

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-436 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection
2. For orders on MA-1565/2023
3. For orders on MA-1566/2023
4. For hearing of main case.

02.11.2023

Mr. Imdad Ali Memon, advocate for petitioners.

Guardian Application No.25 of 2019 was allowed by Judgment dated 05.04.2023 by the Court of Guardian/Family Judge-VIII Hyderabad. Present Petitioners filed Guardian Appeal No.10/2023 before the 6th Additional District Judge Hyderabad and the same was dismissed vide Judgment dated 11th September 2023. The present petition assails the respective judgments rendered in the family jurisdiction.

At the very outset learned counsel is queried as to whether there is any jurisdictional defect in the judgments impugned and he replied in the negative. However, it was stated that since no remedy is provided therefore, writ must be entertained.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided¹, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² 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. The impugned judgments are well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they could not have been rested upon the rationale relied upon. In so far as the plea for appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard³.

It is observed that this petition unjustifiably assails the concurrent findings of the statutory hierarchy in the writ jurisdiction of this Court; the same has been disapproved by the Supreme Court in *Hamad Hasan*⁴ and earlier similar views were also expounded in *Arif Fareed*⁵. Therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed with listed applications.

Judge

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

² 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*.

³ *2016 CLC 1*; *2015 PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR 574*; *PLD 2001 Supreme Court 415*.

⁴ Per *Ayesha A. Malik J* in *M. Hamad Hassan vs. Mst. Isma Bukhari & Others* reported as *2023 SCMR 1434*.

⁵ Per *Amin ud Din Ahmed J* in *Arif Fareed vs. Bibi Sara & Others* reported as *2023 SCMR 413*.