



It is an admitted position that the aforementioned FRA, filed by the petitioner, was received to learned Appellate Court by way of transfer on 20.10.2021, which was adjourned to 01.11.2021, on which date neither the petitioner nor his counsel appeared nor the cost was deposited; however, in the interest of justice the learned Appellate Court adjourned the matter to 17.11.2021. Again on said date neither appellant nor his counsel were present nor the cost for notices was deposited; hence, the FRA was dismissed by the learned Appellate Court for default/non-prosecution. It is also an admitted position that the application filed by the petitioner for recalling the order dated 17.11.2021 was barred by 58 days; hence, the same was also dismissed by the learned Appellate Court.

There is no cavil to the proposition that the High Court has wide jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973; however, it does not mean that it can disregard the substantive provisions of a Statue and passed orders which can be settled only through a mechanism prescribed by the Statue. Once the petitioner failed to avail its remedy of appeal as per law duly prescribed under the Statue he cannot challenged the order through a Constitution Petition as the same is not alternate of an appeal.

Remedy of Appeal under Section 21 of the S.R.P.O. 1979 is creative of Statue. If the appeal was filed and the same was dismissed in default/non-prosecution and the remedy of its restoration was not availed within statutory limitation period of 30 days in terms of Article 168 of the Limitation Act, 1908 it is incomprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such.

For the forgoing facts and reasons, instant Constitution Petition is dismissed in limine being devoid of any merit alongwith pending applications.

JUDGE