

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Yahya Afridi
Mr. Justice Amin-ud-Din Khan
Mrs. Justice Ayesha A. Malik

Civil Petition No.3155-L/2023

(Against the order dated 11.09.2023 passed by the Lahore High Court, Lahore in W.P. No.47965/23)

Shahzad Amir Farid

....Petitioner

Versus

Mst. Sobia Amir Farid and others

....Respondents

For the petitioner:

Mr. Aftab Mustafa, ASC
(via video link from Lahore)

For the respondents:

N.R.

Date of Hearing:

30 April 2024

ORDER

Yahya Afridi, J.- The petitioner has called in question the impugned order dated 11.09.2023 passed by the Lahore High Court, whereby his writ petition was dismissed.

2. The striking feature of the case is the contumacious failure of the petitioner to pay maintenance for his minor children as fixed by the Family Court. The necessary facts are that Mst. Sobia Amir Farid (respondent No.1) filed a suit for maintenance allowance for herself and her minor children against her husband and father of her children, i.e., the petitioner. The Family Court passed an

order for payment of interim-maintenance to the minors under Section 17-A of the West Pakistan Family Courts Act, 1964 (“Act”). However, despite availing multiple opportunities, the petitioner failed to comply with the order. As a result, his defence was struck off, and the suit for maintenance to the extent of minors was decreed on the basis of averments in the plaint and other supporting documents on record of the case. The petitioner filed an appeal against the decision of the Family Court before the District Court. During the appeal, he was again ordered to pay interim maintenance, but he disregarded this order as well. Finally, the appeal was dismissed due to his continued non-compliance and failure to appear before the Court. The petitioner unsuccessfully challenged the orders of the Family Court and District Court before the High Court. Now, the petitioner seeks leave to appeal against the decision of the High Court through the present petition.

3. The learned counsel for the petitioner was unable to point out any substantive illegality, procedural impropriety and decisional irrationality in the order of the Family Court. The Family Court, in accordance with Section 17-A of the Act, had the lawful authority to strike off the defence of the petitioner and decree the suit for maintenance on the basis of averments in the plaint and other supporting documents on record of the case, once the petitioner failed to pay the interim maintenance allowance by

fourteenth day of each month during the pendency of proceedings. The petitioner was also put to notice by the Family Court to clear the arrears of interim maintenance allowance otherwise the provisions of Section 17-A of the Act would be invoked, which the petitioner failed to comply with. Moreover, the determination of the amount of maintenance by the Family Court is neither arbitrary nor capricious. Hence, the High Court in the exercise of its constitutional writ jurisdiction, has rightly declined to interfere with the findings of the Family Court with regard to the quantum of maintenance allowance. Thus, the petition is ill-founded and ill-advised, and is accordingly dismissed.

4. We note with grave concern that the conduct of the petitioner leaves a lot to be desired. It falls significantly short of the expected standards of fairness and amounts to gross abuse of the process of the Court. The persistent dragging of the matter from one court to another constitutes vexatious litigation, and adds to undue delay and overburdening of the Courts. Such frivolous petitions need to be strongly discouraged. Therefore, in view of the callous disregard of the petitioner for the court order to pay interim maintenance and his attempts to delay the payment of decreed maintenance allowance for his minor children, we feel inclined to impose costs on the petitioner in the sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to deter such

conduct in the future. The costs shall be recovered by the
executing court as part of the decree for maintenance.

Judge

Judge

Judge

Islamabad
30 April 2024.
Approved for reporting.
Nasir Khan