

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
C.P.No.S-466 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
	<ol style="list-style-type: none">1. For orders on office objection2. For orders on MA-1660/20233. For orders on MA-1661/20234. For hearing of main case.

03-11-2023

Mr. Gulzar Ali advocate holds brief for learned counsel for the petitioner.

The judgment assails an interlocutory order dated 09.08.2023 passed in an application under Section 17-A of the West Pakistan Family Court, Act, 1964 in Family Suit No.326 of 2023. A fixed date was granted for today, however, learned counsel is absent without justification while this may be a fit case for dismissal for non-prosecution, however, it is considered appropriate to advert to the merit of this case.

There is no provision for an appeal against an interim order in the relevant Act and on the contrary there is a specific preclusion in such regard. The Supreme Court has maintained in *Gul Taiz Khan Marwat*¹ that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed. Further that the absence of an appellate provision / forum gives no automatic occasion to prefer a writ petition.

An aggrieved person party may wait till final judgment and then approach the appellate forum for examining the validity of the said order². 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 Appeal³. The law⁴ 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 Constitution⁵.

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

² *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

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

⁴ 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*.

⁵ *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 fora (especially in family matters), in the *Atiya Abdul Karim case*⁶, 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* along with listed applications.

Judge

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