

# BLUE SLIP

HJD/C-42

(Revised: under Act No.II of 1990)

## ORDER OF THE COURT

IN THE COURT OF HON'BLE MR.JUSTICE MUZAMIL AKHTAR SHABIR

W.P-673/19

Syed M. Taavi Raza Naarvi

Versus

Judge Family Court etc

Date of hearing: 10-01-2019

(a) Judgment approved for reporting ☒ Yes ☐ No

### CERTIFICATE

Certified that the judgment/order is based upon or enunciates a Principle of law/decides a question of law, which is of first impression/distinguishes/over-rules/reverse/explains a previous decision.

JUDGE

- Note:- (1) This slip is only to be used when some action is to be taken.
- (2) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
- (3) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
- (4) Those directions which are not to be used should be deleted.

### **To be used by I.T.**

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Dated \_\_\_\_\_

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

**W.P.No.673 of 2019**  
 Syed Muhammad Taqi Raza Naqvi  
 versus  
 Judge Family Court, etc.

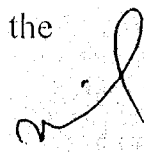
<i>Sr. No. of order/ Proceedings</i>	<i>Date of order/ Proceeding</i>	<i>Order with signature of Judge, and that of Parties' counsel, where necessary</i>
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**10.01.2019**

Sh. Usman Karim-ud-Din, Advocate for petitioner.  
 Ms. Zarish Fatima, Assistant Attorney General. On  
 Court's call.  
 Mr. Muhammad Arshad Manzoor, AAG. On Court's  
 call.  
 M/s. Nasrullah Khan Babar, Ch. Muhammad Naseer and  
 Ms. Uzma Razzaq Khan, Advocates/Amicus curiae.

Through this Constitutional petition, petitioner who is defendant in the suit filed by respondents No.2 to 5 for recovery of maintenance allowance, has called in question order dated 23.11.2018 passed by respondent No.1/Judge Family Court, Lahore whereby interim maintenance allowance of respondent No.2 (wife of the petitioner) has been fixed at the rate of Rs.8000/- per month.

2. The learned counsel for petitioner relies on Section 17-A of the Family Courts Act, 1964 ('Act') to argue that Judge Family Court could pass order for interim maintenance allowance only once, which he had done by fixing the maintenance allowance of the minors/ Respondents No. 3 to 5 ('minors') on 22.09.2018 and had no jurisdiction to subsequently pass an order to fix the interim maintenance allowance of the



wife/respondent no. 2 on 23.11.2018, which was barred by constructive res-judicata.

3. **Heard**, record perused.

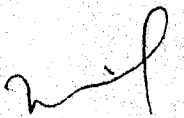
4. The question for determination before this Court is whether after fixing interim maintenance of the minors the Judge Family Court was vested with the powers to subsequently fix the interim maintenance allowance of the wife or the same would be barred by constructive res-judicata.

5. In order to determine the afore-referred question, reference to section 17-A of the Act may be made which is reproduced below:

*"17A. Suit for maintenance.—(1) In a suit for maintenance, the Family Court shall, on the date of the first appearance of the defendant, fix interim monthly maintenance for wife or a child and if the defendant fails to pay the maintenance by fourteenth day of each month, the defence of the defendant shall stand struck off and the Family Court shall decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case.*

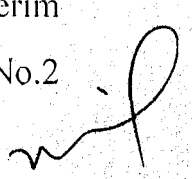
*....."*

6. As per the mandate of Section 17-A (supra), the Family Court is bound to fix monthly interim maintenance allowance of the wife or a child on the first date of appearance of the defendant. In the present case the respondent No.2 as wife and respondents No.3 to 5 as minor children of petitioner filed a suit for recovery of maintenance allowance against him on 11.07.2018 by stating that he earns Rs.80,000/- per month and is liable



to maintain them, which was contested by the petitioner by filing written statement. The learned trial court on 22.09.2018 after hearing the arguments fixed the interim maintenance allowance of respondents No.3 and 4 (minors) at the rate of Rs.7000/- per month each and for respondent No.5 (minor) at the rate of Rs.6000/- per month, whereas nothing was mentioned about interim maintenance allowance of respondent No.2 (wife). Subsequently, on 06.11.2018 the matter was adjourned to 19.11.2018 for personal appearance of the parties for pre-trial reconciliation proceedings and for payment of interim maintenance allowance of the minors. On 19.11.2018, respondent No.2 appeared in the court and got recorded her statement that she wants to reconcile with the petitioner subject to payment of maintenance allowance to her; the petitioner also got recorded his statement on the same date that he wants to reconcile with the respondent No. 2, whereafter, the matter was adjourned to 23.11.2018 for further proceedings but on the said date, petitioner did not appear in the court despite the fact that respondent No.2 remained present in the court and awaited for petitioner's arrival for reconciliation proceedings from 11:00 a.m. onward till the closing time of the court; consequently, the court in the absence of the petitioner fixed the interim maintenance allowance of respondent No.2 at the rate of Rs.8000/- per month and directed the petitioner to make payment of the same.

7. Although the learned counsel for petitioner states that non-passing of order relating to grant of interim maintenance allowance in favour of respondent No.2

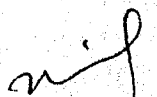


(wife) at the time of fixation of interim maintenance allowance of the minors would amount to refusal of the same but I am not inclined to agree with the said argument of the petitioner for the reason that it was the duty of the Court to fix the interim monthly maintenance allowance of the minor and the wife on the first date of appearance of the petitioner/defendant but the court while fixing the maintenance allowance of the minors did not consider and decide the matter relating to the wife, consequently the same could not be deemed to have been refused. Suffice it to say that no party can be allowed to suffer for any act or omission of the court. Even otherwise, a Family Court is competent to adopt any procedure and pass any order to regulate its own proceedings unless the same is barred under some law and in case the court had not earlier passed an order fixing interim maintenance allowance for the wife, it retained the jurisdiction to pass the said order later on as the said procedure was not barred under the law. It is the case of the petitioner that the interim maintenance allowance of the wife had been impliedly refused at the time of fixation of interim maintenance allowance of the minors but the said assertion is not supported by the record as the order dated 22.09.2018 is silent about the case of the wife, which was not considered at all at that stage and consequently it cannot be held that the court had refused to fix interim maintenance allowance for the wife. Besides, constructive *res judicata* bars any claim from being raised in a later proceedings if the said claim ought to have been raised and decided in an earlier proceedings but was not raised or if raised no relief was



allowed; whereas, in the present case, the matter was still pending with the Family Court who had not expressed its opinion about taking the said claim into consideration. Even otherwise, question of maintenance is a recurring cause of action, which can be raised on every successive occasion when right to sue arises and interim maintenance allowance is to be fixed on monthly basis, therefore, the argument of order dated 23.11.2018 being barred by constructive *res judicata* is misconceived. Besides, mandate of Section 17-A of the Act directing the court to pass order of interim monthly maintenance allowance in favour of wife or minor on the first date of appearance of the petitioner/defendant does not divest the court of power and jurisdiction to pass such an order on a subsequent date and use of word "or" between "wife" or "child" in the afore referred Section authorizes the court to pass separate orders at any stage relating to fixation of interim monthly maintenance allowance for the wife and the child. Consequently it is held that fixation of interim maintenance allowance of the minors on one date would not debar the court from fixing interim maintenance allowance of the wife on subsequent date or *vice versa*.

8. The petitioner also challenges the quantum of interim maintenance allowance fixed by the court. The said order is an interlocutory order against which appeal is not available to petitioner and Constitutional petition filed before this Court cannot be treated as its substitute unless some illegality or erroneous exercise of jurisdiction is pointed out which has not been established in the instant case. Besides, the time fixed in order dated 23.11.2018 for payment of interim maintenance



allowance had also expired before the petitioner approached this Court in Constitutional petition, therefore, it would not be appropriate to comment on merits of the case lest the decision of the trial court be prejudiced on that account. Consequently, this petition against interim order to that extent is not maintainable.

9. For what has been discussed above, this petition being devoid of any merit is accordingly **dismissed**.

*Blue Slip is verified*

*[Signature]*  
16/11/19  
\*KMSubhani\*

*[Signature]*  
(MUZAMIL AKHTAR SHABIR)  
JUDGE

Approved for reporting