

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(JUDICIAL DEPARTMENT)

Writ Petition No.2788-P/2020

Mst. Mehnaz Bibi & 2 others
versus
Muhammad Tahir & another

JUDGMENT

Date of hearing: - **04.05.2021.**

For petitioners: Ms. Mehwish Ashfaq, Advocate.
For respondent: Mr. Muhammad Ashfaq Khan
Akhunkhel, Advocate.

MUHAMMAD NAEEM ANWAR, J. Through this writ petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have prayed for enhancement of interim maintenance to them (petitioners No.2 & 3, the minors) from Rs. 2000/- per month for each to Rs.15000/- fixed by the learned Judge Family-IV, Peshawar, through impugned order dated 14.03.2020.

02. Facts forming the background of this petition are that the petitioners filed a family suit against the respondent No.1 before the Judge, Family Court, Peshawar with the following prayers: -

1. *Dissolution of marriage through Talaq on the basis of cruelty, torture, non-payment of maintenance and dower.*
2. *Recovery of dower four (04) Tolas gold ornaments or its market value.*

3. *Recovery of dower of Rs.100000/-.*
4. *Recovery of one and half marla share in the house of the defendant with its boundaries towards North: house of Shad Muhammad, South: house of Mulayan, East: Riaz and Bashir sons of Hazir Muhammad House, West: gate and street, situated at Mohallah Hoshmeer, Village, Sikandari Koruna, Mardan.*
5. *Recovery of maintenance allowance since 15.07.2017 till date @ Rs.10000/- P.M for Plaintiff No.1 till date and further till completion of Iddat.*
6. *Recovery of maintenance allowance since 15.07.2017 till date @ Rs.15000/- P.M each for plaintiff No.2 & 3 till date and further till the majority of the minor / plaintiff No.2 & 3.*
7. *Recovery of five (05) Tolas gold ornaments in different shapes which was brought by the plaintiff with her, from her parents' house.*

Alongwith the plaint, the petitioners filed an application under section 17-A of the Family Court Act, 1964, for fixation of interim maintenance of minors / petitioners No.2 & 3, which was contested by the respondent No.1 by filing written reply. The learned trial Court, after hearing arguments of both the parties, on the application for interim maintenance, vide its order dated 14.03.2020 fixed the interim maintenance at the rate of Rs.2000/- per month for each minor with direction to the respondent to regularly pay the same before 14th of each month, failing which his defence shall be struck off. According to the petitioners, meager, inadequate niggardly interim maintenance allowance has been fixed by the learned Judge, Family Court-IV, Peshawar,

and they, through the instant petition, have requested for enhancement of interim maintenance amount from Rs.2000/- to Rs.15000/- per month for each minor.

03. Arguments heard; record perused.

04. According to the petitioners, respondent is abroad in connection with his work there, he is man of means, resourceful man and have no financial constraints which fact was even not denied by him in written reply, thus, Rs. 2000/- for each minor is not enough to bear their monthly expenses. On the other hand, respondent has not denied to pay the maintenance for minors, however, contended that due to covid-19 he is back in Pakistan and have no proper source of income thus, could not afford the maintenance other than fixed by the learned Family Court. True, the fixation of interim maintenance allowance is to be based on the financial status on one hand and on-going day to day basic requirements of minors for their survival which includes amenities like food, clothing, shelter, education and other necessities of life on the other. Under Muslim Law, the father has to maintain his son only until he attains majority. While, he has to maintain his daughter until her marriage and till the time she goes to her husband's home. Thus, after perusing the above-mentioned facts, it can be easily concluded that the provisions of maintenance allowance of

Muslim Law are different from other personal laws and are very unique. The term “*Nafaqah*” is an Arabic word, rooted from *infEq*, which means to spend for a good purpose. Literally it means what a person spends for his family members. In general, maintenance refers to what is spent to support one’s family with food, clothing, accommodation and other expenditures. As per the commandments of Allah, the same is revealed in verse No.233 of *Surah ‘Al’baqarah’* which assigns the responsibility of food and clothes to a father, wherein it was revealed *“It is the obligation of one to whom the child belongs that he provides food and clothing for them (the mothers) with fairness. Nobody is obligated beyond his capacity.”*

05. Furthermore, a child is an individual, falling within the age of bracket or category starting from new born till the age of puberty or the legal age of majority. All these rights were given to the child by holy Quran, before revelation of Quran, children were not prominent in terms of having a right in society. The text of the Quran has mentioned in it, a child as a member of society and as such specified the child rights and indicated that it is the key social responsibility of father to fulfill his duty regarding upbringing of child. But for all these, at the time of making of any such order, the Family Court should be more careful while fixing the interim

maintenance, for the reason that the same should always be varied or enhanced, as the order of interim maintenance is always tentative in nature which has no effect or bearing on the final order.

06. This court in the case titled *Noor Ul Sahar and another Versus Tahir Naqash Khan Khattak and another* (2021 CLC374) when the interim order for maintenance, fixed by the Family Court was under consideration, enhanced it while observing: -

"In the present case, the learned Judge, Family Court has only determined a paltry sum of Rs.3,000/- per month as interim maintenance for the minor-petitioner No.2 and that too, in this age of dearness and highly inflationary trend, when such amount is not sufficient even to meet the food requirements of the minor. Similarly, the petitioner-wife is still in the wedlock of the respondent-husband while the latter is bound under the law to maintain her, which duty he appears to have practically abdicated as admittedly he has not provided any maintenance for his wife and minor daughter. Such being the case, we by modifying the impugned judgment / order dated 17.12.2018, enhance the interim maintenance of the minor-petitioner No.2 from Rs. 3,000/- to Rs. 8,000/- (Eight Thousand) per month and also determine the interim maintenance of the petitioner-wife as Rs. 5,000/- (Five Thousand) per month, which shall be paid to them by the respondent till the disposal of the main suit. This writ petition is allowed in the above terms."

07. No doubt, order impugned before us is an interim order but keeping in view the basic needs of minors in juxtaposition with their age we understand that the maintenance allowance fixed by the learned Family Court is not sufficient even to meet the basic requirements of the


minor and in such circumstances this court can enhance the interim maintenance and if the exorbitant maintenance has been fixed the same can be reduced notwithstanding, the provisions of section 14 (3) of West Pakistan Family Court Act, 1964. Ref: Basharat Ali versus Additional District Judge, Multan and 4 others (2018 MLD 785) & Makhdoom Ali versus Mst. Razia Sultana and others (2007 MLD 41).

08. Therefore, for the reasons discussed above, we dispose of this petition in term of enhancing the maintenance allowance for minors from Rs. 2000/- per month to Rs. 3000/- per month for each to be deposited before the 14th of each month, however, the learned Family Court would be free to fix the maintenance allowance for minors, after completion of evidence, in accordance with law and merits of the case.

ANNOUNCED.

04.05.2021.

Himayat, CS


JUDGE

JUDGE

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Hon'ble Mr. Justice Lal Jan Khattak
Hon'ble Mr. Justice Muhammad Naeem Anwar