JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 596/2025

MASHAB ALI

Vs

LEARNED JUDGE FAMILY COURT (EAST), ISLAMABAD ETC

Petitioner by : Mr. Akhlaq Hussain Chishti, Advocate.

Respondents by : Mr. Zahid Ullah Advocate for Respondents Nos. 2 to 5.

Date of hearing : 28.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, **("Constitution"),** Mashab Ali **("Petitioner/Defendant No. 1")** has challenged the order dated 07.12.2024 passed by learned Family Judge, East-Islamabad **("Family Judge")** whereby interim maintenance of the minors/Respondents Nos. 3 to 5/Appellants Nos. 2 to 4 **("Minors/Respondents Nos. 3 to 5")** has been fixed as Rs. 12,000/- per month each.

2. The brief facts leading to the filing of the present Writ Petition are that Respondents No. 2 to 5/Plaintiffs filed a Suit for Recovery of Maintenance Allowance, etc., before the learned Judge Family Court contending therein that Respondent No. 2/Plaintiff No. 1 married the Petitioner/Defendant No. 1 on 06.12.2013, as per the Muslim rite of Sunnah and Customs. The marriage was contracted in consideration of a dower of Rs. 400,000/-, four tola of gold, and a house measuring 10 marlas, fully furnished as specified in the Nikkah Nama. The above-mentioned cash amount as well as gold were not given to Respondent No. 1. At the time of marriage, Respondent No. 2/Plaintiff No. 1 was gifted 4 tolas of gold and dowry articles by her parents. Out of their wedlock, Minors/Respondents Nos. 3 to 5 were born. Subsequently, the Petitioner/Defendant No.1 in the year 2021 went to Saudi Arabia. The Respondent No. 2/Plaintiff No. 1 demanded money for the expenses of her own and the education and other such expenses of food and medical of the Minors/Respondents Nos. 3 to 5 but the

Petitioner/Defendant No. 1 never sent a single penny for the maintenance and expenses of the Respondents Nos. 2 to 5/Plaintiffs. She further alleged that the Petitioner/Defendant No. 1 has registered the suit house situated in Khasra No. 46 in her name but possession of the upper portion of the said house was with the Petitioner/Defendant No. 1's brother and father. When the Respondent No. 2/Plaintiff No. 1 asked the Appellant/Defendant No. 1's brother to vacate her house, he, along with his father and at the instigation of the Appellant/Defendant No. 1, resorted to violence against her. As a result, the Respondents Nos. 2 to 5/Plaintiffs were forcibly expelled and dispossessed from the house. All the dowry articles and gold given to the Respondent No. 2/Plaintiff No. 1 by her parents were also snatched by the brother and father of the Appellant/Defendants Nos. 2 and 3. In the prayer of the Suit, the Respondents Nos. 2 to 5/Plaintiffs had prayed for the following: -

i. Decree for recovery of maintenance allowance in favour of the plaintiff No.1 @ of Rs.20,000/- per month from 01.01.2024 till onward in addition with 10 percent annual increase;
ii. Decree for recovery of maintenance allowance in favor of the plaintiff No.2-4 @ Rs.15,000/- each per month from the date of their birth i.e. 15th September, 2015, 15th August, 2017 and 21st June, 2021 respectively till the date of decree in addition with 10 percent annual increase;
iii. Decree for recovery of dower of 4 tola gold;
iv. Decree for recovery of 4 tolas gold given to plaintiff No.1 by her parents at the time of marriage;
v. Decree for recovery of cash amount of Rs.400,000/- as dower amount;
vi. Decree for recovery of dowry articles as per list attached or alternatively its price of Rs.1,593,050/-;
vii. Decree for possession of the house mentioned in para 6 above and also mentioned in the Nikkah Nama.

3. The learned Family Judge vide the Impugned Order, while keeping in mind the daily basic needs of Minors/Respondents Nos. 3 to 5, fixed Rs.12,000/- per month each as interim maintenance and the Petitioner/Defendant No. 1 was directed to pay the interim maintenance before or on 14th of every month w.e.f December 2024. Being aggrieved of the Impugned Order, the Petitioner/Defendant No. 1 has filed the instant Writ Petition.

4. The learned counsel for the Petitioner/Defendant No. 1 argued that the Impugned Order is against the law, facts and record, hence, the same is liable to be set aside; that the learned Family Judge without going through the record has fixed the interim maintenance of the Minors/Respondents No. 3 to 5 which is beyond the

financial capacity of the Petitioner/Defendant No. 1 as he is a laborer in Saudi Arabia and his monthly income is 1,000 Saudi Riyals, which equals approximately Rs. 74,000/- per month, out of which an amount of Rs. 30,000/- is spent on rent, food, and other expenses in Saudi Arabia, Rs. 30,000/- per month the Petitioner/Defendant No. 1 sends to his parents, leaving him with only Rs. 14,000/- for his own expenses; that the Petitioner/Defendant No. 1 is ready to pay the amount of Rs. 5,000/- per month to each minor; that the learned Family Judge has fixed interim maintenance allowance while relying upon oral assertion of the Plaintiff No. 1/Respondent No.2 who failed to mention in her plaint about the salary of the Petitioner/Defendant No. 1 but only mentioned that the Petitioner/ Defendant No. 1 is residing in Saudi Arabia whereas the Petitioner/ Defendant No. 1 is a laborer by profession thus he is not in a position to pay such a huge maintenance allowance to the Minors/Respondents Nos. 3 to 5 which is beyond his financial capacity; that the learned Family Judge has passed the Impugned Order while giving undue favor to the Respondents Nos. 2 to 5/Plaintiffs which is liable to be set aside; that the Impugned Order is based upon assumptions and presumptions which is not tenable in the eyes of the law; and that the Petitioner/Defendant No. 1 has no other efficacious and expeditious remedy except to invoke the Constitutional jurisdiction of this Court. Lastly, the learned counsel prayed that instant Writ Petition may kindly be accepted, the Impugned Order may be modified and consequently, the interim maintenance of the Minors/Respondents Nos. 3 to 5 may kindly be fixed keeping in view the financial capacity of the Petitioner/Defendant No. 1.

5. On the other side, the learned counsel for the Respondents Nos. 2 to 5/Plaintiffs argued that since 2021, when the Petitioner/Defendant No. 1 moved to Saudi Arabia, he has not paid a single penny towards the maintenance of the Respondents No. 2 to 5/Plaintiffs; that all the expenses of the Respondents No. 2 to 5/Plaintiffs have been borne by the parents of the Respondent No. 2/Plaintiff No. 1; that the learned Family Judge passed a well-reasoned order and rightly fixed the interim maintenance allowance of the Minors/Respondents Nos. 3 to 5. Finally, the learned counsel prayed for dismissal of the present Writ Petition.

6. I have heard arguments of the learned counsel for the parties and perused the available record with their able assistance.

7. The instant Writ Petition is filed against an interim order of the learned Family Judge, vide which interim maintenance to the Minors/Respondents Nos. 3 to 5, was fixed @ Rs.12,000/- per month. Section 14(3) of the West Pakistan Family Courts Act, 1964 clearly stipulates that the legislature has specifically prohibited the filing of an appeal against an interim order, thereby indicating that the legislature did not intend for an interim order to be subject to challenge. When a party challenges an interim order during the pendency of a suit under the Constitutional Jurisdiction vested in the High Court, in my view the Court must exercise its jurisdiction with due consideration of the fact that the order is interim in nature. Not every interim order should be challenged at this stage, as it is well-established that once the suit is finally decided by the Trial Court, all interim orders become subject to review in appeal. If there is a defect in the interim order, it can be reviewed and scrutinized at the stage of the final appeal, as the first appeal is considered continuation of the trial and first appellate court serves as both a court of fact and law, and has the authority to examine such defects at that stage.

8. When a party approaches the High Court under its Constitutional jurisdiction, he is required to demonstrate that the impugned order is issued without jurisdiction as it is only then can the High Court exercise its constitutional jurisdiction to declare the order void. When an order has been passed while exercising discretion, the same cannot be declared by any stretch of imagination to be without jurisdiction. Reliance is placed on reported judgments of the superior courts of the country cited in *Rashid Baig & others Vs. Muhammad Mansha & others,* **(2024 SCMR 1385),** *Shameneh Haider Vs. Haider Ali Khan,* **(2018 CLC Note 43 Sindh),** *Dr. Samina Anayat Vs. Additional District Judge & others,* **(2018 MLD 448 Lahore),** *Tahir Ayub Khan Vs. Ms. Alya Anwar & another*, (**2015 YLR 2364),** *Syed Mohsin Shah Vs. Mst. Momal Aftab & another,* **(2013 MLD 1269 Sindh),** *Ameer Mehmood Hussain Vs. Naeha Aamer Sayad & 2 others,* **(2011 MLD 1105 Lahore),** *Muhammad Sabir Vs. Mst. Azra Bibi & 2 others,* **(2011 CLC 417 Lahore)** and *Syed Sagheer Ahmed Naqvi Vs. Province of Sindh,* **(1996 SCMR 1165).**

9. *Prima facie*, the Petitioner/Defendant No. 1, being dissatisfied with the quantum of interim maintenance having been provided to his minor children, has filed the instant Writ Petition. It needs no reiteration that the determination of adequacy or inadequacy of the quantum of maintenance would certainly require

factual inquiry and evidence, which practice cannot be carried out by this Court while exercising powers under Article 199 of the Constitution.

10. In view of the above, the instant Writ Petition is found to be misconceived and not maintainable, which is accordingly **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Sajid/--

Approved for Reporting
Blue Slip added.