ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P.No.184/2019
Ayaz Khan
Versus
Saira Bibi and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.01.2019	**Raja Nisar Ul Haq Abbasi, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, Ayaz Khan, impugns the order dated 15.11.2018, whereby the learned Judge Family Court fixed an amount of Rs.8,000/- per month as interim maintenance for respondent No.1.

2. Learned counsel for the petitioner submitted that the interim maintenance fixed by the learned Family Court is too exorbitant and beyond the financial means of the petitioner. He further submitted that the petitioner would be ready to maintain respondent No.1 provided she returns to her matrimonial abode; and that the petitioner had already filed a suit for restitution of the conjugal rights.

3. Since the impugned order dated 15.11.2018, is an interlocutory order, I am not inclined to go into the merits of the case lest it may prejudice the petitioner's case during the trial.

4. As Section 14(3) of the West Pakistan Family Courts Act, 1964 expressly bars a right of appeal or revision against an interim order passed by a Family Court, the same cannot be circumvented by challenging such an interim order in the Constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a Family Court passes a final order and then to challenge it in an appeal. This is because

an interim order merges into the final verdict. The purpose behind barring an appeal or a revision against an interim order of the Family Court is to avoid delays in disposal of the cases by the Family Court. Since the suit instituted by respondent No.1 is for recovery of maintenance, etc., the final decree that may be passed by the learned Judge, Family Court would be appealable under Section 14 of the West Pakistan Family Court Act, 1964. Reference in this regard may be made to the following case law:-

(i) **In the case of *Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165),* it has been held as follows:-**

> ***"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders."***

(ii) **In the case *Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab (1976 SCMR 450),* it has been held as follows:-**

> ***"As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitled the petitioner to prosecute a writ petition despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law."***

(iii) **In the case of *Mst. Maham Shabbir Vs. Salman Haider (2014 CLC 330),* the Hon'ble Islamabad High Court held as follows:-**

> ***"9. ... High Court in exercise of its writ jurisdiction is not sitting as a Court of appeal, or court of revision. Its jurisdiction to interfere on the point of fact***

> ***is limited. Interlocutory order if does not suffer from any illegality, malafide or is not in excess of jurisdiction or lack of exercise of jurisdiction or not based on misreading, misconstruing or discarding of the evidence and material on record cannot be challenged in constitutional jurisdiction. Nevertheless, the facts of each case are to be considered separately and no uniform principle can be determined for exercising the writ jurisdiction."***

5. It is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, *malafide*, void or *coram-non-judice*. The order impugned in this petition is clearly interlocutory in nature and does not dispose of the entire case before the Family Court. The impugned order is neither without jurisdiction nor *malafide*, void or *coram-non-judice* so as to warrant interference in the Constitutional jurisdiction of this Court under Article 199 of the Constitution.

6. The order dated 15.11.2018 being purely interlocutory in nature could not be subjected to challenge by filing a Constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 14(3) of the West Pakistan Family Courts Act, 1964. Therefore, I am not inclined to interfere in the said interlocutory order passed by the learned Judge, Family Court.

7. Since, I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 15.11.2018 to be satisfied in the case at hand, the instant writ petition is dismissed as not maintainable. The petitioner will be at liberty to challenge the said order dated 15.11.2018 in an appeal against the final order passed by the

learned Judge, Family Court, if the occasion arises for doing so. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*

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