

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

Writ Petition No. 4049 of 2021

Jamal Khan Durrani

Versus

Madina Khan and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
01.	16.11.2021	Rana Ghulam Rasool, Advocate for the petitioner.

Through the instant petition the petitioner has impugned judgments and decrees dated 22.09.2021 and 26.04.2021, passed by the learned Additional District Judge (MCAC), West-Islamabad and Judge Family Court / Guardian Judge, West-Islamabad, respectively whereby defense of the petitioner was struck off under Section 17-A of West Pakistan Family Court Act, 1964 due to non-compliance of the order dated 12.10.2020 regarding the payment of outstanding interim maintenance.

02. Brief facts of the case are that the respondent No. 1 filed suit for

restitution of conjugal rights and recovery of maintenance with the following prayer;

"In the light of above mentioned circumstances, it is, therefore, respectfully prayed that the following decrees may kindly be passed in favour of the plaintiff and against the defendant with cost:

a. A decree for restitution of conjugal rights and defendant may be directed to perform his marital and obligation.

b. A decree for recovery of past and future maintenance of plaintiff from November 2018, at Rs. 50,000/- per month till her entitlement.

Any other relief which this Honourable Court may deem fit and proper may also be granted to plaintiff".

03. Learned Judge Family Court has passed the impugned order dated

26.04.2021, in which the suit of the respondent No. 1 was decreed to the extent of maintenance allowance under Section 17-A of Family Court Act, 1964 in a manner that the petitioner shall pay an amount of Rs. 20,000/- per month as maintenance to the respondent No. 1 since November 2018 till her legal entitlement with 10% annual increase.

04. Being aggrieved, the petitioner filed an appeal against the said judgment and decree dated 26.04.2021, which was also dismissed vide impugned judgment and decree dated 22.09.2021.

05. Learned counsel for the petitioner *inter alia* contends that impugned judgments and decrees of the lower Courts are against law and facts of the case; learned Courts below have acted with material illegality and irregularity while passing the impugned judgments and decrees; the appellate Court and learned trial Court passed the

impugned judgments and decrees without considering the facts, evidence and record present on file and thus reached at wrong conclusions; learned Courts below also ignored this very important aspect of the matter that the petitioner is ready to *abad* the respondent, as she is self deserted and is residing in the house of her parents and is not ready to *abad* with the petitioner without any reason or justification; learned Courts below while passing the impugned judgments and decrees failed to apply judicial mind, hence both the judgments and decrees are liable to be set aside.

06. Arguments heard, record perused.

07. Respondent No. 1 / Madina Khan filed a suit for restitution of conjugal rights and recovery of maintenance against the petitioner on 18.02.2021, wherein she was held entitled to get interim maintenance allowance @ Rs. 20,000/- per month which was liable to be paid by the petitioner on or before

14th of each month vide order dated 12.10.2020.

08. The petitioner did not make compliance of the order dated 12.10.2020, passed by Learned Judge Family Court rather filed a review petition. Thereafter, vide order dated 07.01.2021, Learned Judge Family Court, West-Islamabad dismissed the review petition, by directing the petitioner to pay the complete maintenance allowance on the next date of hearing failing which he will be proceeded against under Section 17-A of Family Courts Act, 1964. It is further mentioned in the said order that the learned counsel for the petitioner has informed that impugned order dated 12.10.2020 has already been assailed before this Court in writ petition No. 2927/2020, copy of the petition was produced but no any injunctive order was passed by this Court, hence the review petition was dismissed and the case was adjourned for 11.02.2021 for

complete payment of maintenance allowance and for framing of issues. On 11.02.2021, lawyers were observing strike and the case was adjourned for 17.03.2021; on 17.03.2021 the case file was transferred to other Court and the case was adjourned for 19.03.2021; on 19.03.2021 the case was adjourned for 12.04.2021; on 12.04.2020, learned counsel for the petitioner stated before the Learned Judge Family Court that order dated 07.01.2021, whereby notice under Section 17-A of West Pakistan Act 1964 was given to the petitioner, has been assailed through writ petition No. 1364/2021 before this Court. Learned counsel for the petitioner has also undertaken before the Court that if order dated 07.01.2021 is not suspended by this Court, the petitioner will pay the whole outstanding interim maintenance by the next date of hearing. In the light of undertaking of learned counsel for the petitioner, the case was adjourned for

22.04.2021; on 22.04.2021, the maintenance allowance was not paid rather the learned Judge Family Court provided opportunity for reconciliation between the parties, the matter was adjourned for 26.04.2021 for payment of interim maintenance and completion of settlement; again on 26.04.2021, the petitioner did not pay the interim maintenance allowance and violated the previous order passed by Judge Family Court, hence his right of defense was struck off and the suit was decreed to the extent of the maintenance allowance in favour of respondent No. 1 and issues were framed upon rest of the claims to the extent of restitution of conjugal rights and the case was adjourned for 27.05.2021, for evidence.

09. Order dated 07.01.2021, passed by Judge Family Court, West-Islamabad reflects that earlier Writ Petition No. 2927/2021 was filed in this Court, whereby order for payment of interim

maintenance passed by learned trial Court was challenged.

10. Order dated 12.04.2021, passed by Judge Family Court / Guardian Judge, West-Islamabad reflects that another Writ Petition bearing No. 1364/2021 was filed, whereby the order dated 07.01.2021 was challenged, when confronted learned counsel for the petitioner states that both the writ petitions have been dismissed but surprisingly filing of both the writ petitions has not been mentioned in the instant writ petition, even at foot of the writ petition no note regarding filing of earlier writ petitions and their dismissal from this Court has been incorporated.

11. It is evident that the petitioner has not complied with the order passed by learned Judge Family Court, West-Islamabad. There are concurrent findings by both the learned Courts below, the petitioner has filed the instant writ petition by mis-

representation and concealment of facts.

12. In this regard reliance is placed on the cases reported as **2020 SCMR 2155, 2020 SCMR 260, 2019 SCMR 919, PLD 2018 SC 28, PLD 2007 SC 45.**

13. For what has been discussed above, both the impugned judgments and decrees dated 22.09.2021 and 26.04.2021, passed by the learned Additional District Judge (MCAC), West-Islamabad and Judge Family Court / Guardian Judge, West-Islamabad, respectively are in accordance with law and facts of the matter which do not require interference by this Court, as the petitioner has already filed two writ petitions on the subject matter but deliberately concealed the facts in the contents of instant writ petition, no certificate regarding the filing and dismissal of said writ petitions has been incorporated.

14. In view of above, instant writ petition is **dismissed in limine** being devoid of any merits with cost of **Rs. 50,000/-** (Fifty Thousand). The petitioner is directed to deposit the cost in SOS Children's Village Islamabad, near Police Academy Opposite NUST University H-11, Islamabad, within a period of fifteen (15) days and submit the deposit receipt before the Additional Registrar (Judicial) of this Court. Office is directed to put up compliance report after the period of fifteen (15) days for perusal, in case of non-compliance the petitioner will face consequence of the contempt of Court proceedings.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Bilal /-