

**2014 M L D 351**

**[Peshawar]**

**Before Waqar Ahmad Seth and Mrs. Irshad Qaiser, JJ**

**FARID KHAN---Petitioner**

**Versus**

**SAEEDA BIBI and others---Respondents**

Writ Petition No.681-A of 2013, decided on 8th October, 2013.

**West Pakistan Family Courts Act (XXXV of 1964)---**

----Ss. 17A & 5, Sched.---Constitution of Pakistan, Art. 199---Constitutional petition---Maintainability---Maintenance of children by father---Scope---Suit for recovery of dower and maintenance allowance---Application for fixation of interim maintenance for minor---Contention of father was that mother had waived right of maintenance of minor---Application for fixation of interim maintenance for minor was accepted by the Family Court---Validity---Father was responsible to meet expenses of his minor children whether they were in the custody of their mother or in his own custody; he was even bound to maintain divorced daughter if she was living with her mother instead of himself---No illegality, irregularity or jurisdictional defect in the interlocutory order had been pointed out by the defendant---Constitutional petition did not lie against an interlocutory order and same was dismissed.

PLD 2005 SC 24; PLD 2012 Lah. 154; PLD 2001 SC 31; PLD 2005 Pesh. 194; PLD 2006 Pesh. 96; PLD 2006 SC 457; 2000 CLC 1725; Muhammadan Law by D.F. Mullah 369 and 370; PLD 2013 Lah. 464 and PLD 2013 SC 557 rel.

Sardar Muhammad Asif and Yousaf Zahoor Abbasi for Petitioner.

Nemo for Respondents.

Date of hearing: 8th October, 2013.

## JUDGMENT

**MRS. IRSHAD QAISER, J---**Petitioner Farid Khan, filed the present writ petition wherein he challenged the order dated 28-6-2013 passed by the Judge Family Court-VIII vide which petitioner was directed to pay the maintenance allowance to respondent No.2 at the rate of Rs.4000 per month till the decision of the case.

2. Brief facts of the case are that respondent No.1 Mst. Saeeda Bibi filed a suit against petitioner for recovery of dower, the detail of which is mentioned in Paras "Alif and Bay" of the heading of the plaint as well as for maintenance allowance for herself as well as her son respondent No.2 the detail of which is given in Paras 2 to 7 of the plaint. It is admitted fact that petitioner is the father of the respondent No.2 Osama. The main contention of petitioner is that respondent No.1 has waived right of maintenance of respondent No.2 vide compromise deed dated 13-3-2001. That suit is nothing but to blackmail the petitioner. That divorce has been effected between husband and wife.

3. Record shows that during trial respondent No.1 submitted an application for fixation of interim maintenance allowance for minor which was accepted and Rs.4000 per month was fixed as interim allowance of minor during the pendency of case which the defendant/petitioner has to deposit before 14th of each month in default his defence shall be struck off.

4. As noted above petitioner is the real father of minor respondent No.2. It is settled law that under the Islam as well as the relevant law father is responsible to meet the expenses of his minor. No matter whether they are in the custody of their mother or father. Reference in this respect is made to PLD 2005 SC 24, PLD 2012 Lahore 154, PLD 2001 SC 31, PLD 2005 Peshawar 194, PLD 2006 Peshawar 96, PLD 2006 SC 457 and 2000 CLC 1725. Reference is also made to Chapter XIX of Muhammad Law by D.F Mullah 369 and 370. The superior Courts have gone to the extent that father is even bound to maintain a divorced daughter if she is living with her mother instead of father. Reference is made to PLD 2013 Lahore 464. Reference is also made to PLD 2013 SC 557 wherein it is held;

"(a) Islamic Law---

---Maintenance, definition of---Scope---Obligation of father to pay maintenance to his children---Scope---Maintenance meant and included food, raiment and lodging---Such definition was neither conclusive nor exhaustive, and had a wider connotation and should be given an extended meaning for the purposes of meeting and catering for the present days social, physical, mental growth, upbringing and well-being of the minor, keeping in mind the status of the family, the norms of the society and his educational requirement, but obviously corresponding to and commensurating with the means and the capacity of the father to pay."

5. Counsel for the petitioner has not been able to point out any illegality, irregularity or jurisdictional defect in the interlocutory order. It is settled law that every judicial officer understands as to what procedure should be adopted by him/her while deciding an issue before him/her. It is also settled that constitution petition does not lie against an interlocutory order. Thus the present writ petition being without merit and force is hereby dismissed.

AG/662/P

Petition dismissed.