THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Yousuf Ali Sayeed
Mr. Justice Adnan Iqbal Chaudhry

C.P. No. D – 4755 of 2026
[Akhtar Hameed Khan & others v. P.O. Banking Court-III & others]

Petitioners	:	Akhtar Hameed Khan and others through their Attorney namely; Saqib Khan, through Mr. Abdul Shakoor, Advocate.
Date of hearing	:	03-08-2026
Date of decision	:	03-08-2026

O R D E R

Adnan Iqbal Chaudhry J.– 1] Urgency granted. 3] Exemption granted subject to all just exceptions. 2, 4-5] Petitioners are defendants in Suit No. 74/2020 pending before the Banking Court No. III at Karachi and have invoked the writ jurisdiction to challenge order dated 15.07.2026 passed by the Banking Court which allows an application by Respondent No.2 (plaintiff) under Order XIII Rules 1 & 2 CPC for producing further documents in evidence. The ground for the challenge is that by an earlier order dated 31.01.2026 passed under Order XIII Rules 1 & 2 CPC, the Banking Court had allowed Respondent No.2 to produce certain document, therefore, a second application for production of further doucments was not maintainable.

2. At the outset, learned counsel is confronted with the maintainability of a constitution petition instead of an appeal to challenge an order passed by the Banking Court. He submits that the order in question is an interlocutory order from which an appeal is barred by sub-section (6) of section 22 of the Financial Institutions (Recovery of Finances) Ordinance, 2001 [**FIO**], hence a constitution petition is maintainable.

3. Sub-section (1) of section 22 of the FIO provides an appeal from a "judgment, decree, sentence, or final order passed by a Banking Court", whereas sub-section (6) stipulates:

> "No appeal, review or revision shall lie against an order accepting or rejecting an application for leave to defend, <u>or any interlocutory order of the Banking Court which does not dispose of the entire case before the Banking Court</u> other than an order passed under sub-section (11) of section 15 or sub-section (7) of section 19."

4. Similar provisions barring appeals from interim or interlocutory orders existed and exist in a number of statutes, such as the Banking Companies (Recovery of Loans) Ordinance, 1979, the Banking Companies (Recovery of Loans, Advances, Credits & Finances) Act, 1997, the Cantonments Rent Restriction Act, 1963, the Sindh Rented Premises Ordinance, 1979 and the Family Courts Act, 1964. The intent of such provisions is of course to prevent fragmented decision in a *lis* and provide speedy resolution of the main case. That being the legislative intent, it has been held by the superior Courts that where an appeal from an interlocutory order is expressly barred by statute, allowing a constitution petition against such order would amount to circumventing the statute. To quote the Supreme Court in *Saghir Ahmad Naqvi v. Province of Sindh* (1996 SCMR 1165):

> "The statute excluding a right of appeal from the interim order cannot be by-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."

It was then reiterated by the Supreme Court in *President, All Pakistan Women Association, Peshawar Cantt v. Muhammad Akbar Awan* (2020 SCMR 260) that:

> "It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the

Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court.

In the present case, the intent of the Legislature to keep out interlocutory/interim orders from the scope of appeal is not difficult to understand. It is meant to curtail delays, piecemeal and fractured litigation at various fora at the same time. In our view, such orders cannot be challenged under the guise of invoking the constitutional jurisdiction of the High Court because the same would tantamount to negating the provisions of the Statute itself and rendering the bar imposed by the Legislature in the interest of expeditious disposal of rent matters totally redundant. The High Courts exercising constitutional jurisdiction must be fully cognizant and conscious of this Rule and strictly adhere to the same in the interest of advancing the policy of law and delivering expeditious justice in accordance with the law and the Constitution. Even otherwise, constitutional jurisdiction is equitable and discretionary in nature and should not be exercised to defeat or bypass the purpose of a validly enacted statutory provision."

5. Specifically with regards to sub-section (6) of section 22 of the FIO, the aforesaid rule was applied by the High Courts of Sindh and Lahore in the following cases to dismiss constitution petitons brought to challenge interlocutory orders passed by the Banking Court: *Sajid Brothers & Co. v. Manager Allied Bank Ltd.* (2012 CLD 1858), *Bank of Punjab v. AMZ Ventures Ltd.* (2013 CLD 2033), *Sheikh Muhammad Usman v. Judge, Banking Court No.1* (2015 CLD 257) and *Bank of Punjab v. Amtex Ltd.* (2015 CLD 1682).

6. The instant petition does not bring forth any exceptional circumstances to distinguish the aforesaid precedents. Needless to state that if final judgment of the Banking Court goes against the Petitioner, it will be able to appeal aforesaid interlocutory order along with the final judgment and decree as per the doctrine of merger. The petition is therefore dismissed in *limine.*

JUDGE

JUDGE

*SHABAN**