

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 681 OF 2021

SYED KHURRAM ABBAS NAQVI.

Vs.

TAYYABA BATOOL, ETC.

Petitioner by : Mr. Liaquat Ali Tareen, ASC.

Respondent by: S. Shajjar Abbas Hamdani, AHC.
(Respondent Nos.1 to 4)

Date of hearing : 04.03.2021.

LUBNA SALEEM PERVEZ, J. The petitioner, Syed Khurram Abbas Naqvi, through instant writ petition has assailed order dated 07.12.2020, passed by learned Judge Family Court, East-Islamabad, (*hereinafter referred to as the Trial Court*), whereby petitioner was directed to pay interim maintenance at the rate of Rs.10,000/- per month each for three minors (total Rs. 30,000/-), till further orders.

2. Learned counsel for the Petitioner submitted that the learned Trial Court has committed a material irregularity and illegality while passing the impugned order, which is contrary to the facts and law on the subject and as such based on conjectures and surmises, is also against the norms of natural justice and the pronouncements rendered by the Hon'ble Supreme Court. It is further contended that the interim maintenance fixed by the learned Trial Court, vide impugned order is not only excessive but exaggerated, hence, liable to be set-aside. He submitted that the petitioner is a salaried person serving as Lt. Commander in Pakistan Navy, whose net salary per month is about Rs.26,000/-. He submitted that the learned Trial Court has fixed the

interim maintenance without taking into consideration his financial status and it is not possible for the petitioner to bear the interim maintenance of Rs. 10,000/- per child aggregating to Rs. 30,000/- per month. He relied on the judgment of this Court reported as *Dr. Aqueel Waris v. Ibrahim Aqueel Waris (2020 CLC 131)* and submitted that the impugned order dated 07.12.2020 is liable to be set-aside.

3. On the other hand, learned counsel for Respondent Nos. 1 to 4, vehemently opposed the submissions made on behalf of petitioner and submitted that writ petition against interim maintenance is not maintainable and in this regard placed reliance on the judgments reported as *Abrar Hussain v. Mehwish Rana (PLD 2012 Lahore 420)*, *Imran Sajid v. Mst. Sania (2016 YLR 2801)*, *Ali Adnan Dar v. Judge Family Court (PLD 2016 Lahore 73)*. He submitted that the petitioner is a Lt. Commander in Pakistan Navy and earning a handsome salary of more than one hundred thousand per month and can easily afford the expense of his children at the rate of Rs. 10,000/- per child per month as he was bearing the same expenses during subsistence of marriage. Learned counsel, therefore, prayed for the dismissal of instant petition.

4. Arguments heard. Record perused.

5. The learned Trial Court, vide impugned order dated 07.12.2020 has fixed interim maintenance for three minor children of the petitioner, which he has assailed herein by invoking the constitutional jurisdiction of this court under Article 199(1)(a)(ii) of the Constitution of Pakistan, 1973, as a writ of certiorari and has prayed for setting-aside of the impugned interim order, whereby, the learned Trial Court has passed order in terms of section 17-A of the Family Court Act, 1964 (*hereinafter referred to as the Act, 1964*) which provision empowers the learned Family Court to fix a provisional

monthly maintenance keeping in view the income of the father during the proceedings in the suit of maintenance till its decision. The purpose of this section appears to be that the minors who are dependent and are the responsibility of the father should be saved from facing monetary difficulties and may be able to manage the routine necessary expenditures till the trial in the suit for maintenance is finalized, as such, the findings of the learned Family Court in the impugned order are only tentative in nature and not final. Whereas, proper quantum of the maintenance allowance is fixed by the learned Family Court, after recording of evidence as the issue of final maintenance requires probe into the facts regarding financial status and source of income and the High Courts should refrain from involving in determination of facts, being beyond the scope of Article 199 (1)(a)(ii) of the Constitution, 1973, for the reason that such jurisdiction is exercised only against the act done or proceedings taken by the functionary which are without lawful authority and of no legal effect. Guidance in this regard has been sought from the case law reported as *Ghulam Muhammad and another versus Mst. Noor Bibi and others (1980 SCMR 933)*, *Benedict F.D Souza versus Karachi Building Control Authority and others (1989 SCMR 918)* and *Federation of Pakistan and others versus Major (Retd.) Muhammad Sabir Khan (PLD 1991 SC 476)*.

6. Section 14 of the Act, 1964, provides for an appeal against the orders passed by learned Family Court. Sub-section (3) has been inserted in section 14 of the Act, vide Ordinance LV of 2002 which prohibits filing of appeal or revision against interim orders passed by the learned Family Court. Therefore, interference by this Court, exercising discretionary jurisdiction under Article 199 of the Constitution, against interim orders passed by the learned Family Court would defeat the purpose of insertion of sub-section (3) of section 14 of the Act, 1964. In view thereof, I am of the considered opinion that the learned Family Court has lawfully exercised its jurisdiction

under section 17-A of the Act, 1964 for fixing interim maintenance for the minors, as such, no illegality has been committed by the learned Judge while passing impugned order dated 07.12.2020.

7. For what has been discussed above, the instant petition is held to be without any substance and is hereby, **dismissed**. However, the Family Court is directed to conclude the trial and finalize the suit within a period of thirty days from the date of receipt of this order.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on this ____ day of March, 2021.

JUDGE

Adnan