

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.
C.P.No.S-299 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

For order on office objection
For hearing of main case.

06-11-2023

Mr. Khurram Inam Ghauri advocate for petitioners.

The present writ petition assails the interlocutory order dated 06.07.2023 rendered in Rent Application No.118 of 2020. At the very outset, learned counsel is confronted as to the maintainability hereof, however, he has failed to provide a cogent response. Reliance is rested on the submission that since no forum of appeal is provided, hence, a writ petition ought to be entertained. 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*¹, reiterating settled law that an appeal is a creation of statute and in the absence thereof none can be presumed.

Rent application No.118 of 2020 was filed against the present petitioners and the same was decided there against *inter alia* on account of the chronic default in pursuing the matter. The particulars are of such default are arrayed in the order and also demonstrated from the diary available on record. In appeal, the matter was remanded and the trial Court was required to proceed afresh. In such *de novo* proceedings the impugned order was passed; predicated yet again on the demonstrable default of the petitioners. The narrative contained in the impugned order is not denied by the petitioners' counsel.

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 ordinarily 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 legislature².

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 order³. 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 Appeal⁴. The law⁵ requires that where the fora of

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

² *Dr. Aqueel Waris vs. Ibrahim Aqueel Waris* reported as *2020 CLC 131*.

³ *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

⁴ *Benazir Bhutto vs. The State* reported as *1999 SCMR 1447*; *Mushtaq Hussain vs. The State* reported as *1991 SCMR 2136*.

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 Constitution⁶.

This Court has recently disapproved the invocation of writ jurisdiction to unjustifiably assail interlocutory / tentative orders in rent matters in the *Imran Khalid case*⁷. The judgment is squarely applicable in the present matter, therefore, in *mutatis mutandis* application of the reasoning and ratio illumined, this petition is found to be misconceived, hence, dismissed along with pending application.

Judge

Ahmed/Pa

⁵ 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*.

⁶ *Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.

⁷ Per Muhammad Junaid Ghaffar J in *Imran Khalid vs. Munazza Rizvi* – Judgment dated 16.10.2023 in *CP S 341 of 2023*.