

**JUDGMENT SHEET
LAHORE HIGH COURT,
MULTAN BENCH, MULTAN**

JUDICIAL DEPARTMENT

Writ Petition No. 11512 of 2019
(Arshad Mehmood v. Judge Family Court and another)

JUDGMENT

Date of hearing: 24.01.2023

Petitioner by: Mr. Humayun Syed Rasool, Advocate.

Respondents by: Nemo.

Faisal Zaman Khan, J. Through this petition, interim orders dated 27.10.2018 and 20.06.2019 passed by respondent no.1 have been assailed. By virtue of the former order, right of the petitioner to cross-examine the witnesses of respondent no.2 has been struck off and through the latter, his right to produce oral as well as documentary evidence has also been closed.

2. At the outset of hearing, learned counsel for the petitioner has been confronted with section 14 of the West Pakistan Family Courts Act 1964 (**Act**) to highlight that the Legislature in its own wisdom has not provided any appeal or revision against an interim order passed by the Family Court, therefore, this writ petition is not maintainable in view of the fact that if any such jurisdiction is exercised by this Court, the same would amount to defeating the intention of the Legislature.

3. In spite of his earnest effort, learned counsel for the petitioner has not been able to give any plausible explanation.

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4. Despite service and representation, none has entered appearance on behalf of respondent no.2 therefore she is proceeded against *ex parte*
5. Arguments heard. Record perused.
6. The moot point which requires determination by this Court is as to whether against an interim order passed by a Family Court, a writ petition is maintainable?
7. Family courts are established under section 3 of the West Pakistan Family Courts Act 1964 (**Act**). The said courts exercise their jurisdiction under section 5 of the Act, which is restricted to the “**matters**” specified in Part I of the Schedule of the Act.
8. The preamble of the Act would show that the Act has been promulgated in order to make provisions for establishment of family courts for **expeditious settlement** and **disposal** of disputes relating to marriage and family affairs and for matters connected therewith.
9. A careful reading of the preamble would show that the Act has primarily been promulgated for “**expeditious**” “**settlement**” and “**disposal of disputes**” mentioned in the Schedule of the Act which primarily cater for the disputes arising out of “**marriage**”, which is between the “**spouses**” and the “**family affairs**” which are outcome of marriage.
10. When an “**issue/dispute/matter**” as contemplated in the Schedule arises to a spouse, for “**disposal**” of the same either of them under section 6 of the Act being an aggrieved spouse will approach the family court against a party as defined in section 2(d) of the Act, whose presence is necessary for proper decision of the case or which has been

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impleaded by the family court. Upon such institution, defendant shall be intimated under section 8 who upon intimation will file a written statement under section 9 whereafter under section 10 process of “**settlement**” will be initiated by the family court by making an effort for reconciliation between the spouses. If the reconciliation fails, issues will be framed and thereupon under section 11 parties will be put to evidence and once the evidence is concluded, under section 12 another effort for “**settlement**” between the spouses shall be made by the family court and in case it fails, a final decree will be passed.

11. Unlike the procedure provided for proceeding in a regular civil suit under the Code of Civil Procedure 1898 (**CPC**), for “**expeditious**” disposal of the family suits, under section 7 an aggrieved spouse is allowed to enjoin multifarious causes of action (as mentioned in the Schedule) in one suit and for disposal of the same section 12-A provides for a time line. To further simplify the process/procedure and for express disposal of cases, under section 17 application of Qanun-e-Shahdat Order 1984 and CPC has also been ousted.

12. In order to meet the objectives of the Act a bar has been specifically created in section 14(3) of the Act which would show that any interim order passed by the Family Court cannot be subject to challenge through an appeal or a civil revision.

13. While interpreting such like bar of jurisdiction, it has been held by the Hon’ble Supreme Court of Pakistan that where a particular law does not provide a remedy against an interim order passed by a court exercising jurisdiction under that law, the said order ordinarily cannot be assailed by way of filing a constitutional petition with a caveat that if the order is without jurisdiction. For reference, reliance can be placed on judgments reported as President, All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others [2020 SCMR

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260], Allah Rakha (deceased) through L.Rs. and others v. Additional Commissioner (Revenue), Gujranwala and others [2020 SCMR 502] and Haji Muhammad Latif v. Muhammad Sharif and others [2021 SCMR 1430].

14. Keeping the above in view, when an interim order passed by a family court is challenged before this Court in exercise of its Constitutional Jurisdiction (which according to the judgments mentioned supra is circumscribed), interference made by this Court would not only amount to challenging the wisdom/intention of the Legislature, who has deliberately not provided any remedy against the interim order passed by the family court but it is also violative of Article 189 of the Constitution of the Islamic Republic of Pakistan. Even otherwise, such interference will also be defeating the purpose of promulgation of the Act qua expeditious disposal of the family cases.

15. It has also been held by the Hon'ble Apex Court that wisdom/intention of the Legislature cannot be looked into by this Court in exercise of its constitutional jurisdiction. For reference, reliance can be placed on judgments reported as Zaman Cement Company (Pvt.) Ltd. v. Central Board of Revenue and others [2002 SCMR 312], Pakistan Lawyers Forum and others v. Federation of Pakistan and others [PLD 2005 SC 719], State of M.P. v. Rakesh Kohli and another [2013 SCMR 34] and Lahore Development Authority through D.-G. and others v. Ms. Imrana Tiwana and others [2015 SCMR 1739].

16. Keeping in view the above and placing it in juxtaposition with the facts of the present case, it is clear and obvious that respondent no.1 through the impugned interim orders has not only taken away the right of the petitioner to cross-examine the witnesses of respondent no.2 but has also closed his right to produce oral as well as documentary evidence. The said orders being interim in nature could not have been

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assailed in an appeal or civil revision as contemplated in section 14 of the Act and since the learned counsel for the petitioner has failed to show any jurisdictional defect in the said orders, the jurisdiction of this Court is also barred.

17. It shall not be out of place to mention here that many opportunities were granted to the petitioner to produce his evidence which also included last opportunity however he failed to do the needful therefore the impugned orders have rightly been passed as they are in consonance with the principle of law laid down by the Hon'ble Supreme Court of Pakistan in judgment reported as *Moon Enterprises CNG Station Rawalpindi v. Sui Northern Gas Pipelines Limited and another* [2020 SCMR 300].

18. For what has been discussed above, since the learned counsel for the petitioner has not been able to highlight any jurisdictional defect or procedural impropriety in the impugned orders, therefore, no interference is required, as a sequel to which, this petition fails and the same is dismissed.

(Faisal Zaman Khan)
Judge

Approved for reporting

JUDGE

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