C.P.No.S- 277 of 2009.

Mst.Nasreen Ghori v/s Muhd Arif

1.For orders on office objection at Flag.A and reply of counsel thereof.
2.For orders on CMA 784/09.
3.For orders on CMA 785/09.
4.For Katcha peshi.

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17.04.2009. Mr.Irshrat Qayoom Hanfi, advocate for the petitioner.

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ARSHAD NOOR KHAN,J.- By this constitutional petition, the petitioner has prayed for enhancement of the interim maintenance awarded by the learned Family Court, Sukkur whereby, the learned Court granted Rs.2000/- per month as interim maintenance allowance to the two children of the petitioner.

The facts leading to the present petition in brief are that the petitioner was married with the respondent and because of certain matrimonial dispute amongst them, the marriage was dissolved. During the subsistence of the marriage, the two minors were born out of the wedlock in between the parties. After filing the suit for dissolution of marriage, the marriage was dissolved by virtue of the decree passed by the Court during the pendency of the suit also the interim maintenance allowance to the tune of Rs.2000/- per month to the minors from the date of passing the order was allowed. The petitioner aggrieved against the interim order of maintenance granted at the rate of Rs.2000/- per month, has

approached to this Court for enhancement of the interim maintenance granted to the minor and prays for enhancement of the maintenance at the rate of Rs.3000/- per month per baby.

I have heard Mr.Irshad Qayum Hanfi, learned counsel for the petitioner.

The learned counsel for the petitioner contended that the learned Family Court was not justified in awarding the maintenance of both the minors at the rate of Rs.2000/- per month and since the respondent is serving as Head Constable in Police department and is also running two hotels, as such the interim maintenance allowance is highly less which may be enhanced to Rs.3000/- per month for per child. In support of his contention he has relied upon the case of Zaffar Hussain v Farzana Nazly reported in PLD 2004 Lahore 349.

I have considered the arguments advanced on behalf of the parties and have gone through the case law as well as the material available before me.

The learned counsel for the petitioner has attacked the order passed by the learned Family Judge dated 19.2.2009 on the ground that the earning of the respondent is much more amount and he can easily pay Rs.3000/- per month for each minor and the learned Family Judge committed an error while granting the meagre maintenance and did not take into consideration the whole earning of the respondent. The earning of the respondent is a question of fact, which requires evidence as presently neither on the record of this Court nor on the record of

the trial court exact figure of the earning of the respondent, is available. Even the monthly salary of the respondent is not born out from the record. The assertion of the counsel for the petitioner that the respondent is running two hotels and the earning from these two hotels is also not well worded either in the present petition or in the suit for maintenance and since no specific quantum of earning of the respondent, is available on record, the Family Court was within her right and power to tentatively fix the quantum of interim maintenance and, in case, after recording of evidence of the parties the exact figure of income of the respondent No.1 is established, the said quantum of maintenance may be altered or modified by the Court in the light of the evidence brought before it. In absence of any material on record the contention of the learned counsel for the petitioner, could not be accepted. Even the controversial point, which requires evidence, could not be decided in the constitutional jurisdiction of this Court. By virtue of Section 14 Sub-Section 3 of the Family Court Act, no appeal lies against the interim maintenance granted by the Court. The scheme of the interim maintenance is therefore not to enhance the litigation in between the parties by way of challenging the same before the appellate Court, so that there may not be multiplicity of litigation amongst the parties. The case of Zaffar Hussain, supra, relied upon by the learned counsel for the petitioner itself speaks about recording of evidence of the parties by the Family court to determine the income of the father for the purpose of grant of maintenance to the minors but fact remains that in absence of any material available on record, the interim maintenance could not be enhanced in exercise of constitutional jurisdiction of this Court unless the evidence to that effect is recorded by

trial Court. I am, therefore not persuaded to hold that the interim maintenance could be enhanced by this Court without recording the evidence of the parties.

For all these reasons and circumstances, I do not find any merit in the present petition, which is hereby dismissed in *limine* alongwith listed applications.

JUDGE

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Approved for reporting.