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

W.P.No.1206 of 2016
Qaiser Irshad
VERSUS.
Mst. Nazia Kanwal & others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.04.2016	**Malik Khalid Mansoor, Advocate for the petitioner**

Through the instant writ petition, the petitioner, Qaiser Irshad, has impugned the Order dated 13.02.2016, passed by the learned Judge Family Court (East) Islamabad, whereby an amount of Rs.6,000/- per month has been fixed as interim maintenance for each of the two minor children of the petitioner and respondent No.1.

2. The petitioner and respondent No.1 got married on 20.04.2010. During the wed-lock, two children were born namely, Muhammad Khayam (respondent No.2) and Ayma Noor (respondent No.3). These minor children are said to be in their mother's custody. The matrimonial relations between the petitioner and respondent No.1 have turned sour causing respondent No.1 to leave her matrimonial abode. On 13.07.2015, respondent No.1, along with the two minor children in her custody, filed a suit for recovery of maintenance and the dower amount before the learned Judge, Family Court, Islamabad. The petitioner contested this suit by filing a written statement on 06.01.2016. The learned Court, on 13.02.2016 framed the issues.

3. On 13.02.2016, the learned Judge Family Court passed the following order:-

> *"Today the case was fixed for reconciliation. Reconciliation failed. Plaintiff No.1 stated that plaintiff No.3/minor has serious medical issues therefore, she has to regularly take her to the doctor, hence, facing serious financial crises.*
>
> *Keeping in view the financial needs of plaintiff No.2 & 3/minors as well as financial position of the defendant, Rs.6,000/- per month per minor has been fixed as interim maintenance of plaintiff No.2 & 3 which shall be paid by the defendant before 14th of each calendar month w.e.f. February 2016...."*

4. It is the said order dated 13.02.2016, which has been impugned in the instant writ petition.

5. Learned counsel for the petitioner was of the view that the amount fixed as interim maintenance by the learned Judge, Family Court, was exorbitant; that the petitioner was employed as a driver and his monthly salary was Rs.10,000/-; that it was not possible for the petitioner to show compliance with the said order dated 13.02.2016.

6. I have heard the arguments of the learned counsel for the petitioner and perused the record with his able assistance.

7. The learned Judge, Family Court, had passed the impugned order in terms of the provisions of Section 17-A of the West Pakistan Family Courts Act, 1964, which was added to the West Pakistan Family Courts Act, 1964 vide Ordinance No.IV of 2002. Under Section 17-A ibid, a Family Court has the jurisdiction to pass an interim order for maintenance at any stage of the proceedings in a suit for maintenance. Where such

interim maintenance is fixed, payment is required to be made on the fourteenth day of each month failing which the Family Court is empowered to strike off the defense of the defendant and decree the suit. The purpose behind the provision of interim maintenance is to ensure that during the pendency of the legal proceedings before the learned Judge, Family Court, financial constrains faced by the minors are ameliorated.

8. The grounds taken by the petitioner in his petition do not cause me to interfere in the impugned order, which is interim in nature. The interim maintenance amount of Rs.6,000/- for each of the two minor children is, in my view, adequate given the inflation in this day and age. The written statement filed by the petitioner before the learned Judge, Family Court, did not disclose that the petitioner had ever been anxious or had made bonafide demands for the custody of his minor children. The father of these two minor children cannot expect their mother keep them as well as to pay all their expenses. Hence, the petitioner is under a legal as well as a moral obligation to maintain and support his children, more so when they are minors. In the case of "Syeda Farhat Jehan Vs. Syed Iqbal Hussain Rizvi" reported as "2010 YLR 3275" it has been held by the Hon'ble High Court of Sindh that the right of maintenance is natural right of minor children and their father could not be allowed under any circumstance to be negligent about the same. Furthermore, it was held that it was the legal and moral duty of a father as the natural guardian of his

minor children to keep maintaining them. No excuse, big or small could absolve a father from his duty of maintaining his minor as guardian through the divine relation of Almighty Allah.

9. Now, the impugned order is only an interlocutory order. The maintenance fixed through such an interim order is only temporary. As and when, the final order is passed the amount fixed by the learned Judge, Family Court, may be modified and revisited in that the quantum of maintenance can be increased or decreased after appraising, evaluating and examining the evidence produced during the trial. The impugned order fixing the interim maintenance of Rs.6,000/- per month for each minor child of the petitioner is not the kind of an order that warrants interference in the constitutional jurisdiction of this Court. In the cases of Munir Alam Vs. Civil Judge, Family Court, Lahore reported as 2009 CLC 442, Abrar Hussain. Vs. Mehwish Rana reported as PLD 2012 Lahore 420 and Shahid Ali Gil Vs. Mst. Ruqayya Bano reported as 2015 MLD 265, Hon'ble' High Courts have dismissed Writ Petitions against orders fixing interim maintenance. Furthermore, in the case of Ali Adnan Dar Vs. Judge, Family Court reported as PLD 2016 Lahore 873, the Hon'ble Lahore High Court did not entertain a Writ Petition against an interim order under Section 17-A of the West Pakistan Family Courts Act, 1964 fixing an amount to be paid as an interim maintenance. The said judgment

enumerates guidelines to be followed in matters regarding interim maintenance.

10. One of the grounds taken by the petitioner in his writ petition is that he does not have sufficient income to pay the interim maintenance as ordered by the learned Judge, Family Court. By taking this ground he has raised a factual dispute, which cannot be resolved without the recording of evidence. On account of this factual controversy, the instant petition is not maintainable.

11. Section 14 (3) of the West Pakistan Family Courts Act, 1964, bars an appeal or revision against an interim order passed by a Family Court. The filing of Writ Petitions against interim orders passed by the Family Courts is to be discouraged because an aggrieved party will have a right to agitate his grievance before the appellate Court when the interim order merges into a final order. The West Pakistan Family Courts Act, 1964, being a special law barring a right of appeal or revision against an interim maintenance order, a writ petition against an order under Section 17-A of the said Act would be maintainable only and only if such an interim order is *coram non judice*, wholly without jurisdiction or based on *malafides*. The quantum of the interim maintenance cannot be made a ground for invoking the constitutional jurisdiction of this Court.

12. No case has been made out for interference in Writ Jurisdiction with the impugned order dated 13.02.2016 passed by the learned Judge, Family Court, Islamabad.

Consequently, the Writ Petition is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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