

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3734/2019.

Muhammad Habib Zafar, etc.

Versus

Mst. Sana Habib, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	28.10.2019.	Mr. Zaka Ullah Khan, Advocate for petitioners.

Through this writ petition, the petitioners have assailed the order dated 24.07.2019, passed by learned Judge Family Court, Islamabad, whereby right of defendants/present petitioners to conduct cross-examination of the PW-1 was struck off.

2. Learned counsel for the petitioners *inter-alia* contends that respondents No.1 & 2 have filed suit for recovery of maintenance, dower and dowry articles against present petitioners before the Judge Family Court, Islamabad, whereby after submission of written statement issues were framed on 30.05.2019 and the trial Court has closed the right to cross-examine the PW-1 without giving any opportunity as such the petitioners have been deprived from their legal right, whereas it is well settled that cases have to be decided on merit rather than on technicalities. It has lastly been contended that the petitioners had filed an application for appropriate orders seeking an adjournment due to his personal engagements but this request has not been considered by the trial Court who has passed a harsh

order for closing down the right of petitioners.

3. Arguments heard, record perused.

4. Perusal of record reveals that respondents No.1 & 2 have filed suit for recovery of maintenance, dower and dowry articles which has been contested by the present petitioners and learned Judge Family Court framed the issues vide order dated 30.05.2019, whereafter the case was fixed for recording of evidence for 19.06.2019 and plaintiffs/respondents were given last opportunity for submission of evidence for 08.07.2019 but on the said date again adjournment has been claimed, therefore, absolute last opportunity was granted for 16.07.2019 and on the said date evidence of respondent was submitted by way of affidavit, however, present petitioners being defendants did not cross-examine PW-1 and absolute last opportunity was granted subject to payment of cost of Rs.1,000/- and matter was adjourned to 24.07.2019, however, learned trial Court has specifically written in her order that:-

بصورت دیگر حق جرح ختم کر دیا جائے گا۔ مدعا علیہ کو بھی آخری موقع برائے پیش کرنے

شہادت تاریخ مقررہ دیا جاتا ہے۔

But the present petitioners despite these clear warnings have not cross-examined the witness who was present on 24.07.2019 at about 10:30 a.m. with her counsel, matter was adjourned to 12:00 p.m. then 01:30 p.m. then 02:30 p.m. and at last about 03:15 p.m. but the present petitioners have not cross-examined the PW-1 rather

filed an application at 03:15 p.m. for adjournment. This conduct of the petitioners amounts to willful defiance of the Court order which is otherwise, contemptuous conduct and requires no leniency, even otherwise, the term absolute last opportunity was referred by the trial Court in the previous order with cost of Rs.1,000/-, therefore, ample opportunity was granted to the petitioners to cross-examine the witness but they are delaying the matter, even otherwise, it is apparent from the record that suit was filed on 14.11.2018 and was delayed due to non-appearance of petitioners' side and finally their appearance was procured through publication of notice in the daily Nawa-e-Waqat.

5. As per law the maximum time period for decision of the family case is fixed in the Family Court Act, 1964 which could not be extended beyond six months, therefore, Family Court has rightly imposed the cost with last warning to the petitioners' side for the early conclusion of the trial, however, the conduct of the petitioners is not up to the mark.

6. It is trite law that interim orders are not liable to be challenged in constitutional jurisdiction under the Family Court Act, 1964 and as such the legislature has intentionally not provided any remedy in the Family Courts against the interim or interlocutory orders. The writ is not competent against the interlocutory order and such principle has already been highlighted in the reported cases 2017 YLR 622 ICT (Shahida Fazil Vs.

Mst. Hina Tahir), 2017 YLR 870 ICT (Minhaaj Saqib Vs. Najam-us-Saqib), 1996 SCMR 1165 (Saghir Ahmed Naqvi Vs. Province of Sindh), and 2010 CLC 797 Lahore (Abdul Rasheed Vs. Judge Family Court Mian Channu).

7. Keeping in view the above mandate of law instant writ petition is misconceived and the same is hereby dismissed in limine.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid