

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-271 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection
2. For orders on M.A. 764/2024
3. For hearing of main case

23.07.2024

On the last date, the following order was passed:

“28.06.2024

Mr. Ahmed Faqeer, Advocate for petitioner.

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1. Urgency granted.

2to4. Learned counsel files amended title, which is taken on record. He however, seeks time to satisfy the Court on the point of maintainability of this petition filed against the interlocutory order dated 12.02.2024 passed on an application u/s 17-A of the West Pakistan Family Court Act (Amended Order-2022), in Family Suit N.272/2023.

Adjourned to 23.07.2024.”

Today, petitioner remains unrepresented without intimation or justification. While this may be a fit case for dismissal in default, it is considered appropriate to consider the maintainability aspect instead.

There is no provision of appeal in respect of the nature of order assailed before this Court. 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.

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 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

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*.

from that exercisable in a full-fledged appeal, which *prima facie* is not the mandate of the Constitution⁵.

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

Ali Haider

⁵ *Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.

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*.