

**2013 Y L R 965**

**[Lahore]**

**Before Malik Shahzad Ahmad Khan, J**

**NADEEM RAZA---Petitioner**

**Versus**

**JUDGE FAMILY COURT and 3 others---Respondents**

Writ Petition No.4005 and C.M. No.5471 of 2012, decided on 13th September, 2012.

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

----S. 17A---Interim maintenance of minor---Object and purpose---Purpose behind S.17A of the West Pakistan Family Courts Act, 1964 was to ensure that during pendency of proceedings before the Family Court; financial constraints faced by minors were ameliorated.

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

----S. 17A---Constitution of Pakistan, Art. 199---Constitutional petition against interim order---Maintainability---Condi-tions---Interim maintenance, order for---Suit for recovery of maintenance allowance---Husband assailed order of Family Court whereby he was ordered to pay interim maintenance during pendency of proceedings; on the ground that the quantum of maintenance was exorbitant---Validity---Husband had contended that he had recently been sacked from his job---Disputed questions of facts regarding job, source of income and salary of the husband had been raised which could not be resolved in the Constitutional Jurisdiction of High Court and it was not possible to determine the veracity of claims of husband without recording evidence---Such

exercise could not be undertaken in the Constitutional Jurisdiction of High Court especially when the finding was only tentative in nature and not final and impugned order was interim in nature---Under Art. 199 of the Constitution, petition against interim order was maintainable if the same was void ab initio, without jurisdiction or had attained status of a final order---Family Court had jurisdiction to fix interim maintenance allowance, therefore, the impugned order did not fall within such categories---Legislature had under S. 14(3) of the West Pakistan Family Courts Act, 1964 had specifically prohibited filing of appeal against interim order and if Constitutional Petition was allowed to be filed against such order, same would tantamount to defeating and diverting intent of the legislature---Petitioner had an alternate remedy available to him by challenging impugned order in appeal which he may file against ultimate order /judgment if passed against husband---Constitutional petition, being not maintainable, was dismissed in circumstances.

Zafar Hussain v. Begum Farzana Nazli and others PLD 2004 Lah. 349; Makhdoom Ali v. Mst. Razia Sultana and others 2007 MLD 41 and Shahzad Hussain v. Judge Family Court 2011 CLC 820 distinguished.

Muhammad Younus Khan and 12 others v. Government of N.-W.F.P. through Secretary Forest and Agriculture, Peshawar and others 1993 SCMR 618; Benedict F.D. Souza v. Karachi Building Control Authority and 3 others 1989 SCMR 918; Muhammad Irfan v. Judge Family Court, Sargodha and 2 others 2008 CLC 585; Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary S & GAD Karachi and others 1995 SCMR 1165 and Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State 1999 SCMR 1447 rel.

Aamir Aziz Qazi for Petitioner.

Ch. Asif Karim for Respondents Nos. 2 and 4.

**ORDER**

**MALIK SHAHZAD AHMAD KHAN, J.**---This writ petition has been filed against the impugned order dated 16-3-2012 passed by learned Judge Family Court, Multan whereby interim maintenance allowance of respondents Nos.2 to 4 was fixed at the rate of Rs.5,000 per month; per head.

2. It is contended by the learned counsel for the petitioner that the quantum of interim maintenance as fixed vide the impugned order is exorbitant and the same is beyond the means of the petitioner; that petitioner is not in a position to pay the above mentioned maintenance allowance because he has been facing extreme financial crisis as he has been sacked from his job on 5-7-2012 and presently he is jobless, therefore, the impugned order may be set aside and the quantum of maintenance allowance may be reduced. In support of his contention the learned counsel for the petitioner has placed reliance on the cases reported as Zafar Hussain v. Begum Farzana Nazli and others (PLD 2004 Lahore 349), Makhdoom Ali v. Mst. Razia Sultana and others (2007 MLD 41) and Shahzad Hussain v. Judge Family Court, (2011 CLC 820).

3. On the other hand, this petition has been opposed by the learned counsel for respondents Nos.1 to 4 on the grounds that the instant petition has been filed against an interim order, which is not maintainable in the eye of law; that the petitioner is employed in a private firm and has been earning Rs.60,000 per month; that the petitioner has raised disputed questions of facts in this petition regarding his source or income and the same cannot be resolved in constitutional jurisdiction, therefore, this petition may be dismissed.

4. Arguments heard and record perused.

5. The Family Courts Act, 1964 is a special statute and has been enacted with a specific purpose to ensure expeditious settlement and disposal of disputes relating to marriage and family affairs and also matters connected therewith. It, inter alia, has bestowed upon the Family Court powers under section 17-A of the Act *ibid* to grant interim maintenance to the concerned parties during the pendency of the proceedings. It also has been mandated that such maintenance shall be paid by the 14th of each

calendar month and in case of default the defence of the defendant shall be struck off and the suit decreed. The purpose behind this legislation is to ensure that during pendency of these proceedings with the Family Court financial constraints faced by the minors are ameliorated. In the present case the allowance of maintenance was fixed at the rate of Rs.5,000 per month per head for respondents Nos.2 to 4. It was averred in para 7 of the plaint that the petitioner is employed in a medicine company and has been earning Rs.60,000 per month. The petitioner did not specifically deny in para 9 of his written statement that he was not getting salary of Rs.60,000 per month rather he has taken this objection that he has recently been sacked from the said job. The learned Judge Family Court while keeping in view the pleadings of the parties, their status and available record tentatively assessed the interim maintenance allowance at the rate of Rs.5,000 per month per head. The disputed questions of facts regarding the job, source of income and salary of the petitioner have been raised in this petition, which cannot be resolved in the Constitutional jurisdiction of this Court. It is not possible to determine the veracity of the claim of the petitioner without recording of evidence. Such exercise cannot be undertaken in constitutional jurisdiction, especially when the finding was only tentative and not final and order was also interim in nature. I have fortified my views with the cases of Muhammad Younus Khan and 12 others v. Government of N.-W.F.P. through Secretary Forest and Agriculture, Pehsawar and others (1993 SCMR 618), Benedict F.D. Souza v. Karachi Building Control Authority and 3 others (1989 SCMR 918) at page 920) and Muhammad Irfan v. Judge Family Court, Sargodha and 2 others (2008 CLC 585).

6. There is no cavil with this proposition that a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 is maintainable even against an interim order if the same, is void ab initio, without jurisdiction or if the same has attained the status of a final order. As discussed above, under section 17-A of the West Pakistan Family Courts Act, 1964 the learned Judge Family Court has the jurisdiction to fix the interim maintenance allowance, therefore, the impugned order does not fall within the categories mentioned above. The Legislature under section 14(3) of the Act *ibid* has specifically prohibited the filing of an appeal against an interim order and if the Constitutional petition is allowed to be filed against such order, it would tantamount to

defeating and diverting the intent of the Legislature. Reference is made to the cases of Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary S & GAD Karachi and others (1995 SCMR 1165) and Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State (1999 SCMR 1447).

7. The petitioner has got an adequate remedy available to him by challenging the impugned order in appeal, which, he may file against the ultimate order/judgment if the same would be passed against the petitioner. This petition is also hit by Article 199 (1) of the Constitution of Islamic Republic of Pakistan, 1973, hence, cannot be entertained.

8. The facts of the judgment cited by the learned counsel for the petitioner are distinguishable- from the facts of the present case.

9. In light of the above discussion, the instant petition is without any substance; hence the same is hereby dismissed. There is no order as to costs.

10. Before parting with this judgment, I may observe here that the findings of the learned Judge Family Court, Lahore, in the impugned order, as well as, the observations made in this order are only tentative in nature and not final. Proper quantum of the maintenance allowance has to be fixed by the learned Judge Family Court, after recording of evidence. The learned Judge family Court may increase or decrease the quantum of maintenance allowance at the time of final adjudication of the case, without being influenced by any observation made in the impugned order, as well as, in this order.

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As the main writ petition has been finally decided, therefore, this application has become infructuous, therefore, the same is, hereby, dismissed.

KMZ/N-71/L

Petition dismissed.