

BLUE SLIP

HJD/C-42

(Revised: under Act No.II of 1990)

ORDER OF THE COURT

IN THE COURT OF HON'BLE MR.JUSTICE MUZAMIL AKHTAR SHABIR

Salman Iqbal

Versus

Judge Family Court Shakhzad

Date of hearing: _____

(a) Judgment approved for reporting Yes ☒ No ☐

CERTIFICATE

Certified that the judgment/order is based upon or enunciates a Principle of law/decides a question of law, which is of first impression/distinguishes/over-rules/reverse/explains a previous decision.

JUDGE

- Note:- (1) This slip is only to be used when some action is to be taken.
- (2) If the slip is used, the Reader must attach it to the top of the first page of the judgment.
- (3) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.
- (4) Those directions which are not to be used should be deleted.

To be used by I.T.

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Signature _____

Dated _____

Blue Slip Verified.
14/12/2024

Form No.HCJD/C-121

ORDER SHEET

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

WP No. 19199 of 2019

Salman Fazal

vs

Judge Family Court, Sheikhupura etc

| S.No. of Order/ Proceeding | Date of order/ proceeding | Order with signature of Judge and that of parties or counsel where necessary |
|----------------------------------|---------------------------------|---|
|----------------------------------|---------------------------------|---|

02.04.2019 M/s. Aamir Iqbal Basharat and Umair Yasin, Advocates
for petitioner.
Ms. Zarish Fatima, Assistant Attorney General and Mr.
Muhammad Arshad Manzoor, AAG. On Court's call.
M/s. Nasrullah Khan Babar, Ch. Muhammad Naseer and
Ms. Uzma Razzaq Khan, Advocates/Amici curiae.

Through this constitutional petition, the petitioner
has called in question the order dated 06.11.2018 passed
by Judge Family Court, Sheikhupura, whereby the
application filed by the petitioner under Section 5 of the
Family Courts Act, 1964 ("Act") for rejection of plaint to
the extent of recovery of Rs.70,000/- has been dismissed.

2. Learned counsel for the petitioner has argued that
as per preamble, Section 5 of the Act and Schedule-I
attached with the Act, the family court being a special
court of limited jurisdiction cannot entertain claim to the
extent of recovery of Rs.70,000/- filed by respondent



No.2 ("respondent") against the petitioner and the jurisdiction for the said purpose vests with the civil court.

3. Conversely, the learned Law Offices as well as Amici Curiae have argued that as nothing has been finally decided, therefore, this constitutional petition is pre-mature.

4. In paragraph 2 of the plaint, the respondent claimed that on the second day of marriage, the petitioner had taken away Rs.70,000/- cash from her purse with the promise to return the same which has not been done. The question here for determination is whether Rs.70,000/- could be recovered under the entries to the schedule of the Act which provided for suits that are under exclusive jurisdiction of family court. In the present case, the trial court has reached the conclusion on the application filed by the petitioner that cash Rs.70,000/- is presumed as personal property of the wife and family court has the jurisdiction to entertain the matter relating to the same including recovery of cash. Whether or not the said amount can be treated as personal property of the wife under the entry No.9 of the Schedule of the Act is yet to be determined on the basis of evidence to be recorded by the parties and the court has *prima facie* presumed the

nil

same to be personal property of the wife for the purposes of further determination, therefore, the impugned order is purely interlocutory in nature, against which an appeal is not available under the law. Consequently, where the appeal is not maintainable, the constitutional petition cannot be used as its substitute especially where no final challengeable order requiring determination has yet been passed. Besides it is a settled principle of law that a plaint cannot be rejected or returned in piecemeal when some dispute required to be determined by the court still subsists and it could be rejected only if all reliefs claimed were barred under the law. Reliance in this regard is placed on the judgments reported as Qadeer Ahmad vs. Ejaz Ahmad through L.Rs. and others (2017 YLR 1217) and Imran Raza Shaikh and 5 others vs. Mst. Zarina Gul and 4 others (2003 YLR 943). In the present case, the petitioner seeks piecemeal rejection of plaint whereas it is not disputed that the court has jurisdiction to entertain and decide the remaining claim and on the basis of principles laid down in the afore referred judgments, it is not advisable to reject the plaint at this state.

5. For what has been discussed above, this constitutional petition at this stage is premature and is

nil

WP No. 19199 of 2019
Dated 02.04.2019

accordingly *dismissed*. The petitioner may wait for final order before challenging the same through appropriate proceedings.

(MUZAMIL AKHTAR SHABIR)
JUDGE

Naveed *

Approved for reporting

Blue Ink verified.
14/04/19