

Form No: HCJD/C-121

**ORDER SHEET.**

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

**Writ Petition No. 90 of 2022**

Dr. Muhammad Javed Iqbal

***Versus***

Shakeel Arshad and others.

<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>
(01)	11.01.2022	M/s. Muhammad Ali and Mushtaq Ahmad, Advocates for the petitioner.

Through the instant writ petition,  
the petitioner has challenged order dated  
15.11.2021, passed by learned Civil Judge  
1<sup>st</sup> Class, East-Islamabad, whereby four  
(04) miscellaneous applications filed by  
respondent No.1 were allowed.

02. Succinctly stated facts of the case  
are that respondent No. 1 / plaintiff filed  
suit for recovery along with damages /  
compensation of Rs. 1,24,15,000/-. During  
the proceedings, respondent No. 1 filed  
four (04) miscellaneous applications, detail  
whereof is given below;

- i. First application under Order 1 Rule 10 of CPC for impleading Bahria Town (Pvt) Ltd.*
- ii. Second application under Order 1 Rule 10 of CPC for impleading Empire Real Estate & Builders.*
- iii. Third application under Section 153 & 151 of CPC for removal of word perform in memo of parties.*
- iv. Fourth application under Order 6 Rule 17 of CPC for amendment in plaint.*

03. Learned Civil Judge 1<sup>st</sup> Class, East-Islamabad vide impugned order dated 15.11.2021, has allowed all the four (04) miscellaneous applications, submitted by respondent No. 1.

04. Learned counsel for the petitioner *inter alia* contends that the impugned order is arbitrary, fanciful and capricious which is against the law and facts and suffers from legal infirmity, therefore the same is liable to be set-aside.

05. Arguments heard, record perused.

06. Admittedly the construction agreement dated 11.06.2018, on the basis of which the suit has been filed, was executed between the M/s Empire Real Estate & Builders and Ch. Munsif Khan.

07. The suit was filed by signatory / C.E.O namely Shakeel Arshad / respondent No. 1 but M/s Empire Real Estate & Builders was not impleaded as party, hence by allowing the petition under Order 1 Rule 10 of CPC, M/s Empire Real Estate & Builders was impleaded as plaintiff in the suit.

08. As the suit property is situated at Bahria Town, Phase-4, Islamabad and all administrative By-laws of Bahria Town were applicable, so it was impleaded as party.

09. As far as the application for removal of word performa and allowing the amendment in the pleadings is concerned, the same has not caused any

prejudice to the petitioner.

10. The impugned order dated 15.11.2021, is interlocutory order which has not been made appealable under Section 104 read with Order XLIII, Rule 1 C.P.C. and pursuant to Section 15 of the Code of Civil Procedure (Amendment) Act, 2020 Section 115 C.P.C stands substituted in a manner that an order which is not appealable is no more revisable. The said substituted section reads as 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."***

11. Now the said statutory amendment

does not allow revision against a non-appealable interlocutory order. 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 delay in disposal of the cases. Reference in this regard may be made to a case titled as **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'.***

Similarly in a case titled as **Ms. Afshan Ahmed Vs. Habib Bank Limited (2002 CLD 137)**, it was held as follows:-

***"It is a settled principle of law that when a statute does not provide an appeal against an interlocutory order then the same cannot be challenged by way of a Constitutional Petition as allowing such an order to be impugned by way of a Constitutional Petition would amount to negating the provisions of the statute which does not provide for an appeal against an interlocutory order. According to the principles of interpretation of statute the Court would not act in a manner by which the object of a statute is defeated and the same is rendered nugatory."***

12. The exceptional circumstances which could justify invoking the jurisdiction of 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.

13. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the impugned order dated 15.11.2021, 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 15.11.2021, in an appeal against the final judgment passed by the learned Civil Court, if the occasion arises for doing so.

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