

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. S-862 & S-863 of 2023

Date Order with signature of Judge

Petitioner: Mst. Atiya Abdul Karim,
Through Mr. Jibran Nasir,
Advocate.

On Court Notice: Ms. Naushaba Haque Solangi,
Assistant Advocate General.

**Respondents
No. 3:** Sadiq Ali Khawaja,
Through M/s. Muhammad Sadiq
Khoso & Muhammad Asif Khoso,
Advocates.

Date of hearing: 23.10.2023.

Date of Order: 23.10.2023.

ORDER

Muhammad Junaid Ghaffar, J: Both listed petitions have been filed against separate orders¹ of the Appellate Court, whereby, Family Appeals filed by the Petitioner against orders of the family court have been dismissed as being not maintainable. Since the legal issue involved is same, therefore, both petitions are being decided through this common order.

2. Today learned Counsel for the Petitioner has been confronted on maintainability of instant Petition(s) as admittedly, the same are against some interlocutory orders passed in Family Suit(s) which are yet to be decided finally. It has been contended by the Petitioner's Counsel that in CP No.862 of 2003 the Appellate Court was misdirected in dismissing the Appeal on the ground that the same was not maintainable under Section 14(3) of the West Pakistan

¹ Order dated 12.08.2023 passed by VIth Additional District Judge, Karachi East in Family Appeal No. 107 of 2023 (CP No: 862 of 2023)
& Order dated 12.08.2023 by VIth Additional District Judge, Karachi East in Family Appeal No. 77 of 2023 (CP No: 862 of 2023)

Family Courts Act, 1964 inasmuch as initially the Appellate Court had entertained the Appeal and even passed certain orders and issued directions to NADRA. According to him, the learned Trial Court was misdirected in passing the order on 29.03.2023 whereby, it has taken on record a letter of NADRA instead of the entire Report as by such date no report of NADRA furnished on the directions of the trial Court was available on record. He has further argued that in CP No.863 of 2023 an application under Order XI Rule 12 & 14 of the Civil Procedure Code was filed which has not been appreciated by the two Courts below as the prayer of the Petitioner was of discovery and not of verification of any documents; hence, the two orders are not in accordance with law. He has contended that since the order(s) are not interlocutory order(s); therefore, the Appeal(s) were competent before the Appellate Court and ought to have been decided on merits. He has placed reliance on the case of ***Muhammad Majid Iqbal***².

3. Heard and perused the record. It appears to be an admitted position that as of today, no final Judgment has been passed, either by the Family Court or by the Appellate Court. In that case heavy burden is on the Petitioner to first satisfy as to how this Court can exercise any discretion under its Constitutional jurisdiction in a family matter. Time and again, it has been settled by the Courts that jurisdiction of this Court under Article 199 of the Constitution cannot be invoked against interim or interlocutory orders and therefore, the Petitioner's request to entertain the Petition and intervene in the matter cannot be acceded to. Per settled law interlocutory orders of the Family Court could not be assailed in constitutional jurisdiction, even though in some of cases they are harsh, whereas, the underlining legal principles to consider this legal aspect is the intention of the legislature, who has specifically prohibited filing of appeal against interim order, therefore, allowing constitutional petition would tantamount to defeating and diverting intent of the legislature³.

² Muhammad Majid Iqbal Vs. Judge Family Court, Dunya Pur and 2 Others (2021 CL C 644)

³ Dr Aqueel Waris v Ibrahim Aqueel Waris (2020 CLC 131)

4. Admittedly, these Petition(s) have been filed against order(s) passed by the family court during pendency of the main *lis*, whereas, under the constitutional Jurisdiction, which otherwise is discretionary in nature, such orders cannot be impugned as a matter of right. Per settled law where the statute does not provide any right of appeal against an interim order, then it could not be by-passed by impugning it in Constitutional jurisdiction as it would defeat the intent of the legislature and the affected party must wait till it matures into a final order and then approach the Appellate forum created by the statute for examining the validity of the said order⁴. It is further settled that interlocutory orders should not be brought to the higher Courts to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law; even reducing the right to Appeal.⁵ Lastly, it is wholly wrong to consider that the Constitutional jurisdiction is designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong. In that case, it would make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which plainly is not the intention of the Constitution-makers⁶. It is not that if no further appeal is provided in law, then a constitution petition can be treated as an appeal and matter could be argued as if this Court is the Appellate Court. Such concept is totally misconceived and uncalled for.

5. Lastly, in a recent judgment in respect of a final judgment of the Appellate Court in a family matter, the Supreme Court in *M Hamad Hasan*⁷, has held that “*thus the legal position is that the Constitutional jurisdiction cannot be invoked as a substitute for revision or an appeal*” and “*the interference is on limited grounds as an exception and not the rule*”. This observation is very pertinent as it is in respect of a final judgment of an Appellate Court, as thereafter no further appeal has been provided; therefore, in the present facts, when not even a final judgment has

⁴ Saghir Ahmad Naqvi v Province of Sindh (1996 SCMR 1165)

⁵ Benazir Bhutto v The State (1999 SCMR 1447) also see Mushtaq Hussain v The State (1991 SCMR 2136)

⁶ Muhammad Hussain Munir and others v Sikandar and others (PLD 1974 SC 139)

⁷ 2023 SC 197 (Supreme Court citation).

been passed / impugned, this Court must not interfere in the orders of the Courts below in its Constitutional jurisdiction.

6. In view of hereinabove facts and circumstances of this case, no case for indulgence was made out; hence, both listed Petition(s) were dismissed as not maintainable by means of separate short order(s) dated 23.10.2023 and these are the reasons thereof.

J U D G E

Arshad/