

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-87 of 2023

[Sajjad Ahmedv..... Mst. Nosheen Khan & others]

Date of Hearing : 03.02.2023
Petitioner through : Mr. Syed Makhdoom Javaid Hussain,
Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- The petitioner impugns the findings of the learned Family Judge Karachi West passed in Family Suit No.2302 of 2022, whereby, respondent No.1's application under Section 17-A of the Family Court Act, 1964 for fixation of interim maintenance was allowed.

2. Pithily the facts of the case at hand is that the respondent No.1 filed a Family Suit No.2302 of 2022 before the learned Family Court Karachi West for maintenance. The learned trial Court vide order dated 16.11.2023 fixed the interim maintenance of the respondent No. 1 to 3 at the rate of Rs.30,000/-, each (respondent No.2 & 3 are children of the petitioner) was fixed, however, the petitioner impugned the said interim maintenance order passed under Section 17-A of the Act, 1964 before this Court.

3. The crux of arguments of learned counsel for the petitioner is that maintenance is fixed looking into the financial status of the father but the learned trial Court failed to appreciate this aspect and passed the impugned order.

4. Since this is a fresh petition and fixed before the Court in a category of "Fresh Case". I have heard learned counsel for the

petitioners at length and have also scanned the available record. The grievance of the petitioner is that he cannot afford the interim maintenance fixed by the learned trial Court and the same is very exorbitant.

5. It is well settled that it is the sacrosanct duty of the father to provide maintenance to his child and to fulfill this obligation, the father is required to earn money even by physical labour, if he is able-bodied, and could not avoid his obligation. The Family Court Act, 1964 is a special statute and has been enacted with a specific purpose to ensure expeditious settlement and disposal of disputes relating to marriage and family affairs and also matters connected therewith. It, inter alia, has bestowed upon the Family Court powers under section 17-A of the Act *ibid* to grant interim maintenance to the concerned parties during the pendency of the proceedings. It also has been mandated that such maintenance shall be paid by the 14th day of each calendar month and in case of default the defence of the defendant shall be struck off and the suit decreed. The purpose behind this legislation is to ensure that during pendency of these proceedings with the Family Court financial constraints faced by the minors are ameliorated. The Family Court has uninhibited powers to enhance or decrease the quantum of maintenance after appraising deciphering and examining the evidence produced during trial. Therefore, findings qua interim maintenance normally cannot be interfered with.

6. Anyhow, every interim order cannot be challenged in writ Jurisdiction. Notwithstanding the contentions raised by the learned counsel, to my mind the present petition is incompetent and not

maintainable on legal plane. Admittedly, the suit is still pending and during its pendency, the learned Judge Family Court has fixed the interim maintenance. Undoubtedly, order passed by the learned Judge Family Court, for all intents and purposes, is an interlocutory order, as the lis is pending before the learned Judge Family Court, and it has still to render its final verdict. The impugned order has not attained the status of a final order. The Legislature has made such order, passed by the Judge, Family Court as non-appealable by specifically making a provision in that respect by virtue of subsection (3) of Section 14 of the West Pakistan Family Courts Act, 1964, which for facility of reference is reproduced below.

“14 Appeal.---(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or decree passed by a Family Court shall be appealable:-

(a) -----

(b) -----

(2) -----

(a) -----

(b) -----

(c) -----

(3) No appeal or revision shall lie against an interim order passed by a Family Court.

(4) -----

7. In these circumstances, when the Legislature has specifically prohibited the filing of an appeal against an interim order and if the Constitutional petition is allowed to be filed against such order, it would tantamount to defeating and diverting the intent of the Legislature. Reference is made to Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary S & G A D, Karachi and

others (1996 SCMR 1165), in which the Hon'ble Supreme Court was pleased to hold as under:--

“Constitutional jurisdiction, exercise of statute excluding a right of appeal from the interim order could not be bypassed by bringing under attack such interim orders in constitutional jurisdiction. 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 order.”

8. The above-mentioned view was reiterated by the Hon'ble Supreme Court of Pakistan in the case of Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House, Karachi v. The State (1999 SCMR 1447), wherein, at page 1452, it was held that *“It is well settled that orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decision, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law, even reducing the right of appeal. Refer the case of “Mushtaq Hussain Bukhari v. The State” 1991 SCMR 2136, Muhammad Afzal Zullah, the then Hon'ble Chief Justice, at page 168 of the report observed as follows:--“It is a wrong or at least misstatement in our state of law, practice, procedures and proceedings in the Courts of law, that wrong orders should be corrected at the time they are passed because it would take less time for the case to conclude. This might have been true half a century to quarter century ago. Thereafter, the challenge to the interlocutory orders has brought about a deluge in the administration of criminal justice. Cases started piling up with the result that the concept of speedy justice came to a grinding halt and powers that may be, started thinking of curtailing remedies even reducing the right of appeals. Cases like the present one do justify*

such an angry re-action but with a little change of practice in the technical field (for example amendment, vis-a-vis, the subject in section 197, Cr.P.C. it is hoped there would no (sic) be need to curtail the remedies as that too in the stage where we are passing, might be counter-productive”

9. The petitioner has got an adequate remedy available to him by challenging the impugned order in appeal, which, he may file against the ultimate order/judgment if the same would be passed against the petitioner. This petition is also hit by Article 199 (1) of the Constitution of Islamic Republic of Pakistan, 1973, hence, cannot be entertained. As discussed earlier, the impugned order can neither be termed as void, ab initio nor without jurisdiction. Similarly, the order of fixing the interim maintenance has not attained the status of a final order. The interim maintenance order was passed by the learned Judge Family Court, who has the jurisdiction to pass the said order under section 17-A of the West Pakistan Family Courts, Act, 1964. The learned counsel for the petitioner is unable to point out any patent illegality or material irregularity in the impugned order as well as order whereby interim maintenance of the minor was fixed, therefore, the instant petition, which has been filed against an interim order passed by a Court of competent jurisdiction, after providing an opportunity of hearing to the parties, is not maintainable in the eyes of law.

10. In light of the above discussion, the instant petition is without any substance; hence, the same is, hereby, dismissed along with pending applications.

11. Before parting with this order, I may observe here that the observations made in this order are only tentative in nature and not final. Proper quantum of the maintenance allowance has to be fixed by the learned Judge Family Court/trial court, after recording of evidence. The learned trial Court may increase or decrease the quantum of maintenance allowance at the time of final adjudication of the case, without being influenced by any observation made in this order.

Karachi
Dated:03.02.2023

JUDGE

Aadil Arab