

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4211/2019
Awish Awan and another
Versus
Muhammad Junaid Anwar and others

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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05.12.2019 Mr. Sajid Raza Khan, Advocate for the petitioners

Through the instant writ petition, petitioner No.1, Awish Awan, impugns the order dated 28.10.2019 passed by the Court of the learned Judge Family Court, whereby her application for the recall of the orders dated 05.07.2019 and 19.07.2019 was dismissed and the matter was adjourned for final arguments. Vide order dated 05.07.2019, petitioners No.1's right to produce documentary evidence was closed and vide order dated 19.07.2019, her right of cross-examination was closed.

2. The record shows that on 01.09.2018, petitioner No.1 and her daughter had filed a suit for *"dissolution of marriage on the basis of khula, maintenance of minor (plaintiff No.2), recovery of dowry articles and gold ornaments"* before the learned Family Court, Islamabad. The private respondents contested the said suit by filing a written statement. From the divergent pleadings of the contesting parties, the learned Family Court framed the issues on 12.12.2018. On 30.04.2019, petitioner No.1's oral evidence was recorded and the matter was adjourned to 29.05.2019 for the petitioners' documentary evidence. Since the petitioners were absent on 29.06.2019, the matter was adjourned to 05.07.2019 on which date they also did not appear. Consequently, their right to produce documentary evidence was closed and the case was adjourned to 12.07.2019 on which

date the private respondents evidence was recorded through affidavit. The matter was adjourned for the cross-examination of the private respondents. Since the petitioners failed to appear before the Court on 19.07.2019, their right of cross-examination was also closed. The learned Family Court has also observed that even on subsequent dates, the petitioners did not appear. This caused the learned Family Court to observe that the petitioners' attitude with respect to the suit was casual. Vide the impugned order dated 28.10.2019, the learned Family Court dismissed the petitioners' application for the recall of orders dated 05.07.2019 and 19.07.2019.

3. Learned counsel for the petitioners submitted that the petitioners' absence from the learned Trial Court was for justifiable reasons and unavoidable circumstances; that the impugned order dated 28.10.2019 is harsh and unreasonable; and that in the interest of justice, the petitioners should be granted one opportunity to produce their documentary evidence and to cross-examine the private respondents. Learned counsel for the petitioners prayed for the writ petition to be allowed in terms of the relief sought therein.

4. I have heard the contentions of the learned counsel for the petitioners and have perused the record with his able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above and need not be recapitulated.

5. Since the impugned order dated 28.10.2019 is an interlocutory order, I am not inclined to go into the merits of the case lest it may prejudice the petitioners' case before the learned Family Court.

6. 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 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 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 Family Court is to avoid delays in disposal of the cases by the Family Court. Since the suit instituted by the petitioners is for dissolution of marriage on the basis of *khula*, maintenance for the minor, recovery of dowry articles and gold ornaments, the final decree that may be passed by the learned Judge, 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 Augaf, 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."

7. 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 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.

8. The order dated 28.10.2019 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.

9. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 28.10.2019 to be satisfied in the case at hand, the instant writ petition is dismissed as not maintainable. The petitioners will be at liberty to challenge the said order dated 28.10.2019 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

Qamar Khan*