

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

**Writ Petition No. 4511 of 2022.**

**TEHSEEN AHMED.**

**Vs.**

**LEARNED FAMILY JUDGE, WEST-ISLAMABAD, ETC.**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	<b>02.12.2022</b>	<b>Khawaja Sajjad Ahmad, Advocate for the Petitioner.</b>

The Petitioner, by way of the instant Petition, has assailed the Order dated 07.09.2022 (**Impugned Order I**), passed by the learned Guardian Court/Civil Judge 1<sup>st</sup> Class, Islamabad-West (**“Trial Court”**) whereby the Petitioner’s objection regarding return of the plaint on the basis of jurisdiction has been turned down as well as Order dated 12.11.2022 (**“Impugned Order II”**) passed by the learned Trial Court through which the interim maintenance of the Minor/Respondent No.3 has been fixed at the rate of Rs.7,000/- per month.

2. Brief facts as per the memo of petition are that the parties were married on 20.02.2017 and were blessed with Respondent No. 3 (Minor) on 06.03.2020. Thereafter the relations between the spouses became strained and finally divorce was pronounced by the Petitioner to the Respondent No.1 on 07.11.2020. The Petitioner filed an application for visitation rights with the Minor / Respondent No.3 before the learned Family Court Mansehra on 09.05.2022. Subsequently the Respondents No. 2 & 3 filed Suit for Recovery of Outstanding Dower Amount of Rs. 150,000/- and Recovery of Maintenance of Iddat Period at the

rate of Rs. 15,000/- per month and Maintenance of Minor/Respondent No.3 at the Rate of Rupees 10,000/- per month on 21.05.2022 before the learned Family Court, Islamabad-West. The Petitioner filed written reply to the same with preliminary objection regarding the assumption of jurisdiction by the learned Family Court in Islamabad by stating that suit for visitation of Minor/Respondent No.3 is already pending in Mansehra and as such suit in Islamabad for Recovery of Outstanding Dower Amount of Rs. 150,000/- and Recovery of Maintenance of Iddat Period at the rate of Rs. 15,000/- per month and Maintenance of Minor/Respondent No.3 at the Rate of Rupees 10,000/- per month cannot proceed. The learned Family Court, Islamabad turned down the Petitioner's objection vide the Impugned Order I and fixed the interim maintenance of the Minor/Respondent No.3 as Rs. 7,000/- per month vide the Impugned Order II. Hence, instant petition.

3. The learned counsel for the Petitioner conceded that according to Rule 6 of the West Pakistan Family Court Rules, 1965 suit for maintenance has to be filed where the mother ordinarily resides, however, in the instant case suit for visitation rights of the Minor/Respondent No.3 is already pending in Mansehra and further that in such suit Respondent No.2 has entered appearance wherein her address has been shown as Mansehra therefore, her claim of residence in Islamabad in the aforementioned suit filed by her is wrongful and mala fide.

4. I have heard the learned counsel for the Petitioner at length and have also perused the available record including the Impugned Orders.

5. The Petitioner has not disputed the right of the Respondent No.3 to file Suit for Recovery of Dower and Maintenance where she ordinarily resides. The only contention is that she is not a resident of Islamabad which according to the learned counsel for the Petitioner is evident from the fact that she entered appearance in the suit filed in Mansehra in which her address was given as of Mansehra and no objection to jurisdiction has been raised by her in such proceedings. In my opinion the fact that she has entered appearance in Mansehra does not by itself negate her residence in Islamabad. The matter of residence is a factual dispute which cannot be adjudicated upon in exercise of the Constitutional Jurisdiction by this Court as it requires recording of evidence for which purpose the correct forum is the learned Family Court, Islamabad.

6. The Impugned Order is merely an interlocutory order regarding a preliminary objection whereby jurisdiction has been challenged. It does not preclude the Petitioner from demonstrating that the Court does not have jurisdiction at the time of recording of evidence. As such, the Petitioner has an alternate adequate remedy available at law. Even otherwise, no appeal can be entertained against an interlocutory order by virtue of Section 14 of the Family Courts Act, 1964 and, therefore, this court has refused to exercise the discretionary relief in exercise of constitutional jurisdiction in a number of cases.

7. The Impugned Order II whereby maintenance of the Minor/Respondents No. 3 was fixed has been passed in pursuance of Section 17-A of the West Pakistan Family Courts Act, 1964, where under the Family Court has the jurisdiction to pass interim order for maintenance at any stage of the proceedings in a suit for maintenance. The purpose behind the provision of interim maintenance is to ensure that during the pendency of the legal proceedings, the minors are not faced with financial challenges.

8. Section 14 (3) of the West Pakistan Family Courts Act, 1964, bars an appeal or revision against an interim order passed by a Family Court with the obvious purpose to avoid delays.

9. The interim maintenance fixed is only temporary. The quantum of maintenance may be modified after appraising the evidence produced at trial. An aggrieved party will have a right to agitate his grievance before the appellate Court when the interim order merges into a final order. Even otherwise, quantum of interim maintenance as well as the alleged erroneous determination of such amount constitute factual disputes, which cannot be made grounds for invoking the Constitutional jurisdiction of this Court.

10. I am guided by the consistent view taken by different Honorable Benches of the Islamabad High Court, Islamabad in various matters including the reported cases of *Dr. Aqueel Waris Vs. Ibrahim Aqueel Waris*, 2020 CLC 131; *Minhaaj Saqib Vs. Najam Us Saqib*, 2018 CLC 506; *Mashkoor Ahmed Khokhar versus The Family Judge (East), Islamabad*, 2019 CLC 1635;

*Muhammad Touseeq Danial Bhatti versus Ayesha Naeem*, 2021 MLD 337; and *Aamir Munir Puri versus Mst. Saima Naeem*, 2021 YLR 2166, wherein it has been held that interlocutory orders by the Family Court cannot be assailed in Constitutional jurisdiction even though they may be harsh in some instances.

11. Consequently, this Writ Petition is hereby **dismissed in limine**.

(SAMAN RAFAT IMTIAZ)  
JUDGE