JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 1422 OF 2025

SYED NAVEED ABBAS
VERSUS
MST. HINA ANWAR & 3 OTHERS

Petitioner by	**:**	**Mrs. Tasleem Abbasi Advocate.**
Respondents by	**:**	**Rana Samreen Akhtar, Advocate for Respondent No.1.**
Date of hearing	**:**	**24.06.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Petition, the Petitioner [Syed Naveed Abbas] has challenged the Order dated 19.03.2025 ("**Impugned Order**") passed by the learned Judge Family Court, West-Islamabad ("**Family Court**"), whereby the learned Family Court has fixed the interim maintenance of minors/Respondents No. 2 & 3 at the rate of Rs.30,000/- each, to be paid by the Petitioner by the 14th of every calendar month.

2. The brief facts of the present case are that the Petitioner and Respondent No. 1 solemnized their marriage on 06.08.2013. From this wedlock, two sons were born: Syed Ariz Abbas Bukhari (Respondent No. 2) and Syed Ehsan Abbas Bukhari (Respondent No. 3). Due to matrimonial differences, Respondent No. 1 filed a suit for recovery of maintenance allowance. In response, the Petitioner instituted a petition under Section 25 of the Guardians and Wards Act for the custody of the minors. Both parties contested each other's claims by filing written statements/replies. Upon failure of the pre-trial conciliation proceedings, the learned Family Court, vide Impugned Order, framed consolidated issues, fixed a visitation schedule, and granted interim maintenance of Rs.30,000/- per month for each minor, payable by the Petitioner by the 14th day of each calendar month. The learned Family Court further directed that in the event of default in payment, the Petitioner's defense would be struck off and the suit would be decreed in accordance with Section 17-A of the Family Courts Act, 1964. Aggrieved by the said order, the Petitioner has filed the instant writ petition.

3. The learned counsel for the Petitioner argued that the Impugned Order is against the law and facts of the case; that the Impugned Order is a result of non-reading and misreading of material available on record; that the Petitioner, having a very meager source of income, cannot pay such huge amounts of interim maintenance allowance for Respondents No. 2 & 3; that the learned Judge Family Court ignored all the facts of the case and fixed interim maintenance of Rs.60,000/- collectively, which is beyond the financial capacity of the Petitioner; that if the interim maintenance is fixed at Rs.10,000/- per month per head for Respondents No. 2 & 3, it will be convenient for the Petitioner to comply; that the learned Judge Family Court has totally ignored the fact that Respondent No. 1 filed an application before the competent authority, wherein she disclosed that the Petitioner is jobless and unable to manage the daily as well as monthly expenses of the minors; that the Impugned Order should be modified to the extent of the quantum of interim maintenance allowance, being against the law and facts of the case; that Respondent No. 1 has not produced any documentary evidence to prove the income of the Petitioner, yet the learned Family Court passed the Impugned Order without applying judicial mind, thereby burdening the Petitioner with a heavy maintenance obligation, which is completely against his financial status and circumstances. Lastly, the learned counsel prayed that the instant writ petition may kindly be accepted, the Impugned Order may be modified, and consequently, the interim maintenance of the Minors/Respondents No. 2 & 3 may kindly be fixed at Rs.10,000/- per month per head, i.e., Rs.20,000/- collectively.

4. On the other hand, the learned counsel for Respondent No. 1 argued that the learned Family Judge passed a well-reasoned order and rightly fixed the interim maintenance allowance of the Minors/Respondents No. 2 & 3. Finally, the learned counsel prayed for dismissal of the present writ petition.

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

6. The Petitioner is aggrieved by the interim maintenance fixed by the learned Judge Family Court vide the Impugned Order. The main grievance of the Petitioner is that the amount of interim maintenance fixed is excessive and unjustified. It is pertinent to observe that interim maintenance is fixed on the basis of available record and, as the term suggests, it is merely interim and subject to alteration, whether by

reduction or enhancement, upon conclusion of the proceedings. The case is still pending, and the Petitioner shall be at liberty to lead evidence in support of his claim and to contradict the stance of the Respondents/Plaintiffs. The Impugned Order**,** challenged through this writ petition under Article 199 of the Constitution, is interim in nature. The law on the subject is well settled that a petition under Article 199 of the Constitution against an interim order is only maintainable if such order is without jurisdiction, perverse, or patently illegal. The learned counsel for the Petitioner failed to point out any such jurisdictional error or illegality.

7. In addition, the learned counsel for Respondent No. 1 pointed out that the Petitioner has failed to comply with the order of the learned Family Court and is not paying the interim maintenance. Such non-compliance is in violation of a recent judgment of the august Supreme Court of Pakistan passed in case titled *Shahzad Abid Farid versus Mst. Sobia Amir Farid* reported as **2024 SCMR 1292**, wherein it has been was held that:-

> *"----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 instances they

may appear harsh. However, the adequacy or inadequacy of the quantum of maintenance involves factual determination, which cannot be undertaken in writ proceedings under Article 199 of the Constitution. The legislature has specifically prohibited the filing of an appeal against an interim order under Section 14(3) of the Family Courts Act, 1964, and allowing a Constitutional petition in such cases would defeat the legislative intent.

9. In similar facts and circumstances, a Division Bench of this Court in *"Minhaj Saqib and Others v. Najam-us-Saqib and Others"* [**2018 CLC 506 (Islamabad)]** held that interim maintenance for minors cannot be adjudicated on merits by the High Court under Article 199 of the Constitution. In light of prevailing precedent on the subject, this Court cannot interfere with the Impugned Order of the learned Family Court regarding the quantum of maintenance allowance, which is not justiciable in writ jurisdiction. Hence, the instant writ petition is **dismissed**, being ill-founded and ill-advised.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____ day of July 2025.

JUDGE

//Mehboob//*