

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT).**

**Writ Petition No. 1859 of 2022**

Ehtisham-ul-Haq

***Versus***

Judge Family Court, Islamabad (West) and another.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(02)	13.09.2022	Mr. Imran Khan Jadoon, Advocate for the petitioner.

The petitioner has filed the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, by assailing the impugned orders dated 12.10.2021 and 18.04.2022, passed by learned Judge Family / Guardian Court, West-Islamabad, whereby right of cross-examination upon the witnesses of respondent No.2 was closed.

02. Succinctly stated facts of the case are that respondent No. 2 / plaintiff filed a suit for dissolution of marriage, recovery of dower, dowry articles, belongings and gift articles before Senior Civil Judge / Judge

Family Court, (West) Islamabad. Written statement was filed by the petitioner / defendant and issues were framed. Respondent No. 2 along with her witnesses tendered appearance before the Court but the petitioner did not conduct cross-examination, hence right of cross-examination of the petitioner was closed vide impugned order dated 12.10.2021. Thereafter, the petitioner filed an application for restoration of his right of cross-examination, the same was also dismissed vide impugned order dated 18.04.2022, hence the instant writ petition.

03. Learned counsel for the petitioner *inter alia* contends that law always favours adjudication on merits rather than technicalities; it is a fundamental and legal right of the petitioner to cross-examine upon the witnesses produced by respondent No. 2; valuable rights of the petitioner have been jeopardized, as learned trial Court cannot render just and

fair decision without providing opportunity of cross-examination to the petitioner.

04. Arguments heard, record perused.

05. The family suit was filed by respondent No. 2 on 07.12.2019, written statement was filed, issues were framed on 14.12.2020 and the case was fixed for recording of evidence of the respondent No. 2 / plaintiff. On 30.01.2021, respondent No. 2 / plaintiff got recorded her evidence and sought time for producing more evidence and the case was adjourned to 25.02.2021, for recording of remaining evidence and cross-examination, thereafter on many dates, the case was adjourned due to strike or some other reasons.

06. On 08.09.2021, respondent No. 2 / plaintiff along with her witnesses was present in the Court, learned counsel for the petitioner sought time for cross-examination, the request was allowed subject to payment of cost of Rs. 1,000/- and the case was adjourned to 12.10.2021.

Learned trial Court has mentioned in the said order that if on the next date of hearing, the witnesses will not be cross-examined, the right of cross-examination would be closed.

07. On 12.10.2021, the case was fixed for cross-examination of PWs by petitioner's counsel, subject to payment of cost of Rs. 1000/-, witnesses were present in the Court but learned proxy counsel on behalf of petitioner appeared and stated that learned counsel for petitioner will not cross-examine the PWs and request for an adjournment was made, whereas learned trial Court has mentioned that no plausible reason for non-availability of learned counsel for petitioner to cross examine the PWs was advanced and cost of Rs. 1000/- was also not paid, hence right of cross-examination was closed vide impugned order dated 12.10.2021 and the case was adjourned to 18.11.2021, for recording of evidence of the defendant.

08. After about five (05) months of closing the right of cross-examination, the petitioner moved an application for restoration of his right of cross-examination on 09.03.2022, which has also been dismissed by learned trial Court vide impugned order dated 18.04.2022.

09. The above mentioned facts have established that the petitioner / defendant was deliberately delaying the matter of cross-examination, respondent No. 2 / wife appeared in the Court on three dates of hearing, for recording of her evidence and cross-examination but learned counsel for the petitioner / defendant neither cross-examined respondent No. 2 nor her witnesses and also did not pay the cost.

10. This conduct clearly shows that the petitioner is trying to cause inconvenience, insult and embarrassment to respondent No. 2 / wife and wanted to drag her in the Courts, in order to give her mental torture.

11. In the instant case many opportunities were provided to the

petitioner for conducting cross-examination upon respondent No. 2 and her witnesses. The August Supreme Court of Pakistan in a case titled as **Moon Enterpriser CNG Station, Rawalpindi Vs. Suit Northern Gas Pipelines Limited, through General Manager, Rawalpindi and another (2020 SCMR 300)**, while dealing with a similar question of law pertaining to application of Order XVII Rule 3 C.P.C has, in unequivocal terms, held that:

***"In our view it is important for the purpose of maintaining the confidence of the litigants in the court systems and the presiding officers that where last opportunity to produce evidence is granted and the party has been warned of the consequences, the court must enforce its order unfailingly and unscrupulously without exception. Such order would in our opinion not only put the system back on track and reaffirm the majesty of the law but also put a check on the trend of seeking multiple adjournments on frivolous grounds to prolong and***

***delay proceedings without any valid or legitimate rhyme or reason. Where the Court has passed an order granting the last opportunity, it has not only passed a judicial order but also made a promise to the parties to the lis that no further adjournments will be granted for any reason. The Court must enforce its order and honour its promise. There is absolutely no room or choice to do anything else. The order to close the right to produce evidence must automatically follow failure to produce evidence despite last opportunity coupled with a warning. The trend of granting (Akhri Mouqa) then (Qatai Akhri Mouqa) and then (Qatai Qatai Akhri Mouqa) make a mockery of the provisions of law and those responsible to interpret and implement it. Such practices must be discontinued, forthwith".***  
***(Emphasis supplied)***

Reliance is also placed on a case titled as **Rana Tanveer Khan Vs. Naseer Ud Din and other (2015 SCMR 1401)**.

12. It is mentioned in Section 14(3) of the West Pakistan Family Courts Act, 1964 that:

***"No appeal or revision shall lie against an interim order passed by a Family Court".***

13. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165)**,

that:

***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."***

Reliance is also placed on the cases reported as **1976 SCMR 450 and 2020 SCMR 260**.

14. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction,



or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. Reliance is placed on the following case laws:

*i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs, (2020 SCMR 2155).***

*ii. **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260).***

*iii. **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).***

*iv. **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).***

*v. **Syed Saghir Ahmad Naqvi Vs. Province of Sindh (1996 SCMR 1165).***

*vi. **Mumtaz Hussain alias Butta***  
***Vs. Chief Administrator of Augaf,***  
***Punjab (1976 SCMR 450).***

15. Learned counsel for the petitioner has failed to point out as to how the impugned orders dated 12.10.2021 and 18.04.2022, passed by learned Judge Family / Guardian Court, West-Islamabad were the consequence of an error of law or without jurisdiction or in excess of jurisdiction.

16. In view of the above prospective, instant writ petition has no merits and the same is **dismissed in limine.**

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Bilal /-*