

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-328 of 2023

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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For orders on office objection

For hearing of main case

**26.10.2023**

Ms. Rehana Siddiqui advocate for petitioner.

Mr. Wali Muhammad Jamari, Asstt. A.G.

The Family Civil Judge-II, Hyderabad delivered an interim order under section 17-A of West Pakistan Family Court Act 1964 in Family Suit 1976 of 2021. The said interim order was assailed in a review application which was dismissed vide order dated 08.05.2023. The order in review is assailed before this Court.

Learned counsel was confronted as to how such interlocutory orders could be assailed in the writ jurisdiction of this Court; however, she remained unable to submit any cogent response. It was submission that since the appeal provided to petitioner was time barred, hence, present proceedings.

The Supreme Court has maintained in *Gul Taiz Khan Marwat*<sup>1</sup> that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed. The Court is unaware of any appellate forum having been designated for the order originally / subsequently impugned. Notwithstanding the foregoing, lack of any provision of appeal or such a remedy becoming time barred gives no automatic occasion to prefer a writ petition.

If a statute does not provide any right of appeal against an interim order, then the law ought not to be circumvented by resort to writ jurisdiction. An aggrieved person party may wait till final judgment and then approach the appellate forum for examining the validity of the said order<sup>2</sup>. It is trite law that interlocutory orders may not be ordinarily assailed 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<sup>3</sup>. The law<sup>4</sup> requires that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. Unmerited interference could make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which *prima facie* is not the mandate of the Constitution<sup>5</sup>.

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<sup>1</sup> Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

<sup>2</sup> *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

<sup>3</sup> *Benazir Bhutto vs. The State* reported as *1999 SCMR 1447*; *Mushtaq Hussain vs. The State* reported as *1991 SCMR 2136*.

<sup>4</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

<sup>5</sup> *Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.

This Court has recently disapproved of resort to writ jurisdiction to assail interlocutory / interim orders of subordinate for a (especially in family matters), in the *Atiya Abdul Karim case*<sup>6</sup>, therefore, in *mutatis mutandis* application of the reasoning and ratio illumined in conjunction with the deliberation supra, this petition is found to be misconceived, hence, dismissed with listed applications.

Judge

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<sup>6</sup> Per *Muhammad Junaid Ghaffar J* in *Atiya Abdul Karim vs. Sadiq Ali Khawaja* – Judgment dated 23.10.2023 in CP S 862 of 2023.