Khalid Mehmood Awan

***Versus***

Zaib Un Nisa and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	11.11.2021	Mr. Muhammad Zahir, Advocate on behalf of Zaib Un Nisa in above captioned two writ petitions.  Mr. Muhammad Tanveer Khalid Awan, Advocate on behalf of Malik Khalid Mehmood in above captioned two writ petitions.

Through the instant order, I intend to decide the above captioned two writ petitions, as they entail common questions of law and facts.

02. Petitioners in both the writ petitions have assailed judgments and decrees dated 01.07.2021 and 27.04.2021, passed by learned Additional District Judge, West-Islamabad and the

learned Judge Family Court, West-Islamabad, respectively.

03. Succinctly stated facts of the case are that the petitioner in writ petition No. 2782 of 2021, namely Mst. Zaib Un Nisa (*hereinafter called daughter*) is the real daughter of Malik Khalid Mehmood Awan (*hereinafter called the father*), respondent No. 3 of writ petition No. 2782 of 2021 and petitioner of writ petition No. 2911 of 2021.

04. The daughter is residing with her mother, as the father has divorced his wife / mother of petitioner namely Mst. Abida Begum in the year 1995/96 and contracted second marriage with Mst. Shabana Bibi. The mother of daughter and father were separated when she was only 5 years old and since then she has been requesting for maintenance but the father never paid any maintenance. Now the daughter want to start her matrimonial life but unable to afford the expenditure of marriage. Father is an employee of Capital Development

Authority (CDA) and owner of many properties in Islamabad. The daughter requested to her father for marriage expenditure and maintenance but he refused to do so, hence she filed suit for past maintenance and marriage expenditure.

05. Suit was contested by her father, issues were framed, evidence was recorded and learned Judge Family Court, West-Islamabad vide impugned judgment dated 27.04.2021, partially decreed the suit filed by the daughter in a manner that she was held entitled to get Rs. 12,00,000/- as past maintenance, Rs. 10,00,000/- as marriage expenditure including gold and Rs. 5000/- per month from institution of the suit till her marriage with 10% annual increase, from her father and rest of her claims were declined by the learned Judge Family Court-West, Islamabad.

06. Being aggrieved of the impugned judgments and decrees dated 01.07.2021 and 27.04.2021, both the

parties i.e. daughter and father have filed above mentioned writ petitions, the daughter has averred that the learned trial Court vide impugned judgment has not granted the past maintenance of Rs. 20,00,000/- and Rs. 15,00,000/- as marriage expenses along with expenses of litigation @ Rs. 50,000/- as prayed in the family suit. The daughter is also aggrieved by the judgment and decree dated 01.07.2021, whereby the learned Additional District Judge (West), Islamabad has modified in the manner that plaintiff is not entitled for expenses of marriage.

07. The father is aggrieved by both the judgments and decrees of the lower Courts.

08. Learned counsel for the petitioner / daughter in writ petition No. 2782 of 2021 *inter alia* contends that the judgment and decree dated 01.07.2021, passed by learned Additional District Judge (West), Islamabad, whereby the judgment and decree passed by the

learned Judge Family Court was modified to the extent that the petitioner / daughter was held not entitled for the grant of marriage expenses by mis-reading and non-reading of the evidence; the petitioner / daughter has clearly proved her case through the cogent evidence; she was entitled for the marriage expenses; local commission was also appointed by the learned Judge Family Court, West-Islamabad who has submitted a report which is erroneous and not tenable under the law.

09. Learned counsel for the petitioner / father in writ petition No. 2911 of 2021 *inter alia* contends that both the impugned judgments and decrees passed by lower Courts are erroneous; the daughter cannot claim past maintenance according to law, as no provision of Family Law provides that the father will be liable to pay the marriage expenses, hence both the judgments and decrees passed by the learned Judge Family Court, West-Islamabad as well as

learned Additional District Judge West-Islamabad are liable to be set aside, whereby the decision to the extent of payment of maintenance to the daughter was upheld; both the judgments and decrees are erroneous not tenable under the law and the same have been passed against the dictum laid down by superior Courts of the country; both the Courts below have passed the judgments and decrees without applying their judicial mind; the impugned judgments and decrees are suffered from legal infirmity, hence the same were liable to be set aside.

10. Arguments heard, record perused.

11. It is admitted fact that the petitioner / Mst. Zaib Un Nisa is the real daughter of Malik Khalid Mehmood Awan, who was deserted along with her mother when she was aged about 5 years. Father of the petitioner has not paid the past maintenance. As far as the arguments of learned counsel for the petitioner / Khalid Mehmood Awan

(father) is concerned that daughter has filed the suit at this belated stage which is hit by the Limitation Act, 1908 and not sustainable under the law, rather the father is legally, morally and ethically bound to maintain her daughter according to law.

12. As far as the marriage expenses are concerned, there is no provision in the family law that the father will be bound to pay the marriage expenses to his daughter.

13. According to injunctions of Islam, Nikkah can be solemnized in simple manner and only fee of the Nikkah Khvaan is liable to be paid which is very meager expense.

14. Father has already burdened with heavy amount in lieu of past maintenance i.e. Rs. 12,00,000/- and Rs. 5,000/- per month till marriage of his daughter with 10% annual increase.

15. Learned Additional District Judge, West-Islamabad vide impugned

judgment and decree dated 01.07.2021, has rightly declared that the marriage of the daughter has not been solemnized, so the daughter has not spent any amount on her wedding as well as on purchase of jewelry articles and she was held not entitled for marriage expenses.

16. There are concurrent findings on the issue for grant of maintenance to the daughter by both the learned Courts below. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of evidence. It has been laid down in a case titled as "**Syed Arif Ali Sabri Vs. Abdul Samad through L.Rs. and 2 others**" **(2008 YLR 2309)**, that:

***"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".*** The



same view has also been taken in a case titled as **"Sadruddin Vs. Aslam Madad Ali and others" (PLD 2008 Karachi 2005).**

17. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal. Reliance may be made to the following case laws:

(i) In a case titled as **"Amjad Khan Vs. Muhammad Irshad**

**(Deceased) through LRs”**  
**(2020 SCMR 2155)**, it is held  
by the Hon'ble Supreme Court  
that:

***"It is by now a settled principle of law that the High Courts must not exercise their constitutional jurisdiction in order to interfere with the discretion exercised by lower courts unless the same suffers from jurisdictional, factual or legal errors. In other words, such interference would be justified in cases where the impugned order has been passed without jurisdiction or is based on misreading or non-reading of evidence, or is not in accordance with the law. If none of these errors is present, the High Courts must not exercise their constitutional jurisdiction to interfere with the findings of lower courts merely because it reached a different conclusion as to the***

***controversy than the latter. In this regard, reference can be made to a collective reading of Mst. Mobin Fatima v. Muhammad Yamin (PLD 2006 SC 214) and Nadira Shahzad v. Mubashir Ahmad (1995 SCMR 1419)."***

(ii) In a case titled as

**"President All Pakistan**

**Women Association,**

**Peshawar Cantt Vs.**

**Muhammad Akbar Awan and**

**others" (2020 SCMR 260),** it

is held by the Hon'ble Supreme

Court that:

***"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it***

***cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."***

(iii) In a case titled as **"Chief Executive MEPCO and others Vs. Muhammad Fazil and others" (2019 SCMR 919)**, it

is held by the Hon'ble Supreme Court that:

***"Where the Court or the Tribunal has jurisdiction and it determines***

***specific question of fact or even of law, unless patent legal defect or material irregularity is pointed out, such determination cannot ordinarily be interfered with by the High Court while exercising jurisdiction under Article 199 of the Constitution."***

(iv) In a case titled as

**"Chairman, NAB Vs. Muhammad Usman and others" (PLD 2018 SC 28),** it

is held by the Hon'ble Supreme Court that:

***"The powers of judicial review vested in High Court under Article 199 of the Constitution is no doubt a great weapon in the Judge's hands however, the same shall not be exercised in a case where discretion is exercised by the subordinate court / Tribunal in a fair and just manner without violating or disregarding statutory provision of law, likely to occasion***

***the failure of justice. Ordinarily such extraordinary jurisdiction shall not be exercised at random and in routine manner". The following case law is reproduced for the guidance of the learned Judges of the High Court for future course of action:***

*(i) Brig (Rtd.) Imtiaz Ahmed v. Government of Pakistan, through Secretary, Interior Division, Islamabad (1994 SCMR 2142).*

*(ii) Shahnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan (PLD 1971 SC 677).*

*(iii) Malik Shaukat Ali Dogar v. Ghulam Qasim Khan Khakwani (PLD 1994 SC 281).*

(v) In a case titled as **"Shajar Islam Vs. Muhammad Siddique and 2 others" (PLD 2007 SC 45)**, it is held by the

Hon'ble Supreme Court that:

***"The High Court in exercise of its constitutional***

***jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal”.***

18. For what has been discussed above, both the learned counsel have failed to point out as to how the impugned judgments and decrees dated 01.07.2021 and 27.04.2021, passed by learned Additional District Judge, West-Islamabad and learned Judge Family

Court, West-Islamabad, respectively are the consequence of error law or without jurisdiction and excess of jurisdiction, hence both the impugned judgments and decrees do not require interference by this Court. Both the writ petitions are not maintainable, hence **dismissed** being meritless with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal /-