

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
C.P.No.S-132 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections.
2. For hearing of MA-615/2023.
3. For hearing of main case.

30.05.2023.

Mr. Muhammad Awais Bughio, Advocate for Petitioner.

M/s. Irfan Ahmed Qureshi and Noreen Shaikh, Advocates for Respondent.

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Learned Counsel for the Petitioner states that under the Statutory Scheme mentioned in West Pakistan Family Courts Act, 1964 and Rules framed there under, no power of review exists for the Family Appellate Court to review its own Order and the impugned Order which is admittedly passed on the Application seeking review of it, is illegal and should be set at naught. He has cited 1983 CLC 2365 [ANWAR MASIH v. WAILAT AND 2 OTHERS]; whereas, the above line of argument is vehemently refuted by Mr. Irfan Ahmed Qureshi, Advocate for Respondent, who has stated that to redress the grave illegality in the first Order of 09.01.2023 passed by the Appellate Court, in which the learned Family Court was directed to proceed exparte, since no other remedy was available, therefore, Review was filed and the Appellate Court after going through the record, has correctly handed down the impugned Decision. He further contends, that under Section 14 of the above Statute, no appeal is maintainable against interim orders, the Appellate Court has committed an illegality by entertaining an appeal against an interim order, thus, to correct the same, Respondent filed the review Application. He has cited 2014 CLC 715 [MUHAMMAD SAAD ALI and 2 others v. Mst. MARYAM KHAN and 2 others] and PLD 1973 Supreme Court 110 [FAQIR MUHAMMAD KHAN v. Mir AKBAR SHAH].

Arguments heard and record perused.

The Judgment of the Hon'ble Supreme Court in FAQIR case (*ibid*), inter alia, is a deliberation on Order XLVII of Civil Procedure Code, which relates to the power of review of the Courts and thus this Judgment, with respect, is distinguishable because the question here is that whether the power of review exists in the above Statutory Scheme or not. The second Judgment handed down by learned Divisional Bench of Peshawar High Court (*ibid*) supports the case of Respondent; whereas the Judgment of Lahore High Court (*ibid*) relied upon by Petitioner's Counsel supports his case.

There is a plethora of case law that power of review has to be expressly mentioned in the Statute, like that of an appeal. If the Statute has not expressly provided a review of earlier decisions, then, the Court functioning under a special Statute, as is the present case, cannot construe the same (review) to be of an inherent nature. Therefore, I answer the above question in negative, that if the power of review does not exist in the above Statutory Scheme of Family Laws, then the Appellate Court should not have exercised such a power to review its earlier order. The contention of Respondent's Counsel that no remedy was available, is not correct, as the said Order could have been challenged in accordance with law.

In view of the above, this Petition is accepted, the impugned Order is set aside.

JUDGE

Shahid