

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.1780 of 2020

M. Touseeq Danial Bhatti

Vs

Ayesha Naeem & others

Date of Hearing: 17.08.2020

Petitioner By: Mr. Muhammad Saqib Bhatti
Advocate.

Respondents By: Ms. Saima Uzman Chatha
Advocate.

Ghulam Azam Qambrani, J: Through this petition, the petitioner has invoked the jurisdiction of this Court filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;-

“ It is, therefore, respectfully prayed that impugned order dated 02.03.2020 passed by learned Judge Family Court may please be set aside in the best interests of justice.

Any other relief which this Hon'ble Court deems fit and just also be awarded in favour of the petitioner.”

2. Briefly stated facts of the instant petition are that the respondents filed a suit for recovery of maintenance of respondent No.2/minor at the rate of Rs. 84,000/- per month stating therein that the petitioner is running the business of restaurant in the name and style of “Bhatti Snack Bar” at Rose & Jasmine Garden, Islamabad and he is earning Rs. 5,00,000/- per month and he can easily pay the claimed maintenance of the minor. It has been further averred in the plaint that the minor is school going. Her school fee, transportation, medical, food, clothing and other expenses are more than Rs.89,590/- per month. The

petitioner /defendant contested the suit on factual as well as on legal grounds by filing written statement and stating therein that “ Bhatti Snack Bar” is not a restaurant, rather the same is a “Khokha” which is sole ownership of petitioner’s disabled elder brother namely Muhammad Taufeeq Umar; that he is a jobless person and has no source of income; that he just helps his brother and he can only pay Rs.5000/- per month to the minor as maintenance allowance.

3. The learned Trial Court after hearing the parties tentatively made an assessment and fixed an amount of Rs.20,000/- per month as interim maintenance allowance for the minor vide order dated 02.03.2020. Feeling aggrieved, the petitioner has filed instant petition.

4. Learned counsel for the petitioner has contended that the impugned order has been passed without any reasoning, therefore, the same is hit by Section 24 of the General Clauses Act; that the learned Trial Court without any evidence just on the pleading of the respondent/ plaintiff has fixed the maintenance allowance at the rate of Rs.20,000/- per month whereas this amount is not possible from his insufficient source of income. Next contended that the petitioner is dependent upon his disabled brother, who is running the “Khokha” for his livelihood and his elder brother is also paying monthly Rs.5000/- for the minor. Lastly prayed for acceptance of writ petition and for reduction in maintenance allowance.

5. Conversely, learned counsel for the respondent has opposed the contention raised by the learned counsel for the petitioner contending that no maintenance has been deposited by the petitioner for the minor. The minor is school going. The learned Trial Court has rightly assessed the monthly maintenance at the rate of Rs.20,000/- per month and urged for dismissal of the instant petition.

6. I have heard the arguments of learned counsel for the parties and have perused the material available on record.

7. Perusal of the record reveals that the respondent has filed a suit for maintenance of the minor, who is in the custody of respondent No.1. The learned Trial Court on submission of written statement, has assessed an amount of Rs.20,000/- per month for the financial needs of the minor, as interim maintenance allowance.

8. The learned Judge, Family Court, had passed the impugned order in terms of the provisions of Section 17-A of the West Pakistan Family Courts Act, 1964, which was added to the West Pakistan Family Courts Act, 1964 vide Ordinance No.IV of 2002. Under Section 17-A *ibid*, a Family Court has the jurisdiction to pass an interim order for maintenance at any stage of the proceedings in a suit for maintenance. Where such interim maintenance is fixed, payment is required to be made on the fourteenth day of each month failing which the Family Court is empowered to strike off the defense of the defendant and decree the suit.

9. The purpose behind the provision of interim maintenance is to ensure that during the pendency of the suit before the learned Judge Family Court, financial constraints faced by the minors are ameliorated.

10. The stance taken by the petitioner in his petition did not persuade me to interfere in the impugned order, which is interim in nature. The petitioner, who is the father of the minor, cannot expect her mother to keep her and also to pay all her expenses. However, the petitioner is under a legal as well as a moral obligation to maintain and support his children, more so when they are minors.

11. In this regard, I am fortified by the law laid down in the case of **Syeda Farhat Jehan v. Syed Iqbal Hussain Rizvi** (2010 YLR 3275) wherein it has been held as under:-

“The right of maintenance is natural right of minor children and their father could not be allowed under any circumstance to be negligent about the same. Furthermore, it was held that it was the legal and moral duty of a father as the natural guardian of his minor children to keep maintaining them. No excuse, big or small could absolve a father from his duty of maintaining his minor as guardian through the divine relation of Almighty Allah.”

12. Perusal of the record reveals that the impugned order passed by the learned Judge Family Court, is only an interlocutory order. The maintenance fixed through such an interim order is only temporary. As and when, the final order is passed the amount fixed by the learned Judge, Family Court, may be modified and revisited in that the quantum

of maintenance can be increased or decreased after appraising, evaluating and examining the evidence produced by the both the parties. The impugned order fixing the interim maintenance of Rs.20,000/- per month for the minor child of the petitioner is not the kind of an order that warrants interference in the constitutional jurisdiction of this Court. In the cases of **Munir Alam v. Civil Judge, Family Court, Lahore** (2009 CLC 442), **Abrar Hussain. v. Mehwish Rana** (PLD 2012 Lahore 420) and **Shahid Ali Gil v. Mst. Ruqayya Bano** (2015 MLD 265), the Hon'ble' High Courts have dismissed Writ Petitions against orders fixing interim maintenance. Furthermore, in the case of **Ali Adnan Dar v. Judge, Family Court** (PLD 2016 Lahore 73), the Hon'ble Lahore High Court did not entertain a Writ Petition against an interim order under Section 17-A of the West Pakistan Family Courts Act, 1964 fixing an amount to be paid as an interim maintenance. The said judgment enumerates the following guidelines to be followed in matters regarding interim maintenance:-

I. Maintenance allowance is indispensable right of the mother and children, so the order for grant of maintenance allowance must be passed at a "convenient stage" of the proceedings.

II. Although section 17-A of the ibid Act empowers Family Court to pass an order for grant of interim maintenance allowance at any stage of the proceedings, in the normality of the circumstances, it must be passed after hearing "both of the parties" unless the attitude and conduct of the defendant/father is evasive.

III. The order for grant of interim maintenance is made on the basis of tentative assessment of the material available on file and keeping in view the social status of the parties. Further, both the above, material available and social status, should be mentioned in the order for the grant of interim maintenance. Further the quantum of interim maintenance should be "bare minimum" to meet the day to day needs of the recipient in the narrow context.

IV. Although the family laws have been enacted to promote, protect and advance the rights of women and children yet at the interim stage, the version of the respondent/defendant be given a sympathetic or somewhat preferable consideration because, non-payment of interim maintenance allowance will cut throat of his invaluable right i.e. "right to defence" and in

consequential effects, children/women would be the losing and deprived parties.

V. Further, if the case is not decided within the statutory period as given in Section 12-A of the West Pakistan Family Courts Act, 1964 either party may apply to the High Court for appropriate direction. However, the order for grant of interim maintenance shall hold the field unless reviewed by High Court under section 12-A or Family Court itself reviews it at any stage as observed below.

VI. Family Court, according to section 12-A" of the West Pakistan Family Courts Act, 1964, is under legislative direction to decide the case within six months. Although this provision is directive as no penalty/consequences are mentioned for non-compliance and in this regard reference is made to (2001 SCMR 1001). But in case the matter is not decided within six months and the delay is due to the plaintiff party, then Family Court either on its own motion or on the application of the defendant/father review its earlier order for grant of interim maintenance allowance."

In the case reported as **Mohtarma Benazir Bhutto Vs. The State** (1999 SCMR 1447), it has been held as under:-

"Orders at interlocutory stages should not be brought to higher courts to obtain pragmatic orders as it intends to harm the advancement of fair trial, curtailing remedies under the law, and even reducing the right of appeal."

13. One of the grounds taken by the petitioner in his writ petition is that he is dependent upon his disabled brother, who is running a "Khokha" for his livelihood and his elder brother is also paying monthly Rs.5000/- for the minor whereas stance of the respondent is that the petitioner is running the business of restaurant in the name and style of "Bhatti Snack Bar" at Rose & Jasmine Garden, Islamabad and he is earning Rs.5,00,000/- per month. By taking this ground petitioner has raised a factual dispute, which cannot be resolved without the recording of evidence. On account of this factual controversy, the instant petition is not maintainable. Reliance in this regard is placed upon the cases reported as "**Col. Shah Sadiq Vs. Muhammad Ashiq and others**" (2006 SCMR 276), "**Muhammad Saleem Bhatti Vs. Syed Safdar Ali Rizvi and 2 others**" (2006 SCMR 1957) and "**Muhammad Shahbaz Khalid Vs. Judge Family Court, Lahore**" (PLD 2013 Lahore 64).

14. 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. The filing of Writ Petitions against interim orders passed by the Family Courts is to be discouraged because an aggrieved party will have a right to agitate his grievance before the appellate Court when the interim order merges into a final order. The West Pakistan Family Courts Act, 1964, being a special law barring a right of appeal or revision against an interim maintenance order, a writ petition against an order under Section 17-A of the said Act, would be maintainable only and only if such an interim order is coram non judice, wholly without jurisdiction or based on mala fides. The quantum of the interim maintenance cannot be made a ground for invoking the constitutional jurisdiction of this Court.

15. Keeping in view the above facts and circumstances, it can safely be held that the father should not be punished by way of interim maintenance allowance order so that he would not be able to pay the maintenance and resulted into consequences provided in Section 17-A of the Family Courts Act, 1964, therefore, it is the imperative duty of the Family Court to adopt a pragmatic approach and fix the interim maintenance on the following principles:

- i. Financial status of father shall be kept in view, which should be based upon salary slips, bank statements, income tax record, and business income reflected on record or through any other documentary proof placed by either side in the Court.
- ii. Interim maintenance should be fixed not on hard and fast principles, rather based upon a tentative view.
- iii. Maintenance should not be fixed on a higher side, which may result into technical knockout of the father so that he could not able to pay the interim maintenance, therefore, his option should also be considered for payment of interim maintenance, which he agrees to pay before the Family Court.
- iv. In cases, where father has not explained his monthly income or his financial status in the pleadings, rather concealed his income, the

Family Court can rely upon the facts narrated in plaint or on the basis of attached documents vis-a-vis the needs of minor and the verbal stance given by father without reference to his written statement will not be considered justified, hence the Family Court shall exercise discretion to fix the interim maintenance while applying the above principles.

- v. In cases, where determination of adequacy or inadequacy of quantum of maintenance requires factual inquiry and evidence in trial, the maintenance should be fixed after consultation with the father and mother as well as keeping in view the day-to-day requirements of minor.
- vi. The needs of minor should be considered on the basis of social stratification of family in which minor has been brought up.
- vii. The financial status of father could also be considered on the basis of facts narrated in pleadings of the parties, which includes the living standard and previous matrimonial life of the parties in which the mother/wife has been provided with particular kind of living, housing facilities, transportation, gifts, immovable properties of husband and the lifestyle in which husband/father was living prior to separation or divorce or before the institution of suit for maintenance.
- viii. In cases, where father being civil servant or employee of any organization, department or company has not appended his salary slips or bank statements, the Family Court shall ask for an undertaking or affidavit regarding his salary and thereafter shall fix the interim maintenance, however after the trial of the case, if the court comes to the conclusion that at the time of fixation of interim maintenance allowance the father/husband has stated a fact beyond his pleadings or undertaking, which is found to be false, such father be burdened with heavy costs and action of perjury may also be initiated against him.
- ix. The Family Court may also call the employer of father, HR department, admin department, bank managers, land revenue department, tax record, and banking details as well as salary details of the father directly from the relevant offices while deciding the question of interim maintenance for a prima facie view to fix the allowance in favour of minor so that no inadequacy is attributed while fixing the maintenance allowance.”

16. Keeping in view the above principles, when the petitioner/father has taken the plea that he is dependent upon his disabled brother, who is running a “Khokha” for his livelihood and his elder brother is also paying monthly Rs.5000/- for the minor, he could not pay the interim maintenance allowance of Rs.20,000/- per month to the minor, which *prima facie*, seems to be exorbitant at this stage, but this Court, in constitutional jurisdiction, is not able to determine this factual aspect of adequacy or inadequacy of the interim maintenance allowance on the basis of principles laid down by the superior Courts, where such order could not be assailed in constitutional jurisdiction. Perusal of record reveals that the suit before the learned Trial Court was filed on 14.09.2019 and the same has not been concluded within a period of six months as prescribed by Section 12-A of the West Pakistan Family Court Act, 1964, therefore, in order to meet ends of justice, the Judge Family Court is directed to decide the suit for recovery of maintenance, filed by respondents No.1 & 2, preferably within a period of two months so that the father/petitioner could only be burdened with the interim maintenance for two months only, which would subsequently be merged into final judgment.

17. In view of what has been discussed above, this petition is hereby dismissed with the direction to the Judge Family Court seized with the matter to conclude the suit within two months after receipt of this order.

18. The observations hereinabove are tentative in nature and shall not prejudice the case of the parties at the time of final adjudication of the case.

Ghulam Azam Qambrani
Judge

Announced in Open Court, on this 25th day of August, 2020.

Judge

S.Akhtar

Approved for reporting

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