

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-450 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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1. For orders on MA-1749/2023
2. For orders on office objection
3. For orders on MA-1750/2023
4. For orders on MA-1751/2023
5. For hearing of main case.

13.11.2023

Mr. Kamran Bhatti, advocate for petitioner.

This writ petition challenges successive judgments rendered in the family jurisdiction. The conclusive judgment is dated 27.09.2023, rendered by the VIth Additional District Judge, Hyderabad in Family Appeal No.64/2023, and the operative paragraph therein is reproduced herein below:

“8. After hearing of the parties counsel respectively I have gone through the memo of family appeal and R&Ps so also impugned order 13.04.2023 and ex-parte judgment decree dated 31.08.2022. The appellant through family appeal u/s 14 of family court act assailed the two judgment orders, i.e. one ex-parte judgment and decree dated 31.08.2022 and an order dated 13.04.2023 passed in family suit No.630/2022. The circumstances questioning regarding challenging of two respective judgment and order through single appeal. The record reflects that the family suit was filed by respondent before learned Family Court Hyderabad. The appellant after the due service failed to file written statement hence was debarred consequently the family suit was decreed as ex-parte vide judgment dated 31.08.2022. The appellant through an application U/O IX Rule 13 CPC challenged the said ex-parte judgment and decree, the learned family court recalled ex-parte judgment and decree dated 31.08.2022 and provided opportunity to appellant for filing of Written Statement but he failed comply with the said order, consequently the learned family judge through an order, order sheet dated 13.04.2023 recalled an order dated 15.03.2022, hence ex-parte judgment remained in field as for as challenge of an order dated 13.04.2023 is concerned same has been passed an interim and interlocutory order which could not be assailed through family appeal U/S 14 of Family Court Act as the provision of section 14(3) of the Act bars for assailing an interim or interlocutory order through the provision therefore in circumstances as arrived here in appeal of appellant, is not maintainable under the law therefore impugned order dated 13.04.2023 cannot be disturbed by interfering through this provision hence point No.1 is discussed as negative.”

In view of the judgments of the Supreme Court in the cases of *M. Hamad Hassan vs. Mst. Isma Bukhari and others* (2023 SCMR 1434) and *Arif Fareed vs. Bibi Sara and others* (2023 SCMR 413), learned counsel is queried as to whether there is any jurisdictional defect in the proceedings/judgment impugned and he responded in the negative. Under such circumstances, and in *mutatis mutandis* application of the ratio illumined by the Supreme Court, no case is made out to invoke the writ jurisdiction of this Court, hence, this petition is dismissed *in limine* along with pending applications.

Judge