

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

Writ Petition No.227 of 2022

Imran Jameel

Versus

Mst. Najma Shaheen etc.

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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24.01.2022 Mr. Arbab Alam Abbasi Advocate:

This writ petition is arising out of order dated 10.11.2021, passed by the learned Judge Family Court, West-Islamabad, whereby interim maintenance to the tune of Rs. 12,000/- was fixed for respondent No.2.

2- The facts of the instant petition are that the petitioner and respondent No.1 got married in the year 2015 and out of their wedlock one daughter 'Manal Imran' (respondent No.2) was born in the year 2018. The respondent/plaintiff filed suit for dissolution of marriage, recovery of dowry articles, gold ornaments, delivery, medical expenditure and monthly maintenance against the petitioner/defendant.

3- The grounds agitated by the respondent No.1/plaintiff in the plaint are that the petitioner used to tease her, in-habit of using filthy language and also did not pay single penny to her; that after the marriage, petitioner proceeded to Saudi Arabia where he was working for earning his livelihood for more than ten years and that there after he did not establish any

contact with her and also failed to pay any maintenance.

4- It is further maintained that after arrival from Saudi Arabia, petitioner paid no heed to the respondents 1&2 and all expenses were born by the respondent's family member and that on 19.10.2019, petitioner thrown out the respondents from the house and they are residing with her parents since then.

5- The respondents 1&2 /plaintiffs prayed for interim maintenance to the tune of Rs.25,000/- per head per month.

6- In response to notice, petitioner/defendant entered appearance before the court and filed written statement wherein he categorically denied all the allegations levelled by the respondent/plaintiff. The learned trial court fixed the matter for pre-trial reconciliation proceedings, which ended into failure and thereafter fixed interim maintenance allowance at the rate of Rs.12,000/- per month for minor/respondent No.2 vide order dated 10.11.2021, being assailed through the instant writ petition.

7- Arguments heard. Record perused.

8- Under Section 17-A of the West Pakistan Family Courts Act, 1964 (**Act of 1964**), family court is competent to fix interim maintenance and remedy of appeal or revision against the interim order is barred in terms of Section 14 of the West Pakistan Family Courts Act 1964 which stipulates that:-

"No appeal or revision shall lie against an interim order passed by a Family Court."

9. The Act of 1964, being a special law, bars remedy of appeal or revision against interim order, therefore, when a statute specifically excludes a remedy, petition in terms of Article 199 of the Constitution cannot be held to be maintainable against the said order as it would amount to circumvent the intention of the legislature and frustrate the express provision of law.

10. This Court in the case of "Dr. Aqueel Waris v. Ibrahim Aqueel Waris" (**2020 CLC 131-Islamabad**), after surveying case law on the subject has held that *"While considering the above discussion, interlocutory orders of the Judge Family Court could not be assailed in constitutional jurisdiction, even though in some of cases they are harsh, but the determination of adequacy or inadequacy of the quantum of maintenance would certainly require factual evidence or inquiry which cannot be made in the proceedings under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, as held in 2018 CLC Note 43 (Shameneh Haider and others v. Haider Ali Khan), 2011 MLD 1105 Lahore (Aamir Mehmood Hussain v. Niha Aamir Saeed), 2015 YLR 2364 (Tahir Ayub Khan v. Miss Aalia Anwar), PLD 2012 Lahore 420 (Ibrar Hussain v. Mehwish Rana and others), and PLD 2013 Lahore 64 (Muhammad Shahbaz Khalid v. Judge Family Court Lahore)."*

11. The Hon'ble Lahore High Court in the case of "Dr. Samina Anayat v. Additional District Judge and others" (2018 MLD 448 Lahore), has held that:-

"Perusal of section 14(3) of West Pakistan Family Court Act, 1964, shows that no appeal or revision shall lie against an interim order passed by a Family Court. The Act has explicitly barred the remedy of appeal or revision against such an order, therefore, in case a constitutional petition is entertained against such an order, it will amount to circumvent the intention of the legislation and to frustrate the express provision of law. Reliance in this respect is placed upon Muhammad Anwar Khan v. Mst. Yasmin Zafar (1987 SCMR 2029), Ms. Quratulain Aleem v. Muhammad Rehman Khan and another (2006 YLR 2604) and Mst. Noor Jehan alias Tasleem Begum v. Muhammad Arshad and another (1986 CLC 442). Since the impugned order is an interlocutory order and against such an order constitution petition cannot be filed, therefore, the petition before this Court is not maintainable. The learned Additional District Judge has rightly observed in the appeal that appeal or revision against interlocutory matters is not maintainable."

12- In view of above, instant writ petition assailing interim order of the learned Judge Family Court is not maintainable. It is accordingly **dismissed in limine**.

(~~ARBAB MUHAMMAD~~ **ARBAB MUHAMMAD TAHIR**)
JUDGE

A.R.Ansari