

IN THE HIGH COURT OF SINDH AT KARACHI
C.P No.S-280 of 2020

Present: Mr. Justice Nazar Akbar

Petitioner : Muhammad Adeel Baig,
Through Mr. M. Hanif Kashmiri, Advocate.

Versus

Respondent No.1 : Mst. Meh Jabeen @ Mehwish. (Nemo).

Respondent No.2 : Master Mustafa Adeel Baig.

Respondent No.3 : The XXXth Family Judge, Karachi East.

Date of hearing : **02.03.2020**

Date of decision : **18.05.2020**

J U D G M E N T

NAZAR AKBAR, J:- This constitution petition is directed against the interim Order dated **18.01.2020** passed by the XXXth Family Judge, East, Karachi in G&W Application No.2869/2017, whereby petitioner/applicant was directed to proceed with the matter.

2. Precisely the facts of the case are that the Petitioner/ applicant filed G&W Application No.2869/2017 against Respondent No.1 for custody of minor/Respondent No.2. The evidence of the Petitioner/ applicant has already been concluded in the said G&W Application, while during cross-examination of Respondent No.1, the counsel for the Petitioner/applicant requested to allow him to produce the evidence recorded in Family Suit No.626/2017, therefore, the trial Court directed learned counsel for the Petitioner/applicant to produce case-laws on this point and further cross-examination of Respondent No.1 was reserved for want of case-laws. On the next date i.e **18.01.2020** learned counsel for the Petitioner/applicant has produced case-laws before the trial Court but the same were not found relevant to the facts and circumstances of the case of the

Petitioner, therefore, the Petitioner/applicant was directed by the trial Court in the impugned order to proceed with the matter in the following terms:-

*“Today the matter was fixed learned counsel for the applicant want to produce the evidence of other suit No.626/2017 the applicant counsel will produce the law therefore the cross is reserved for want for production case law produce **2010 YLR-2473, PLD-2006-Lahore-661, 2016-SCMR-1 and PLD-1989-Karachi-499 same were different from the facts and circumstances of the case as the family law as well Guardian are distinct laws can not be amalgamated into each other** light of the guidelines recapitulated above it concludes that the provisions of the Code invoked by counsel for the applicant at this stage and entertaining the same could defeat sprit (spirit) of the Guardian Laws for which it is enacted and reliance is 2011 PLD 241 Supreme Court, and 2011 YLR 522 Lahore. The applicant is directed to proceed the matter accordingly.”*

3. I have heard learned counsel for the Petitioner and perused the record as well as written arguments filed by the learned counsel for the Petitioner.

4. In written arguments learned counsel for the Petitioner has reiterated almost same facts as were given in the instant constitution petition. Learned counsel for the Petitioner was unable to satisfy the Court that how an interim order can be challenged in constitution petition except by saying that no remedy lies. In support of his contentions, learned counsel for the Petitioner has relied upon the following case-laws and asserts that it was not considered by the trial Court:-

- i. *Muhammad Iaz Ahmed Chaudhry vs. Mumtaz Ahmed Tarar (2016 SCMR 1);*
- ii. *Iqbal Ahmed and others vs. Khurshid Ahmed and others (1987 SCMR 744);*
- iii. *Ghulam Muhammad Lali vs. Imtiaz Ahmed Lali (PLD 2006 Lahore 661).*

The facts of the above case-laws are quite distinguishable from the facts of the case in hand.

5. In fact by entertaining constitution petition in ordinary cases against interim orders which are neither without jurisdiction nor contrary to law, the litigant tries to defeat the very purpose of not providing appeal against the interim orders pending the final decision on merit. It would defeat the intention of the legislatures; therefore, the Petition does not lie. Even otherwise it is incorrect to believe that no remedy lies against the interim order. By now it is settled law that if any interim order is not appealable, the aggrieved party should wait for final order and after final order, he may impugn both the interim and the final orders in appeal before the appellate Court. In this context, if any, citation is needed one may refer to the case of Shamshad Khan and another vs. Arif Ashraf Khan and 2 others reported in **2008 SCMR 269** in which the Hon'ble Supreme Court in para-7 has observed as follows:-

7. As regards the plea of learned counsel for the respondent that interim order, dated 13.9.2004 striking off petitioners' right of defence had attained finality. Suffice it to say that it is settled that that interlocutory order merge in the final judgment and an aggrieved person may challenge interim orders while assailing the final judgment in appeal. We have also examined the memorandum of appeal and find that the petitioners, while filing the first appeal before the learned Additional District Judge, have also challenged the order dated 13.9.2004. Thus, the contention of the learned counsel is without force.

6. In view of the above, instant petition is dismissed. Copy of this order be sent to the trial Court for information and with direction to proceed the G&W Application No.2869/2017 in accordance with law.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul