

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

Writ Petition No.676 of 2021  
Muhammad Ameen  
Versus  
Mst. ShaziaSaleem, 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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29.03.2021	Ch. WajidHussain, Advocate for petitioner, Ch. Bilal Yousaf, Advocate for respondents 1 to 5.
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Through instant writ petition, petitioner impugns order dated 27.01.2021, passed by the learned Senior Civil Judge-II/Judge Family Court, Islamabad-East, which reads as under:-

*" RanaAamir Sultan Advocate filed his WN for D.2. He also cross-examined the PWs.*

*Regarding payment of interim maintenance to the minor as directed vide order dated 22.12.2021, he contended that in this order only D.1 was directed to pay interim maintenance and there was no order regarding payment of maintenance to the D.2. It may be observed that D.2 is paternal grandfather of the minors and is equally responsible to maintain the minors as the D.1. It is, therefore, ordered that D.2 shall pay the interim maintenance to the minors in case of failure by D.1 to maintain his children. As such, D.2 is also directed to clear all outstanding amount of maintenance by next date before making further proceedings in the case.*

*Adj. to 16-02-2021 for evidence of def. No.2."*

2. Essential and relevant facts for adjudication of instant writ petition are that respondents 1 to 5 filed suit for recovery of maintenance and dowry articles besides gold ornaments against Muhammad Ameen and petitioner (*father & grandfather of respondents 2 to 5*). Said Muhammad Ameen, arrayed as defendant No.1, was proceeded against ex-parte while petitioner contested the suit by filing written statement. The learned Trial Court framed necessary issues and then passed the order, being impugned through instant writ petition.

3. Learned counsel for the petitioner contends that monthly income of the petitioner is just Rs.11000/- per month in terms of his pension, while he owns only five marla land; that actually sons of the petitioner owns four houses and name of the petitioner is only meant for connection of utility meters, therefore, impugned order is liable to be set aside. Learned counsel placed reliance upon case laws reported as **PLD 2012 Lahore 445 and 2020 CLC 131 (Islamabad)**.

4. On the other hand, learned counsel for respondents 2 to 5 argued that petitioner and his sons are running a joint business; that their monthly income is about Rs.1,70,000/- and that a vague stance has been taken just to avoid liability, therefore, petition is liable to be dismissed. Learned counsel refers **2004 YLR 616**

**(Lahore), PLD 2012 Lahore 148 and PLD 2016 Lahore 622.**

5. Heard, record perused.

6. At the very outset, it is necessary to mention that the impugned order, on the face of it, is an interim order where against remedy of appeal or revision is barred in terms of Section 14 of the West Pakistan Family Courts Act 1964 **(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. Moreover, the questions as to whether petitioner being grandfather is jointly and severally liable to maintain minors/respondents 2 to 5, is a man of means or is only dependent upon meager amount of monthly pension, are to be decided after recording evidence, *pro and contra*, where both the sides will have right to adduce their respective oral as well as documentary evidence.

9. The jurisdiction in terms of Article 199 of the Constitution cannot be invoked to assail an interim order in an issue, totally dependent upon recording of evidence. The proceedings, being conducted by the learned Trial Court, would, of course, be culminated through final judgment and in that eventuality both the sides will have a right of appeal as per law. Thus, where statutory remedy is provided,

constitutional jurisdiction cannot be pressed into service.

10. In view of above, it is held that the instant writ petition is not maintainable and lacks merits, consequently, **dismissed.** Ad-interim relief granted to the petitioner vide order dated 18.02.2021 is recalled.

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

A.R.Ansari