

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3277/2019
Javid Iqbal Omer *alias* Omer Hayat
Versus
Mst. Zubia Yousaf and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	30.09.2019	Ch. Sheraz Sohail, Advocate for the petitioner.

Through the instant writ petition, the petitioner, Javid Iqbal Omer *alias* Omer Hayat, impugns the judgment dated 17.07.2019, passed by the Court of the learned Additional District Judge, Islamabad, whereby his appeal against the order dated 06.04.2019, passed by the learned Family Court, was dismissed. Vide the said order dated 06.04.2019, the learned Family Court had closed the petitioner's right to file a written statement to the amended plaint.

2. Learned counsel for the petitioner submitted that the petitioner had already filed his written statement on 29.10.2018; that earlier the *ex-parte* proceedings against the petitioner were set-aside, vide order dated 17.10.2018 subject to the payment of costs; that on 06.04.2019, the petitioner had paid costs of Rs.5,000/-; that after the payment of costs, the learned Trial Court should not have struck off the petitioner's right to file a written statement to the amended plaint; and that the learned Appellate Court erred by holding that the petitioner had tried to prolong the litigation and had abused the process of the Court. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders/judgments passed by the learned Courts below to be set-aside.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. The petitioner has chosen not to file a copy of the suit for recovery of maintenance, etc. filed by respondents No.1 and 2 against the petitioner before the learned Family Court. The documents on the record show that vide order dated 26.06.2018, the petitioner was proceeded against *ex-parte* by the learned Family Court. Vide order dated 17.10.2018, the petitioner's application for setting-aside the *ex-parte* proceedings was allowed subject to the payment of costs amounting to Rs.3,000/-. The petitioner was also directed to file the amended written statement. On 29.10.2018, the petitioner filed the written statement but did not pay the costs. The petitioner was directed to pay the costs as well as the outstanding maintenance allowance for the minor, failing which his defence was to be struck off under Section 17-A of the West Pakistan Family Courts Act, 1964. On 19.11.2018, the petitioner sought an adjournment for an opportunity to pay costs. On 27.11.2018, the petitioner was given a last and final opportunity to pay the costs. Since the petitioner did not pay the costs, the learned Family Court, vide order dated 04.12.2018, recalled its order dated 17.10.2018, whereby the *ex-parte* proceedings had been set-aside. The matter was adjourned on 13.12.2018 and 10.01.2019. On the latter date, the matter was adjourned to 28.01.2019.

5. The petitioner has chosen not to file copies of the order dated 28.01.2019 and the subsequent orders upto 21.03.2019. Vide order dated 06.04.2019, the petitioner is said to have paid costs amounting to Rs.5,000/-. However, the

learned Family Court struck off the petitioner's right to file a written statement to the amended plaint. The said order dated 06.04.2019 was assailed by the petitioner in an appeal before the Court of the learned Additional District Judge, Islamabad. Vide judgment dated 17.07.2019, the said appeal was dismissed.

6. Perusal of the judgment dated 17.07.2019, passed by the learned Appellate Court shows that the petitioner had not bothered to pay the interim maintenance for his minor son after filing the appeal. Several opportunities had been given by the learned Appellate Court to the petitioner's counsel to argue the appeal, but to no avail. Having gone through the appellate judgment dated 17.07.2019, I do not find any jurisdictional infirmity in the same so as to warrant interference in the Constitutional jurisdiction of this Court.

7. Even otherwise, the petitioner's appeal against the order dated 06.04.2019 was not maintainable. The said order dated 06.04.2019 was an interim order.

Section 14 (3) of the West Pakistan Family Courts Act, 1964 expressly bars a right of appeal or revision against an interim order passed by a Family 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 respondents No.1 and 2 is for recovery of maintenance, the final decree that may be passed by the learned Judge, Family Court would be appealable under Section 14 of

the West Pakistan Family Court Act, 1964. 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), 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 would be when the order or action assailed was

palpably without jurisdiction, *malafide*, void or *coram non judice*. The order 06.04.2019 passed by the learned Family Court is interlocutory in nature and does not dispose of the entire case before the Family Court. The said order as well as the judgment dated 17.07.2019 passed by the learned Appellate Court impugned in this petition are 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. Since I do not find the pre-requisites for interference in the Constitutional jurisdiction of this Court with the concurrent orders/judgments passed by the learned Courts below to be satisfied in the case at hand, the instant writ petition is dismissed. The petitioner will be at liberty to challenge the said order dated 06.04.2019 passed by the learned Family Court in an appeal against the final order passed by the learned Family Court, if the occasion arises for doing so. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*