

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3412 OF 2021

AWAIS SHABBIR

VS.

DR. AYESHA SAEED and others

Petitioner by : **Syed Ghias-ud-Din, Advocate.**
Mr. Adnan Muhammad Khan, Advocate.

Respondents by : **Mr. Naseem Ahmad Shah, Advocate.**
(for Respondents No.1 to 3)

Date of hearing : **11.05.2022.**

SAMAN RAFAT IMTIAZ, J.:- Through the instant petition, the Petitioner [Awais Shabbir] has assailed the Order dated 23.06.2021 (“**Impugned Order-I**”) whereby the application filed by the Petitioner/Defendant for dismissal of suit was dismissed by the learned Judge Family Court, West-Islamabad (“**Family Court**”). The Petitioner also assailed Order dated 29.07.2021 (“**Impugned Order-II**”) whereby the learned Family Court ordered that both minors are entitled to get Rs.20,000/- per month each as interim maintenance.

2. Facts, in brief as per the Memo of Petition, are that the Petitioner/Defendant and the Respondent No.1/Plaintiff No.1 were married on 06.10.2012. The parties were blessed with two children (Respondents/Plaintiffs No.2 and 3). The relations between the husband and wife deteriorated and Respondents No.1 to 3/Plaintiffs instituted a Suit for Dissolution of Marriage on the basis of Khulla, Recovery of Dower of Amount Rs.50,000/- and Maintenance of Minors at the rate of Rs.40,000/- per month for each Plaintiff No.2 & 3 with 10% Annual Increase. The Petitioner/Defendant filed an application for rejection of plaint on the ground that the learned Family Court lacks territorial jurisdiction which was dismissed vide Impugned Order-I. Thereafter, vide Impugned Order-II the learned Family Court decreed the suit of Respondents/Plaintiffs and dissolved the marriage on the basis of Khulla whereas interim maintenance of Respondents/Plaintiffs No.2 and 3 was fixed at the rate of Rs.20,000/- per month each which the Petitioner/Defendant shall be bound to pay on or before 14th day of each month. Feeling aggrieved, the Petitioner/Defendant filed instant Writ Petition.

3. Learned counsel for the Petitioner/Defendant, *inter alia*, contended that the Impugned Orders are against the law and facts of the case; that Respondents No.1 to 3/Plaintiffs are resident of Taxila, Rawalpindi whereas in the plaint filed before the learned Family Court, Respondents No.1 to 3/Plaintiffs claim to be residents of Islamabad and that cause of action also accrued in Islamabad; that the learned Family Court ought to have decided the question of jurisdiction as a preliminary matter; that the Respondent No.1/Plaintiff No.1 herself and through Respondents/Plaintiffs No.2 and 3 filed the suit just to extort money from the Petitioner; that the learned Family Court failed to appreciate that the Petitioner/Defendant is not in a position to pay maintenance of Respondents/Plaintiffs No.2 and 3 at the above mentioned rate; that in any case there is no legal or factual justification for the grant of maintenance allowance; that the Petitioner/Plaintiff had been maintaining both the Respondents since before the institution of suit, hence the Respondents cannot claim past maintenance; that it is an established law that maintenance for the minor children should not become the sources of undue and enrichment for the lady; that the learned Family Court failed to notice that above amount is an excessive amount as compared to the requirements of the minor children; that the learned Family Court has failed to appreciate the facts that valuable rights of the Petitioner/Defendant are involved and he will suffer an irreparable loss. Learned counsel prayed, on behalf of the Petitioner, for acceptance of the instant Writ Petition and the Impugned Orders-I and II dated 23.06.2021 and 29.07.2021 passed by the learned Family Court to be set aside.

4. On the other hand, learned counsel for Respondents No.1 to 3/Plaintiffs supported the Impugned Orders and strongly opposed the contentions raised by the learned counsel for the Petitioner/Defendant. He submitted that Respondents No. 1 and 3/Plaintiffs are presently residing in Islamabad; that the instant petition is not maintainable and is liable to be dismissed.

5. Arguments advanced by the learned counsels for the parties have been heard and record examined with their able assistance.

6. In so far as the Impugned Order-I is concerned the learned counsel for the Petitioner essentially argued that the issue of jurisdiction should have been decided as a preliminary matter and the learned Family Court erred in declining the

Petitioner's application for dismissal of suit due to lack of territorial jurisdiction vide Impugned Order-I.

7. In this regard relevant paragraph of the Impugned Order-I is reproduced herein below:

4. Perusal of plaint shows that plaintiffs permanently reside in Islamabad whereas their temporary residence is in Taxila as well. Copy of CNIC of plaintiff No. 1 which was issued to her even prior of this suit shows her permanent address in Islamabad. Her learned counsel stated that she is doing her job in Taxila. Prima facie plaintiffs successfully proved their residence in Islamabad. At this stage this application is declined. However, defendant will be at liberty to prove his case with special reference to territorial jurisdiction during evidence.

8. The relevant portion as reproduced hereinabove shows that the learned Family Court was satisfied with regard to the point of jurisdiction nevertheless allowed the Petitioner to prove his case regarding territorial jurisdiction through evidence. The discussion contained in the Impugned Order-I regarding jurisdiction shows that the dispute raised by the Petitioner was a factual one. Therefore, in the facts and circumstances of the case, the issue of territorial jurisdiction was a mixed question of law and fact which can only be resolved through evidence. Reliance is placed on *Bank of Credits and Commerce Vs. Asrar Hassan*, 2007 SCMR 852, *Zohaib Hussain Bangesh Vs. Judge Family Court*, 2011 YLR 1155 and *Messrs Taha Commodity Export Vs. Khadim Ali Shah Bukhari*, 2011 MLD 1898. Therefore, I do not see any legal defect in the Impugned Order-I that warrants interference in writ jurisdiction as the Petitioner has the right to prove the issue of jurisdiction through recording of evidence.

9. Even otherwise this Writ Petition is hit by laches as the Petitioner has filed the same on 24.09.2021 to challenge the Impugned Order-I which was passed on 23.06.2021 without any explanation for the delay of three months. In the meantime Khulla was granted with the consent of the Petitioner by the learned Family Court vide Impugned Order-II and no appeal has been filed against the same and the Petitioner is not stated to be aggrieved by the grant of khula.

10. To the extent that the Petitioner is purportedly aggrieved by the Impugned Order-II as the interim maintenance fixed thereunder is allegedly excessive, the same 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.

11. 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.

12. The Impugned Order-II 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 forum 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.

13. 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; *Minhaaj Begum Vs. Najam-us-Saqib*, 2018 CLC 506; *Mashkoor Ahmed Khokhar Vs. The Family Judge (East), Islamabad*, 2019 CLC 1635; *Muhammad Touseeq Danial Bhatti Vs. Ayesha Naeem*, 2021 MLD 337; and *Aamir Munir Puri Vs. 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. Keeping in view the above said observations by this Court in the aforementioned cases the instant petition is, therefore, not maintainable to the extent of the Impugned Order-II dated 29.07.2021.

14. Thus, in the light of above said discussion the Impugned Orders I and II dated 23.06.2021 and 29.07.2021 passed by the learned Family Court do not call for interference in writ jurisdiction. Consequently, this Writ Petition is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE