

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.302/2018

Asif Pervez

Versus

Family Judge, Islamabad (East) and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.07.2019	Ms. Sumiya Shakeel Raja, Advocate for the petitioner. Malik Sajjad Haider and Ms. Naheed Iqbal, Advocates for respondent No.2	
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Through the instant writ petition, the petitioner, Asif Pervez, impugns the order dated 09.01.2018, passed by the learned Judge, Family Court, Islamabad, whereby his right to cross-examine respondent No.2's witnesses, was closed.

2. Learned counsel for the petitioner submitted that she could not attend the Court on 09.01.2018 because she was *"out of city in connection with her family engagements and was also suffering [from] flue and fever"*; and that it was in the interests of justice if the impugned order dated 09.01.2018 was set-aside. Learned counsel for the petitioner prayed for the impugned order dated 09.01.2018 to be set-aside.

3. Learned counsel for respondent No.2 submitted that the instant writ petition is not maintainable since the impugned order is an interlocutory order passed by the learned Family Court; and that since no right of appeal was provided against such an interlocutory order, the law could not be circumvented by filing a writ petition against such an order. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. Since the impugned order dated 09.01.2018 is an interlocutory order, I am not inclined to go into the merits of the case lest it may prejudice the case of either party before the learned Family Court.

As Section 14(3) of the West Pakistan Family Courts Act, 1964 ("the 1964 Act") expressly bars a right of appeal or revision against an interim order passed by a learned Family Court, the same cannot be circumvented by challenging such an interim order in the Constitutional jurisdiction of the High Court. A party aggrieved by such an interim order has to wait until a learned Family Court passes a final order and then to challenge it in an appeal. This is because an interim order merges into the final verdict. The purpose behind barring an appeal or a revision against an interim order of the learned Family Court is to avoid delays in disposal of the cases by the learned Family Court. Since the suit instituted by respondent No.2 was for recovery of maintenance, dower and dowry articles, the final decree that may be passed by the learned Family Court would be appealable under Section 14 of the 1964 Act. Reference in this regard may be made to the following case law:

- (i) In the case of Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165), it has been held as follows:-

"The statute excluding a right of appeal from the interim order cannot be passed by bringing under attack such interim orders in Constitutional jurisdiction. The party affected has to wait till it

matures into a final order and then to attack it in the proper exclusive forum created for the purpose of examining such orders.”

- (ii) In the case Mumtaz Hussain alias Butta Vs. Chief Administrator of Auqaf, Punjab (1976 SCMR 450), it has been held as follows:-

“As the said Ordinance has taken away the right of petitioner to interim relief, learned counsel submitted that this was a ground which entitled the petitioner to prosecute a writ petition despite the pendency of the proceedings on the District Court. The argument is misconceived because the writ jurisdiction of the superior Courts cannot be invoked in aid of injustice and in order to defeat the express provisions of the statutory law.”

- (iii) In the case of Mst. Maham Shabbir Vs. Salman Haider (2014 CLC 330), this Court held as follows:-

“9. ... High Court in exercise of its writ jurisdiction is not sitting as a Court of appeal, or court of revision. Its jurisdiction to interfere on the point of fact is limited. Interlocutory order if does not suffer from any illegality, malafide or is not in excess of jurisdiction or lack of exercise of jurisdiction or not based on misreading, misconstruing or discarding of the evidence and material on record cannot be challenged in constitutional jurisdiction. Nevertheless, the facts of each case are to be considered separately and no uniform principle can be determined for exercising the writ jurisdiction.”

6. It is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution would be when the order or action assailed was palpably without jurisdiction, *malafide*, *void* or *coram-non-judice*. The order impugned in this

petition is clearly interlocutory in nature and does not dispose of the entire case before the learned Family Court. The impugned order is neither without jurisdiction, nor *malafide*, *void* or *coram-non-judice* so as to warrant interference in the Constitutional jurisdiction of this Court under Article 199 of the Constitution.

7. The order dated 09.01.2018 being purely interlocutory in nature could not be subjected to challenge by filing a Constitutional petition before this Court as it would amount to defeating the legislative intent behind Section 14(3) of the 1964 Act. Therefore, I am not inclined to interfere in the said interlocutory order passed by the learned Judge, Family Court.

8. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 09.01.2018 to be satisfied in the case at hand, the instant writ petition is dismissed as not maintainable. The petitioner will be at liberty to challenge the said order dated 09.01.2018 in an appeal against the final order passed by the learned Judge, Family Court, if the occasion arises for doing so. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Sultan*