

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**  
**WRIT PETITION NO. 1806 OF 2021**

**USMAN ALI**

**VERSUS**

**ADDITIONAL DISTRICT JUDGE (WEST), ISLAMABAD *and*  
*others***

**Petitioner by                               :       Hafiz Naimat Ullah, Advocate.**

**Respondents by                           :       Nemo.**

**Date of Decision                        :       29-01-2024.**

**SAMAN RAFAT IMTIAZ, J.:-**

1. Through the instant Writ Petition, the Petitioner [Usman Ali] has assailed the (i) Order and Decree dated 30-11-2020 (“**Impugned Order**”) passed by the learned Judge Family Court (“**Family Court**”) whereby the Petitioner’s right to defense was struck off and the suit filed by the Respondents No.3 to 5 was decreed and the (ii) Judgment and Decree dated 14-04-2021 (“**Impugned Judgment**”) whereby the Petitioner’s appeal against the Impugned Order was dismissed.

2. The brief facts, as per the Memo of Petition, are that the Respondents No.3 to 5 [Sumera Khaliq, Abiha, and Aima] filed a Suit against the Petitioner for Recovery of Maintenance and Dowry Articles. The Petitioner filed his written statement whereafter issues were framed. Thereafter vide the Impugned Order dated 30-11-2020 the learned Family Court struck off the defense of the Petitioner under Section 17-A of West Family Courts Act, 1964 and decreed the suit. Being aggrieved of the Impugned Order the Petitioner filed an appeal before the learned Additional District Judge-West, Islamabad which was dismissed vide the Impugned Judgment. Hence, the instant petition.

3. The learned counsel for the Petitioner submitted that although the Petitioner’s defence was struck off pursuant to Section 17-A of West Family Courts Act, 1964, however, the mandate of the said provision is not for the Family Court to blindly allow the plaint as prayed for. Even if the defendant is not present in the Family Court, the Family Court is liable to

independently assess whether the claim of the plaintiffs/Respondents is made out or not. He submitted that in the instant case the Respondents did not even disclose the source of income of the Petitioner. He submitted that the Petitioner is a labourer and therefore, he cannot be saddled with the burden of paying Rs.35,000/- per month per child. He further submitted that the amount of interim maintenance fixed by the Family Court i.e. Rs.4,000/- was reasonable and the final maintenance granted should be the same. Lastly, he prayed on behalf of the Petitioner that the Petitioner may be given a chance to clear all the outstanding and for the matter to be decided on the merits. The learned counsel relied upon *Marriam Bibi and others Versus Azhar Iqbal and others*, PLD 2022 Lahore 840, *Khurram Shahzad Versus Naseem Akhtar and 2 others*, 2021 CLC 1300, and *Muhammad Shakir Versus Additional District Judge, Islamabad-West and 5 others*, 2021 CLC 809.

4. No one is in attendance on behalf of the Respondents No.3 to 5. Same was the position on the last date of hearing i.e. 28-11-2023 and 10-05-2023, therefore, Respondents No.3 to 5 are proceeded against ex-parte.

5. I have heard the learned counsel for the Petitioner and gone through the available record.

6. First and foremost, it has to be borne in mind that this Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. As such, the Court cannot embark upon a reappraisal of evidence. It is settled law that a High Court in such jurisdiction cannot substitute the concurrent findings of the courts below with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice. With that in mind I endeavor to see whether interference by this Court in exercise of its Constitutional jurisdiction is warranted in this case.

7. As far as the Petitioner's objection is concerned that the Respondents did not even disclose his source of income, I agree with the judgments rendered by the Lahore High Court in the cases of *Tanveer Salamat versus Additional Sessions Judge and others*, 2019 YLR 1862, and

*Tariq Mehmood versus Mst. Farah Shaheen*, 2010 YLR 349 whereby it has been held that the onus to prove financial capability is upon the husband/father. A wife cannot be expected to have documentary proof of her former husband's income. No person can be burdened to prove the income of another. There is no cavil to the proposition that children are the financial responsibility of a father. A minor's maintenance cannot be denied on account of the wife/mother's inability to prove the father/husband's financial capability. Therefore, it is the father/husband who has the burden to prove his financial capability in order for the learned Family Court to decide the quantum of maintenance of the minor children. In case of his failure to do so the learned Family Court may draw a negative inference on account of withholding of evidence and determine the quantum of maintenance for the minor on the basis of available record. The father/husband in such case is not justified in claiming that such amount exceeds his capability when he himself bypassed the opportunity of informing the Family Court of his financial position.

8. In the instant case, the Petitioner's right to defense was struck off due to his failure to pay the interim maintenance as fixed by the learned Family Court. The Petitioner has failed to point out any misreading or non-reading of evidence or any jurisdictional error or other infirmity which would warrant interference in the exercise of Constitutional jurisdiction. As such, the instant petition is hereby **dismissed** as being devoid of merit.

**(SAMAN RAFAT IMTIAZ)**  
**JUDGE**