

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

Writ Petition No. 84 of 2021  
Isbah Rashid, etc.  
Versus  
Additional District Judge, Islamabad-West, etc.

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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13.01.2021    Mr. Mudassir Latif Abbasi, Advocate for petitioners.

Through the instant writ petition, petitioners impugn orders dated 15.12.2020 and 23.12.2020, passed by the learned Judge Family Court-III, and learned Additional District Judge, Islamabad-West respectively whereby respondent No.3/father was allowed to meet his minor daughter Ayesha Noor/ petitioner No.2 for half an hour once in a month while appeal against the order-in-original was dismissed being not maintainable.

2.     Facts, essential for adjudication of instant writ petition are that petitioners filed suit for recovery of dower, dowry articles and maintenance allowance wherein on 15.12.2020, on the request of respondent No.3/defendant, the learned Family Court fixed a meeting schedule in terms noted in Para-1 above. Being dissatisfied with the said schedule, petitioners filed an appeal but the same was dismissed being not maintainable, hence instant writ petition.

3. According to the learned counsel, the learned court of first instance travelled beyond the jurisdiction vested in it by fixing meeting schedule as the */is* pending is with regard to recovery of maintenance allowance and not a guardian petition; that respondent No.3 has already filed a guardian petition before the learned Guardian Judge at Rawalpindi where he can ask for the relief sought and that the respondent No.3 is chronic patient of skin disease and his exposure may cause irreparable injury to the health of minor, therefore, impugned orders are liable to be set aside.

4. Heard, record perused.

5. The jurisdiction and competence of learned Judge Family Court cannot be read in isolation, for the reason that the learned Family Court retains jurisdiction to adjudicate upon the matters contained in first schedule of the West Pakistan Family Courts Act, 1964 (**'Act of 1964'**), that includes "**custody of children**" against serial No.5 with addition of "**and the visitation rights of parents to meet them**" inserted vide Ordinance LV of 2002. The objection that the Family Court does not retain jurisdiction to pass the order impugned is misconceived, hence repelled.

6. The impugned order, on the face of it, is an interim order. It was so observed by the learned Appellate Court vide order dated

23.12.2020 by referring Section 14 (3) of the Act of 1964 which reads as under:-

***"No appeal or revision shall lie against an interim order passed by a Family Court."***

7. The Act of 1964, being a special law, explicitly 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. In "**Dr. Samina Anayat v. Additional District Judge and others**" (2018 MLD 448 Lahore), the Hon'ble Lahore High Court was of the view 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."*

8. Another important aspect of the matter is that the respondent No.3 is real father and, therefore, cannot be restrained to have meeting with his daughter. The apprehension of the petitioners that the respondent No.3 may cause any danger to the health of the minor was also addressed by the learned Family Court in terms that the respondent No.3 was allowed to meet the minor once in a month and that too for just half an hour with further restriction to observe social distancing and other preventive measures/ SOPs.

9. There can be no second opinion that like mother, father shall have equal right to see his minor children. The right so bestowed upon the father cannot be taken away. If a mother retains apprehension of catching any disease by the minor, it cannot be presumed that a father would not think alike and can also not be expected even by this Court with further expectation that the father would make every endeavor to protect and preserve the health of his minor daughter. In no way, a father can be restrained to meet his daughter on the excuse, being pressed into service, as it would not only be considered illegal but unethical and oppressive to the right of a father.

10. In view of above, it is held that the instant writ petition is not maintainable and also lacks merits, consequently, it is **dismissed in limine.**

**(FIAZ AHMAD ANJUM JANDRAN)**  
**JUDGE**

Imran

Approved for reporting.