

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

Writ Petition No.573 of 2022

Syed Mazhar Ali Shah
Versus
Syeda Nighat Sultana & 4 others

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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17.02.2022 Sardar Bilal Firdous, Advocate:

The instant writ petition is arising out of order dated 10.01.2022, passed by the learned Judge Family Court, West-Islamabad, whereby interim maintenance to the tune of Rs. 30,000/- for respondent No.2, Rs.15,000/- for respondent No.3, Rs.20,000/- for respondent No.4 and Rs.10,000/- for respondent No.1, was fixed.

2- Precisely, relevant facts are that respondents 1 to 4 filed suit for recovery of maintenance against the petitioner on 04.09.2021. The latter contested the suit by filing written statement. The learned Trial Court after hearing the parties, fixed interim maintenance in terms noted in Para-1 above. Hence, instant writ petition.

3- Learned counsel argues that the quantum of interim maintenance determined by the learned Trial Court is not only excessive but also against the financial status of the petitioner and the law on the subject. Learned counsel relied upon case laws reported as PLD 2009 SC 760, 2012 YLR 1214, 2007 MLD 41 and 1994 CLC 1216.

4- Arguments heard. Record perused.

5- 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."

6- 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.

7- 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*)."

8- 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."

9- Even otherwise, it emerges from the record that the petitioner is an Officer of BS-17 in the Federal Government while respondents 2 to 4 are studying in A-level, F.Sc and class-VI respectively. In the attending circumstances of the case, the quantum of interim maintenance as determined by the learned Trial Court, cannot be termed as excessive or that the same does not commensurate the financial status of the petitioner who, otherwise, being real father is under obligation to maintain respondent 2 to 4.

10- The case law relied upon by the learned counsel for the petitioner do not extend any help to the petitioner due to having distinct facts and circumstances.

11- 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 MUHAMAMD TAHIR)
JUDGE