

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

W.P.No.4316 of 2019

Asif Hayat

**Versus**

Family Judge, Islamabad (West) 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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**11.12.2019**

**Mr. Saad M. Hashmi, Advocate for the petitioner**

Through the instant writ petition, the petitioner, Asif Hayat, impugns the interlocutory order dated 28.09.2019 passed by the learned Judge, Family Court, whereby respondents No.2 and 3's application for the amendment of the plaint was allowed.

2. The record shows that on 26.02.2018, respondents No.2 and 3 filed a suit for dissolution of marriage on the basis of *Khula*, recovery of maintenance and *dowry* articles. The petitioner contested the said suit by filing a written statement. Subsequently, respondents No.2 and 3 filed an application for an amendment in the plaint in order to incorporate therein a claim regarding the recovery of articles allegedly taken by the petitioner from the locker in the bank. The learned Family Court allowed the said application by holding that the provisions of the Code of Civil Procedure, 1908 ("C.P.C.") are not strictly applicable to the proceedings before the learned Family Court, and that since the locker had been operated by the petitioner in respondent No.2's absence, the latter was entitled to claim the recovery of her property in the locker. The said order dated 28.09.2019 has been assailed by the petitioner in the instant writ petition.

3. Learned counsel for the petitioner submitted that respondents No.2 and 3 were seeking to change the nature and complexion of the suit by filing the application for amendment in the plaint; that in effect

respondents No.2 and 3 were seeking a declaration from the learned Family Court that the contents of the locker were respondent No.2's property; and that the learned Family Court did not have the jurisdiction to pass a declaratory decree. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein. In making his submissions, learned counsel for the petitioner placed reliance on the judgment reported as PLD 2011 SC 260.

4. I have heard the contentions of the learned counsel for the petitioner 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 28.09.2019 is an interlocutory order, I am not inclined to go into the merits of the case lest it may prejudice the petitioner's 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 learned Family Court is to avoid delays in disposal of the cases by the learned Family Court. Since the suit instituted by respondents No.2 and 3 is for dissolution of marriage on the basis of *Khula*, recovery of maintenance and *dowry* articles,

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 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), 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.”*

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 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.

8. The order dated 28.09.2019, 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 28.09.2019 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 28.09.2019 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\*