JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.1331 OF 2025
MR. HASSAN NAJAM VS. THE JUDGE FAMILY COURT (WEST), ISLAMABAD AND OTHERS

&

WRIT PETITION NO. 1454 OF 2025
NATALIA NAJAM AND ANOTHER VS. JUDGE FAMILY COURT, ISLAMABAD AND ANOTHER

Petitioner(s) by	**:**	**Ms. Huma Ejaz Zaman, Advocate for the Petitioner (In W.P. No. 1331/2025).** **M/s Nasir Mehmood and Sh. Khizar ur Rasheed, Advocates for the Petitioners. (In W.P. No. 1454/2025).**
Respondent(s) by	**:**	**M/s Nasir Mehmood and Sh. Khizar ur Rasheed, Advocates for the Respondent Nos. 2 and 3 (In W.P. No. 1331/2025).** **Ms. Huma Ejaz Zaman, Advocate for the Respondent No. 2 (In W.P. No. 1454/2025).**
Date of hearing	**:**	**23.05.2025**

MUHAMMAD AZAM KHAN, J.

1. By this single judgment, I intend to dispose of Writ Petition No.1331/2025 filed by Hassan Najam (hereinafter referred to as **"Petitioner"**) and Writ Petition No.1454/2025 filed by Natalia Najam etc. (hereinafter referred to as **"Respondents"**), both arising out of the Order dated 14.03.2025 **("Impugned Order")** passed by the learned Judge Family Court, Islamabad-West **("Family Court")**.

2. The brief facts of the case in hand are that the Petitioner and Respondent No.3 contracted marriage on 14.01.2006. Out of their wedlock, Respondent No. 2 [Mst. Sherin Afzal] was born. Thereafter, certain differences arose between the Petitioner and Respondent No.3, and on 14.12.2014, the Respondent No.3 along with the minor shifted to Islamabad and has since been living with her parents in Islamabad. On 02.01.2025, the Respondents filed a Suit for dissolution of marriage on grounds of cruelty, mental torture and abuse, recovery of dower and maintenance for plaintiffs before the learned Family Court. The learned Family

Court issued notices to the Petitioner/Defendant who contested the suit by filing a written statement. The case was fixed for pre-trial conciliation proceedings and fixation of interim maintenance allowance of the minor. The learned Family Court vide order dated 14.03.2025 held that the defendant/father namely Hassan Najam shall be bound to afford the online school fee in (U.S. Dollar) amounting to $456 of the minor daughter namely Mst. Sherin Afzal (subject to clarification of naming inconsistencies) as per school requirement and to pay the amount of Rs.200,000/- (Two Lac Rupees) as interim maintenance allowance in favour of the minor daughter by 14th of every calendar month, failing which the court may strike off the defense of the defendant. The learned Family Court also fixed the second and fourth Saturday from 10:00 am to 01:00 pm for visitation/meeting of the Petitioner/father namely Hassan Najam with the minor daughter namely Mst. Sherin Afzal, subject to conveyance allowance of Rs.5,000/-, in the visitation/meeting room of Court premises. The Petitioner/Defendant through the Writ Petition No.1331 of 2025 seeks the following relief:

(i) That the maintenance amount be reduced from Rs.200,000/- to Rs.50,000/-;

(ii) Remove the conveyance allowance of Rs.5,000/- in the visitation/meeting room of Court premises (as the meeting is already in the Court room then this amount of Rs.5,000/- is illegal and unjustified) or allow meetings in a nice environment outside the Court in a park or hotel/restaurant and spend a whole day with the father;

(iii) Allow the Petitioner to directly bear the minor's expenses to preserve the sacred bond between father and daughter and he may be permitted to pay the school fees directly to a Pakistani school;

(iv) The Petitioner should be allowed to cover school fees, medical expenses, and other necessities directly, instead of providing lump sum maintenance to the mother;

(v) Remove the condition of paying the school fee in USD 456 and direct the Respondent No.2 to enroll the minor in a Pakistani school where the expenses are manageable within the Petitioner's income range;

(vi) Direct the learned Family Court to fix the matter afresh regarding interim maintenance after hearing the Petitioner and in the light of documentary evidence;

(vii) Direct the Respondent No.2 to return the Petitioner's vehicle bearing No.APE-820 or in the alternative, adjust its value against the interim maintenance allowance until the final disposal of the instant writ petition.

Whereas, through the W.P. No. 1454/2025 the Respondents/Plaintiffs seek enhancement of interim maintenance from Rs. 200,000/- per month to Rs. 400,000/- per month.

3. The learned counsel for the Petitioner argued that the impugned order is perverse, against the law and facts; that the impugned order is the result of mis-reading and non-reading as well as mis-appreciation of the relevant provisions of law on the subject of pleading; that while passing the impugned order, the learned Family Court failed to appreciate the settled provision of law that the interim maintenance order imposes an overwhelming financial burden on the Petitioner, without considering his actual net salary of Rs.8,87,437/- as a Sales Director at Tetra Pak Pakistan. The learned counsel placed reliance on 2024 YLR 2841, PLD 2016 Lahore 72; that the learned Family Court failed to appreciate that the child's medical needs are already covered under the Petitioner's medical insurance, thereby reducing his actual financial burden. He argued that by fixing an excessive maintenance amount, the Family Court has deprived the Petitioner of the ability to sustain his own reasonable expenses, which is contrary to the principles of fairness and equity. As per established legal principles, maintenance should be reasonable, fair, and within the financial means of the father. The imposition of Rs.5,000/- per visit as a conveyance allowance is unjustified and creates an undue financial burden on the Petitioner. Lastly, the learned counsel prayed for acceptance of the writ petition filed by him and for reduction of the maintenance allowance.

4. The learned counsel for the Respondents argued that the maintenance claim of Respondent No.2, which is school fee plus Rs.400,000/- per month, the break-up of which has been provided, is not excessive and has not been denied as being imaginary, which is ascertainable. That Respondent No.2 is an extraordinary, gifted child who is a holder of two Guinness World Records, besides national and

international recognition awards. That despite the order dated 17.02.2025, the Petitioner did not submit his official salary slip. That the Petitioner is otherwise also in contumacious refusal to comply with the Court orders, as he neither deposited the maintenance nor availed visitation, during which Respondents visited the Court on 14.04.2025. That the Petitioner failed to turn up even for visitation on the 2nd Saturday of April, where Respondent No.2 waited in the visitation room the whole day. Lastly, the learned counsel prayed for enhancement of the maintenance allowance of Respondent No.2 to Rs.400,000/- from Rs.200,000/- per month.

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

6. The Petitioner and the Respondents both are aggrieved by the interim maintenance fixed by the learned Judge Family Court vide order dated 14.03.2025. The main grievance of the Petitioner is that an excessive and unjustified interim maintenance has been fixed by the learned Family Court, while the Respondents seek enhancement of the same. It is pertinent to observe that interim maintenance is fixed on the basis of available record and, as the word suggests, it is just interim and subject to revision on the conclusion of the case. The case is still to proceed, and the Petitioner shall be at liberty to lead evidence for the purposes of contradicting the stance of the Respondents/plaintiffs. The impugned order challenged by way of writ petitions under Article 199 of the Constitution is interim in nature and the law on the subject is very much clear that a petition under Article 199 of the Constitution against an interim order is only maintainable if the order passed is without jurisdiction, perverse, or patently illegal. The learned counsel on behalf of the Petitioner failed to point out any such jurisdictional error or illegality; moreover, both the counsels failed to point out any error in the impugned order.

7. In addition to this, the learned Family Court fixed the interim maintenance vide Impugned Order dated 14.03.2025 and the Petitioner filed the writ petition on 10.04.2025 in which no injunctive order was passed by this Court but failed to comply with the orders of the learned Family Court as evident from the order dated 17.05.2025 and failed to pay the interim maintenance fixed by the Court for the months of March, April and May 2025, which is in violation of the recent

judgment of the august Supreme Court of Pakistan cited in *Shahzad Amir Farid versus Mst. Sobia Amir Farid and others,* **(2024 SCMR 1292)** in which it is held as under:

> *"----S. 17A---Interim maintenance---Father failing to comply with order for payment of maintenance to the minors---Contumacious conduct---Costs, imposition of---Family Court, in accordance with Section 17-A of the Family Courts Act, 1964, had the lawful authority to strike off the defence of the petitioner (father) 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---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 was neither arbitrary nor capricious---Hence, the High Court had rightly declined to interfere with the findings of the Family Court with regard to the quantum of maintenance allowance---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, the Supreme Court imposed costs on the petitioner in the sum of Rs. 1,00,000/- (Rupees one hundred thousand only) to deter such conduct in the future with the direction that the costs shall be recovered by the executing court as part of the decree for maintenance---Petition was accordingly dismissed."*

8. Even otherwise, the interlocutory orders of the Family Court should not be assailed in Constitutional jurisdiction of this Court, though in some cases they are harsh, but the determination of adequacy or inadequacy of the quantum of maintenance would certainly require factual evidence or inquiry which cannot be made in the proceedings under Article 199 of the Constitution. Legislature has specifically prohibited filing of appeal against interim order under Section 14(3) of the Family Courts Act, 1964 and if the same is allowed in Constitutional petition against interim order, it would defeat the intention of the legislature.

9. In similar facts and circumstances, a Division Bench of this Court held in case *Minhaj Saqib and Others Vs. Najam us Saqib and others* **(2018 CLC 506 Islamabad)** that interim maintenance for minors cannot be adjudicated on merits by the High Court under Article 199 of the Constitution. In the light of the prevailing precedents on the subject of interim maintenance, this Court cannot interfere with the Impugned Order passed by the learned Judge Family Court

regarding the quantum of maintenance allowance, which cannot be adjudicated in the writ jurisdiction of this Court.

10. In view of the foregoing discussion, both the captioned writ petitions are hereby dismissed for being devoid of merit and misconceived.

C.M. NO. 1945/2025 IN W.P. NO. 1331/2025:

Through the instant Civil Miscellaneous Application, the Petitioner seeks suspension of the operation of the order dated 17.05.2025. However, since the said order has not been specifically impugned before this Court, no relief can be granted in this regard. Moreover, in view of the dismissal of the main Writ Petitions, the instant Application has become infructuous and is accordingly **dismissed.**

(MUHAMMAD AZAM KHAN)
JUDGE

//Sajid//