

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT).**

**Writ Petition No. 771 of 2021**

Muhammad Afzal Sheikh

***Versus***

Learned Additional District Judge, West-Islamabad and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(06)	16.12.2021	Raja Irsalan Ibrar, Advocate for the petitioner. Mr. Muhammad Ali Imran, Advocate for the respondent No. 3.

Through the instant writ petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed judgments and decrees dated 07.01.2021 and 13.01.2020, passed by learned Additional District Judge (MCAC), West-Islamabad and learned Judge Family Court, West-Islamabad, respectively, whereby family suit filed by respondent No.3 was partially decreed and appeal was dismissed.

02. Succinctly stated, the facts mentioned in the writ petition are that petitioner solemnized marriage with mother of

respondent No. 3 on 17.05.1996, according to the Muslim Rites and Ceremonies. From the wedlock one daughter namely Miryam Noor was born on 25.03.1997 and son / respondent No. 3 was born on 13.08.1999. Unfortunately, the matrimonial tie could not succeed and resulted in dissolution of marriage, custody of minors was given to their real mother, thereafter mother of the minors filed suit for maintenance, which was decreed and Rs. 1200/- monthly maintenance of each minor was fixed, since then petitioner has been paying the maintenance regularly.

03. In the month of August 2017, respondent No. 3 attained majority and the petitioner has stopped to pay him maintenance. Consequently, respondent No 3 on 19.04.2018, filed a suit in his personal capacity and claimed educational maintenance upto Rs. 25000/-, per month.

04. Suit was contested, issues were framed and learned Judge Family Court after recording evidence of both the parties partially decreed the suit in favour of

respondent No. 3 by awarding Rs. 10,000/- past and future maintenance w.e.f. September, 2017 till January, 2022 with 10% annual increase.

05. The petitioner assailed the judgment and decree dated 13.01.2020, passed by learned Judge Family Court, West-Islamabad before learned Additional District Judge (MCAC), West-Islamabad, the appeal was also dismissed on 07.01.2021, hence the instant petition.

06. Learned counsel for the petitioner, *inter alia*, contends that the impugned judgments and decrees of both the learned Courts below are against law and facts of the case; respondent No. 3 (real son of the petitioner) is absolutely not entitled to seek maintenance allowance from the petitioner; learned Trial Court as well as learned Appellate Court did not consider the fact that petitioner is an aged person and due to bad health condition cannot work or job; both the impugned judgments and decrees of learned lower Courts are against settled law,

hence not sustainable in the eyes of law and same are liable to be set aside.

07. Learned counsel for the respondent No. 3 has controverted the arguments advanced by learned counsel for the petitioner and stated that impugned judgments and decrees were passed in accordance with law; the petitioner / father of respondent No. 3 is bound to pay the maintenance / education charges; second appeal is not provided in the Muslim Family Laws, hence instant writ petition is liable to be dismissed.

08. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondent No. 3 have been heard and record has been perused with their able assistance.

09. It is categorically mentioned in impugned judgment and decree dated 13.01.2020, that respondent No. 3 was held entitled to get Rs. 10,000/- per month from the petitioner since September, 2017 "till January, 2022" with 10% annual increase.

10. Today is 16.12.2021, and after about one month, entitlement of the respondent No. 3, to get / receive maintenance will be expired. So, no prejudice / loss will be caused to the petitioner for paying the maintenance allowance only for the month of January, 2022 to his real son.

11. Learned counsel for the petitioner has failed to point out any illegality in the impugned judgments and decrees. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the

findings of facts reached by the inferior Court or a tribunal. In this regard, reliance is placed upon the cases titled as **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155), President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260), Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919), Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28) and Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).**

12. For what has been discussed above, impugned judgments and decrees dated 07.01.2021 and 13.01.2020, passed by learned Additional District Judge (MCAC), West-Islamabad and learned Judge Family Court, West-Islamabad, respectively, are in accordance with law and facts of the matter, hence do not require any interference by this Court.

13. In view of above prospective, the instant writ petition has no merits and the same is **dismissed** with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Bilal /-*