

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

Writ Petition No.2655 of 2022.

Malik Sajid Mehmood
Vs.
Shazia Shaheen and 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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(1)	15.07.2022	Raja Muhammad Nazeer, Advocate for the Petitioner.
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The learned counsel for the Petitioner, by way of the instant Petition, assailed the Order dated 14.03.2022 through which the Petitioner's right of defense has been struck off and Respondents' suit to the extent of the minors' (Respondents No. 2 to 5) maintenance has been decreed at the rate of Rs.15,000/- each per month from the date of institution of the suit till their legal entitlement with 10% annual increase.

2. Brief facts of the matter are that the Respondents No.1 to 5 filed a suit for the Recovery of the Maintenance Allowance, Dowry Article and Gold Ornaments before the Family Judge, West-Islamabad on 27.7.2021, wherein the Petitioner appeared through Special Attorney and submitted his written statement on 02.11.2021. The matter was fixed for pretrial proceedings, which failed on 15.11.2021 and on such date interim maintenance of the Respondents No.2 to 5 was fixed at Rs.10,000/- each and issues were framed for the rest of the controversies. On 05.01.2022 the Respondent No. 1 submitted her affidavit-in-evidence and the case was adjourned for cross examination of the witnesses but later on the case was transferred, therefore, neither witnesses could be cross examined nor interim maintenance could

be paid on the said date. After the transfer of the case the matter was adjourned for 14.03.2022 for cross examination and the final opportunity for the payment of the interim maintenance was given to the Petitioner. On the said date counsel for the Petitioner was not present at Islamabad and the Attorney of the Petition paid maintenance amount of Rs.15,000/- early in the morning to the Respondent No.1 against issuance of receipt signed by Respondent No.1 which she did not show to the learned Family Court and as a result the Court not only decreed the Respondents' suit to the extent of maintenance of the Respondents No.2 to 5 at the rate of Rs.15,000/- each but also struck off the Petitioner's right of defense on 14.03.2022.

3. Learned counsel for the Petitioner submitted that the Petitioner resides abroad and entered appearance through attorney before the learned Family Court. He submitted that the said attorney was not able to pursue the case properly and was not able to satisfy the learned Family court that interim maintenance has been fully paid by the Petitioner as fixed vide order dated 15.11.2021.

4. Arguments heard. Record perused.

5. Learned counsel for the Petitioner drew the attention of this Court to the order sheet dated 08.12.2021 and 05.01.2022, whereby payment of Rs.20,000/- by the Petitioner on each date has been recorded as well as receipt issued by Respondent No.1 confirming payment of Rs.15,000/- on 16.05.2022. However, even the aggregate of the amounts mentioned in such orders and receipt do not equal the amount that should have been paid in pursuance of order dated 15.11.2021 whereby interim maintenance was fixed. Moreover, the

receipt issued by the Respondent No.1 is dated after the Impugned Order and the amount received does not cover the arrears.

6. It is also noted that the Petitioner was repeatedly given notice under Section 17A of the Family Courts Act, 1964 due to short payment of interim maintenance and last opportunity was given on 25-02-2022 to pay the interim maintenance with the caution that non-compliance would entail the consequences under Section 17A despite which the Petitioner did not comply with order for payment of interim maintenance for the minor Respondents which is not only his statutory obligation but also his religious and moral duty as father.

6. In the case of *Muhammad Sajid Vs. Judge Family Court*, 2020 CLC 1524, the Honorable Lahore High Court observed as follows:

“7. The use of the word "shall" in the amended Section 17-A of the Act whereby the word "may" has been replaced, clarifies the intention of the legislation that in case of non-compliance of order for payment of interim maintenance allowance within time fixed by the law, not only the defence is to be struck off but as a consequence thereof, the suit is to be decreed; therefore, the said provision is to be treated as mandatory in nature on the basis of the principles laid down in The Collector of Sales Tax, Gujranwala v. Super Asia Muhammad Din & Sons (2017 SCMR 1427), of course, subject to certain exceptions to be decided on case to case basis, whereas no such exception has been pointed out by the petitioner.

8. It is settled by now that where the law requires the thing to be done in a particular manner it should be done in that manner alone and such dictate of law cannot be termed as a mere technicality and would be non-compliance of the legislative intent. Reliance in this behalf is placed on Mst. Shahida Bibi and others v. Habib Bank Ltd. and others (PLD 2016 SC 995) and Zia ur Rehman v. Syed Ahmad Hassan (2014 SCMR 1015); therefore, by non-compliance of making payment within time as required by the law, the default had been committed and the court below was justified to strike off the defence of the petitioner and has rightly decreed the suit.”

7. In view of the foregoing, the learned Family Court correctly passed the Impugned Order in accordance with Section 17A of the Family Courts Act, 1964. At this point the learned counsel requested that the instant petition may be allowed as the Petitioner is ready and willing to deposit all the arrears and sought the indulgence of this Court.

8. Firstly, it is noted that no illegality or lack of jurisdiction or misreading/non-reading of evidence has been pointed out by the learned counsel for the Petitioner warranting interference of this Court in exercise of its Constitutional jurisdiction. Moreover, the Impugned Order was passed on 14.03.2022, however, admittedly only Rs.15,000/- has been paid by the Petitioner to the Respondent No.1 since the passage of the Impugned Order, which was four months prior to the instant petition. Such conduct certainly does not show the bonafide of the Petitioner which would compel this Court to exercise the discretionary jurisdiction of this Court in his favour. Moreover, the remedy of appeal which was available to him under the law has not been availed by the Petitioner.

9. For all the foregoing reasons, instant petition is **dismissed in limine**.

(SAMAN RAFAT IMTIAZ)
JUDGE