ORDER SHEET

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.S-285 of 2025

[Syed Mansoor Ahmed Shah vs. Honorable 2nd CJ&JM Hyderabad and another]

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection(s)
2. For orders on application for stay
3. For hearing of main case

03.09.2025

Mr. Irfan Khaskheli, advocate for the petitioner

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1to3. Through this constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973 (The Constitution) the petitioner has impugned the interim order dated 21.01.2025 passed by learned Family Judge-II Hyderabad in Family Suit No.1272 of 2024, whereby directions were issued to the petitioner to pay interim maintenance @ Rs.10,000/- per month till final disposal of the suit, followed by order dated 01.07.2025, whereby application filed by the petitioner for modification/reduction of the interim maintenance was dismissed.

Learned counsel for the petitioner argued that order dated 21.01.2025 granting interim relief was passed without hearing the petitioner; that he came to know about said order on 11.04.2025 when the respondent filed an application under Section 17-A for striking off the defense of petitioner; that diary sheet of the relevant date shows that on 21.01.2025 the matter was fixed for hearing, however, the order was passed for interim maintenance without any notice and/or hearing the petitioner; that the petitioner is a poor person and not in a position to pay such high interim maintenance. In support of his contentions, reliance was placed on 2009 CLC 442, 2011 CLC 820, 2021 CLC 1300 and 2024 YLR 2841.

The foremost issue that arises for consideration is whether this Court, while exercising writ jurisdiction under Article 199 of the Constitution, can interfere with interlocutory orders of the Family Court fixing interim maintenance under Section 17-A of the Family Courts Act, 1964, particularly when Section 14(3) of the Act expressly bars appeal and revision.

It is an established principle that constitutional jurisdiction is supervisory in nature. This Court does not sit as an appellate forum to re-assess evidence or substitute its own discretion. Interference is permissible only where the impugned order suffers from illegality, infirmity, perversity, or jurisdictional defect**.**

The record shows that the petitioner had already appeared before the Family Court on 30.10.2024 and his counsel was present on 21.01.2025 when the interim order was passed. The plea that the order was made behind his back is belied by the diary sheet. Similarly, his application for reduction was unsupported by affidavit or proof of hardship. The Family Court, considering the paramount welfare of the minor, dismissed the same. No perversity or arbitrariness is evident on the factual side. Even otherwise, Section 17-A of the Family Courts Act authorizes the Family Court to fix interim maintenance even on the first appearance of the defendant. Such order is tentative and adjustable against final adjudication.

Further perusal of Section 14(3) of the Act ibid provides that no appeal or revision can be preferred against an interim order passed by a Family Court. For the sake of better understanding Section 14(3) is reproduced herein below:

> *"14.* ***Appeals****.– (1) Notwithstanding anything provided in any other law for the time being in force, a decision given or a decree passed by a Family Court shall be appealable–*
>
> *(a).....*
>
> *(b).....*
>
> *(c).....*
>
> *(d).....*
>
> *(e).....*
>
> *(3). No appeal or revision shall lie against an interim order passed by a Family Court."*

Once the statute specifically excludes appeal and revision, the writ jurisdiction of this Court cannot be invoked to do indirectly what is directly barred. The Islamabad High Court in Syed Mazhar Ali Shah v. Syeda Nighat Sultana (**W.P. No.573/2022**) has held that *"when a statute specifically excludes a remedy, petition in terms of Article 199 cannot be held to be maintainable against*

the said order as it would amount to circumvent the intention of the legislature and frustrate the express provision of law."

In Dr. Aqueel Waris vs. Ibrahim Aqueel Waris (**2020 CLC 131 Islamabad**), it was held that *"Interlocutory orders of the Judge Family Court could not be assailed in constitutional jurisdiction, even though in some of 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 proceedings under Article 199."*

It is also well settled through Ibrar Hussain vs. Mehwish Rana (**PLD 2012 Lahore 420**) that adequacy of maintenance is a matter requiring evidence, which cannot be adjudicated in writ jurisdiction.

The authorities cited by the petitioner, namely 2009 CLC 442, 2011 CLC 820, 2021 CLC 1300 and 2024 YLR 2841, concern the stage of penal consequences under Section 17-A — striking off defence or decreeing suits — and caution against mechanical exercise of such penal powers. In the present case, however, no penal consequence has followed. Only a provisional order of interim maintenance has been passed, which is adjustable and subject to final adjudication. The defence of the petitioner is intact. The cited judgments are therefore distinguishable.

On overall consideration, the impugned orders do not disclose any illegality, infirmity, perversity, or jurisdictional defect. They are interlocutory in nature, passed within jurisdiction, and expressly protected by Section 14(3). This Court, while exercising writ jurisdiction, cannot sit in appeal over the discretion of the Family Court. Resultantly, the instant constitutional petition is not maintainable and is dismissed in limine along with pending applications.

JUDGE

Sajjad Ali Jessar