

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No.S-1178 of 2019

Date	Order with signature of Judge
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Hearing/ priority case.

1. For orders on office objection as at “A”.
2. For hearing of main case.
3. For hearing of CMA No.5509/2019. (Stay).

19.02.2020

Mr. Parvez Ahmed Memon, Advocate for the Petitioner.

NAZAR AKBAR, J.- This constitution petition is directed against an interim order dated **17.09.2019** passed by the 16th Family Judge, East Karachi on application under Section 17-A of West Pakistan Family Court Act, 1964, whereby the Petitioner was directed to pay maintenance at the rate of Rs.5000/- per month till defendant rejoins the plaintiff.

2. Learned counsel for the Petitioner is unable to satisfy the Court that how an interim order can be challenged in constitution petition except by saying that no remedy lies. The interim order is not an appealable order does not mean that by denying appeal against interim order, the legislator wanted that the person aggrieved by interim orders to approach High Court under **Article 199** of the Constitution and against final order file an appeal before the Court subordinate to the High Court. By entertaining constitution petition in ordinary case against interim orders which are neither without jurisdiction nor contrary to law, the Court defeats the very purpose of not providing appeal against the interim orders pending the final decision on merit. It was not 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.

I have already stated that remedy lies even against the interim order, however, the aggrieved person has to patient and wait for the final order and then impugn both the orders in appeal.

3. In view of the above, instant petition is dismissed along with listed application.

JUDGE

Ayaz Gul