Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-173 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection
2. For orders on MA-769/2023
3. For hearing of main case.

27.10.2023

Mr. Mangal Meghwar, advocate for petitioner.

This petition assails an interim order dated 10.05.2023 rendered by the Family Guardian Judge, Samaro in Guardian & Ward Application No.02 of 2021. At the very outset, learned counsel for the petitioner is confronted as to how the writ petition can be entertained in respect of such an interlocutory order. He submits that since no appeal is provided by law, hence, a writ petition ought to be entertained[1]. This submission does not find merit in law in view of the observations of the Supreme Court, in the case of *Gul Taiz Khan Marwat*[2], reiterating settled law that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed.

It is apparent that no final judgment has been passed and no grievance, incapable of being remedied post final judgment, has been demonstrated before this Court. The superior courts have consistently maintained that writ jurisdiction ought not to be invoked against interim or interlocutory orders. If the intention of the legislature is to preclude the possibility of an appeal then entertaining the matter in writ could amount to defeating the manifest intent of the legislature[3].

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[4]. 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[5]. The law[6] 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

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[1] Reliance is placed on two orders of learned Single Benches of this Court, however, notwithstanding the fact that they are not binding, it is observed with respect that perhaps it would be proper for this Court to follow the binding edicts of the Supreme Court in the matter instead.

[2] Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

[3] *Dr. Aqueel Waris vs. Ibrahim Aqueel Waris* reported as *2020 CLC 131*.

[4] *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

[5] *Benazir Bhutto vs. The State* reported as *1999 SCMR 1447*; *Mushtaq Hussain vs. The State* reported as *1991 SCMR 2136*.

[6] 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*.

from that exercisable in a full-fledged appeal, which *prima facie* is not the mandate of the Constitution[7].

This Court has recently disapproved the invocation of writ jurisdiction to assail interlocutory / interim orders of subordinate fora, in the *Atiya Abdul Karim case*[8], 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 *in limine* with listed applications.

Judge

Ahmed/Pa,

[7] *Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.
[8] Per *Muhammad Junaid Ghaffar J* in *Atiya Abdul Karim vs. Sadiq Ali Khawaja* – Judgment dated *23.10.2023* in *CP S 862 of 2023*.