

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No.890/2020

Zaheer Ahmed  
Versus  
Arshad Mehmood Butt and 2 others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	17.03.2020	Raja Muhammad Sheraz, Advocate for petitioner.

Through the instant writ petition, the petitioner, Muhammad Zaheer, impugns the order dated 27.01.2020 passed by the learned Civil Judge, Islamabad, whereby his application for substitution of written statement was rejected.

2. The petitioner is defendant No.1 in suit for declaration and permanent injunction instituted by respondent No.1 (Arshad Mehmood Butt). The said suit was instituted on 30.11.2013, wherein plaintiff/respondent No.1 pleaded that the petitioner/defendant No.1 had purchased properties mentioned in paragraphs No.4 and 5 of the plaint on respondent No. 1's behalf with funds provided by him. Respondent No.1 further alleged that the petitioner and respondent No.2 refused to transfer the said properties to respondent No.1. The record shows that on 10.01.2014 the summons issued to the petitioner were returned unserved. However, on the next date of hearing i.e 03.02.2014 Malik Talat Hussain, Advocate submitted a power of attorney/wakalatnama on behalf of the petitioner. The said advocate filed

contesting written statement on behalf of the petitioner.

3. Subsequently on 15.01.2019, the petitioner moved an application for rejection of existing written statement and permission to file fresh written statement. In the said application, the petitioner took the position that the power of attorney as well as written statement had been filed without his authorization, and that he had no knowledge about the proceedings till arrival of local commission appointed by the learned Civil Court for inspection. Respondent No.1 contested the said application. The learned Civil Court, after recording the statements of the petitioner as well as Malik Talat Hussain, Advocate, dismissed the said application vide impugned order dated 27.01.2020. The petitioner assailed the said order in civil revision before the Court of learned Additional District Judge, which was returned due to lack of jurisdiction. Hence the instant petition.

4. The learned counsel for the petitioner, after narrating the facts leading to filing of the instant petition, submitted that the impugned order is erroneous inasmuch as it does not take into account the facts of the case; that the learned Civil Court did not allow the petitioner to cross-examine the advocate who filed the power of attorney purportedly on the petitioner's behalf; that the said advocate also filed a power of attorney on behalf of the respondent No.2/defendant No.2 whereafter defendant

No.2 had his consenting statement recorded by the learned Civil Court; that the said advocate after appearing before the learned Civil Court without the petitioner's authorization remained absent from the proceedings due to which interim injunction was confirmed in favour of plaintiff/respondent No.1 vide order dated 17.04.2018; that the petitioner's statement on oath was not considered by the learned Civil Court; that the impugned order is against the settled law that no credence could be given to a written statement disowned by a defendant; and that the impugned order was arbitrary based on technicalities rather than merits. Learned counsel for the petitioner prayed for the petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel placed reliance on the judgment of the Hon'ble Supreme Court in the case of Mst. Dara Vs. Khursheed Ali (2007 SCMR 761).

5. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

6. Admittedly, the written statement which was filed on behalf of the petitioner by Malik Tallat Hussain, Advocate does not concede the claim made in the plaint. It is not the petitioner's stance that he did not want to contest the plaint. In essence, the petitioner wants to supplement the defence by filing a fresh written statement. Where a defendant wants to change the contents of his written statement, the proper course is to apply for

amendment of the written statement. The petitioner, however, did not seek to amend the existing written statement.

7. As regards the question whether the petitioner had executed a power of attorney in favour of Malik Tallat Hussain, Advocate or had authorized to latter to file a written statement, the learned Civil Court after conducting a factual inquiry held the written statement had been filed by the petitioner through Malik Tallat Hussain, Advocate. With regard to authenticity of power of attorney and written statement filed on behalf of the petitioner, there are two rival conflicting claims. Vide order dated 27.01.2020, the learned Civil Court turned down the petitioner's request to cross-examine Malik Tallat Hussain, Advocate. Now, neither did the petitioner file any application against Malik Tallat Hussain, Advocate for filing a written statement without his authorization and for forging the petitioner's signature on the written statement and power of attorney, nor did he file an application against the said advocate of professional misconduct. Therefore, the petitioner's bare allegation cannot constitute the sufficient ground of interference with the impugned order.

8. In addition to above, the impugned order dated 27.01.2020 is an interlocutory order which has not been made appealable under Section 104 read with Order XLIII Rule 1 C.P.C. Pursuant to Section 15 of the Code of Civil Procedure (Amendment) Act, 2020, Section 115 of the Code of Civil Procedure

("C.P.C.") stands substituted with the following:-

*"115. Revision.- Any party aggrieved by an order under section 104, passed by the Court of District Judge or Additional District Judge in an appeal against an interlocutory order passed by a Civil Judge or Senior Civil Judge, as the case may be, may within thirty days of the said order may file a revision to the High Court on an obvious misapprehension of law or in respect of a defect in jurisdiction."*

9. Due to the said amendment, a revision petition cannot be filed against an order which is not appealable. The said statutory bar cannot be circumvented by challenging such an interlocutory order in the Constitutional jurisdiction of the High Court. A party aggrieved by such an interlocutory order has to wait until a Civil Court passes a final order and then to challenge it in an appeal. This is because an interlocutory order merges into the final verdict. The purpose behind barring a revision against an interlocutory order is to avoid delays in disposal of the cases. Reference in this regard may be made to the case of Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165), wherein 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."*

10. The 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 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.

11. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 27.01.2020 to be satisfied in the case at hand, the instant writ petition is dismissed *in limine*. The petitioner will be at liberty to challenge the said order dated 27.01.2020 in an appeal against the final judgment passed by the learned Civil Court, if the occasion arises for doing so. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE