

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.4187 of 2014

Muhammad Iqbal Azhar Qureshi

Versus

Ms. Shaista Khan Kundi and others

Date of Hearing: 22.08.2017

Petitioner by: Mr. Naseem Iqbal, Advocate,

Respondent No.2 by: Mr. Umer Aslam, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Muhammad Iqbal Azhar Qureshi, impugns the order dated 18.02.2014, whereby the learned Judge, Family Court, Islamabad, dismissed the petitioner's application to pay the dower amount of Rs.100,000/- and maintenance at the rate of Rs.40,000/- per month from 21.11.2011 to 21.02.2012 to respondent No.2 (Mst. Sonia Waheed) in installments of Rs.10,000/- per month

2. Through the instant writ petition, the petitioner, Muhammad Iqbal Azhar Qureshi, impugns the order and decree dated 21.12.2013, passed by the learned Judge Family Court, Islamabad, whereby respondent No.2's suit for recovery of dower and maintenance decreed with the direction to respondent No.3 (Afzal Iqbal) to handover the dower amount of Rs.10,00,000/- and maintenance from 21.11.2011 to 21.12.2012, at the rate of Rs.40,000/- per month.

3. Learned counsel for the petitioner submitted that the petitioner is respondent No.3's father; that respondent No.2 had instituted a suit for recovery of dower and maintenance against respondent No.3 before the learned Family Court; that respondent No.3 had executed a special power of attorney in the petitioner's favour to contest the said suit; that on 21.12.2013, the said suit was decreed after the contesting parties took a special oath before the learned Family Court; that the petitioner filed an application before the learned Family Court to pay the decretal amount in monthly installments of Rs.10,000/-; and that the said application was dismissed by the learned Family Court on 18.02.2014. Learned counsel for the petitioner further submitted

that the suit should have been decided on merits instead of the special oaths taken by contesting parties. Learned counsel for the petitioner prayed for the impugned order and decree dated 21.12.2013, as well as the order dated 18.02.2014, to be set aside.

4. On the other hand, learned counsel for respondent No.2 submitted that the petitioner or respondent No.3 could have filed an appeal under Section 14 of the West Pakistan Family Courts Act, 1964 against the said order and decree dated 18.02.2014; that since neither the petitioner nor respondent No.3 filed an appeal against the said order and decree, the instant petition is not maintainable; that an offer for special oath was made on behalf of respondent No.3 by the petitioner before the learned Family Court; that the petitioner or respondent No.3 are estopped by conduct from taking a position contrary to the one taken before the learned Family Court; that the petitioner decided to challenge the said order and decree only after the learned Judge Family Court rejected the application for payment of the decretal amount in installments; and that petitioner was not a party in the proceedings before the learned Family Court, therefore, he does not have the locus standi to file the instant petition. Learned counsel for respondent No.2 prayed for the writ petition to be dismissed.

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

6. Before going into the merits of the case, I propose to decide respondent No.2's objection to the maintainability of the instant petition. Since the impugned order and decree was passed by the learned Civil Judge exercising the powers of a Family Court, under Section 14 of the West Pakistan Family Court Act, 1964, a decision given or a decree passed by such a Court is appealable to the Court of the District Judge. The decree dated 21.11.2013, was for the payment of dower amount of Rs.10,00,000/- and maintenance at the rate of Rs.40,000/- per month. Since, respondent No.3 (who was the defendant in the suit instituted by respondent No.2 for recovery of dower and maintenance) had the

alternative remedy of filing an appeal against the said order and decree passed by the learned Family Court, the instant appeal is not maintainable.

7. As regards the impugned order dated 18.02.2014, whereby the learned Judge Family Court dismissed the application to pay the decretal amount in installments, the same is interlocutory order. In the case of Mst. Maham Shabbir Vs. Salman Haider (2014 CLC 330), the Hon'ble Islamabad High 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.”

8. It is my view that exceptional circumstances which could justify invoking the jurisdiction of the High Court under Article 199 of the Constitution against an interim order 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. 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.

9. The order dated 18.02.2014, 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 West Pakistan Family Courts Act, 1964. Therefore, I am not inclined to interfere in the said interlocutory order passed by the learned Judge, Family Court.

10. In view of the above, this petition is dismissed with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE