

4. The main grievance of the petitioner is that order of the Judge Family Court declining to fix interim maintenance allowance of the respondent-wife being an interlocutory order was not appealable; hence the appellate court had exceeded its jurisdiction to entertain appeal. It is observed that when application for fixing interim maintenance allowance is dismissed/declined, the same attains finality at least to the extent of claim of interim maintenance allowance during the pendency of the suit, consequently, the affected party, may in appropriate circumstances where impugned order is not based on any sound reasoning, agitate the matter before the appellate authority by filing an appeal against the decision given on his/her application in terms of Section 14 of the Family Courts Act, 1964 which appeal was rightly entertained by the learned Addl. District Judge and the order passed by him could not be stated to be without lawful authority in the given circumstances of the case on the ground of non-availability of the appeal. Reliance in this regard can be placed on Nusrat Bibi and another v. Zeeshan Ahmad and another (PLD 2019 Lahore 226). Another important aspect of the matter is that the impugned order is not shown to adversely affect cause of justice as on final decision of the matter, adjustment of already paid maintenance allowance can be made and the said order appears to advance the purpose of justice as the respondent cannot be treated to be a disobedient wife at the initial stage of the proceedings especially when the trial court itself was of the opinion that it was to be determined through recording of evidence that whether the wife is living

apart from her husband due to petitioner's fault or on her own choice without any justification. In such circumstances, legal position is that High Court in its constitutional jurisdiction can refuse to interfere in the impugned order even if it is passed without jurisdiction but tends to further the cause of justice. Reliance is placed on Export Promotion Bureau and others v. Qaiser Shafiullah (1994 SCMR 859), Messrs Norwich Union Fire Insurance Society Limited v Muhammad Javed Iqbal and another (1986 SCMR 1071) and Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others (PLD 1973 SC 236).

5. As regards the quantum of interim maintenance allowance fixed by the Appellate Court is concerned, the said allowance after it has been fixed either by Judge Family Court or Appellate Court remains an interlocutory order till final decision of the matter and cannot be called in question through constitutional petition under ordinary circumstances unless shown to be suffering from any illegality, jurisdictional defect or being against some provisions of law, which defect is not shown to exist in this case at this stage; consequently, this petition challenging the said allowance being premature is not maintainable.

6. For what has been discussed above, this petition being devoid of any merit stands **dismissed**.

(Muzamil Akhtar Shabir)
Judge

Zeeshan Khan

Approved for reporting.