

2020 M L D 2011

[Lahore]

Before Masud Abid Naqvi and Jawad Hassan, JJ

AMJAD ALI---Appellant

Versus

Mst. SHAHEEN BIBI and others---Respondents

I.C.A. No.40084 of 2020, decided on 9th September, 2020.

(a) Family Courts Act (XXXV of 1964)---

---Ss. 11 & 14(3)---Closure of right to produce evidence---Interim order---Maintainability---Scope---Appellant/defendant assailed order passed by Family Court whereby his right to produce evidence was closed---Single Judge of High Court vide impugned order had dismissed the constitutional petition---Validity---Family Court, before passing the impugned order, had granted many opportunities to the appellant to produce his evidence, who despite availing absolute and final opportunities had failed to produce the same---Family Court had no option except to close his right to produce evidence---Order passed by Family Court was interim/interlocutory in nature against which constitutional petition did not lie---Section 14(3) of Family Courts Act, 1964 provided that no appeal or revision would lie against an interim order passed by a Family Court---Family Courts Act, 1964 had explicitly barred the remedy of appeal or revision against such an order, therefore, in case constitutional petition was entertained against such an order, it would amount to circumventing the intention of the legislature and to frustrate the express provision of law---Intra-court appeal, being bereft of merit, was dismissed.

Muhammad Anwar Khan v. Mst. Yasmin Zafar 1987 SCMR 2029; Ms. Qauratulain Aleem v. Muhammad Rehman Khan and another 2006 YLR 2604 and Mst. Noor Jehan alias Tasleem Begum v. Muhammad Arshad and another 1986 CLC 442 ref.

President All Pakistan Women Association Peshawar Cantt. v. Muhammad Akbar Awan and others 2020 SCMR 260 rel.

(b) Constitution of Pakistan---

---Art. 199---Constitutional jurisdiction---Interim order---Maintainability---Scope---Constitutional petition does not lie against an interlocutory order, unless there is found any blatant illegality which has caused injustice to the rights of any of the parties.

(c) Law Reforms Ordinance (XII of 1972)---

---S. 3---Intra-court appeal---Maintainability---Scope---Subsection (2) of S.3 of Law Reforms Ordinance, 1972 provides that no appeal shall lie under subsection (1) or subsection (2) from an interlocutory order or an order which does not dispose of the entire case before the court.

Muhammad Nasir Umar Dhillun for Appellant.

ORDER

Through this Intra-Court Appeal filed under Section 3 of the Law Reforms Ordinance, 1972 (the "Ordinance"), the Appellant has challenged the validity of order dated 24.08.2020 (the "Impugned Order") passed in Writ Petition No.37214 of 2020 by the learned Single Judge in Chamber, whereby the Constitutional petition filed by him was dismissed.

2. Learned counsel for the Appellant has argued that the learned Single Judge in Chamber while passing the impugned order did not determine a very crucial question of law to the effect that if there is no remedy available and an illegality has been committed then the only a remedy of writ jurisdiction will be available. He further argued that the learned Single Judge in Chamber has failed to consider all the aspects of the case, therefore, the impugned order is liable to be set aside.

3. Arguments heard and record perused.

4. It is reflected from perusal of record that a suit for recovery of maintenance allowance, dowry articles and dower amount was filed by Respondent No.1. The said suit was contested by the Appellant by filing a written statement. Interim maintenance of minors was fixed as Rs.10,000/-. Out of divergent pleadings of the parties issues were framed. The Appellant/Defendant was required to produce his evidence. Certain opportunities were granted to the Appellant i.e 09.10.2019, 29.10.2019 to produce his evidence and on 13.11.2019 last opportunity was granted to him to submit his affidavit. Thereafter, the case was fixed on 27.11.2019, 12.12.2019 but due to strike no further proceedings were taken place and case was adjourned to 14.1.2020 and ultimately on 31.01.2020, the Appellant tendered his affidavit and the case was fixed for cross-examination on the said affidavit for 24.02.2020. On 24.02.2020, the Appellant failed to produce his evidence and an absolute last opportunity was granted to produce his evidence and case was adjourned for 14.03.2020. On 14.03.2020 the case was again adjourned to 11.4.2020 for cross-examination. On 11.4.2020 due to lock down the case was adjourned to 19.06.2020. On 19.06.2020, the case was fixed for Appellant's evidence with last and final opportunity but he failed to produce the same. Resultantly, his right to produce his evidence was closed. Feeling aggrieved from order dated 19.06.2020 passed by learned Judge Family Court, Lahore, the Appellant assailed the same by filing constitutional petition which was dismissed by the learned Single Judge in Chamber vide order dated 24.08.2020.

5. From the perusal of record it also transpires that before passing the impugned order, the learned Judge Family Court, had granted many opportunities to the appellant to produce his evidence, who despite availing absolute and final opportunities failed to produce the same. In these circumstances, the learned Judge Family Court has no option except to close his right to produce his evidence. The learned Judge Family Court has exercised his jurisdiction vested in him and nothing in the said order is contrary to law and beyond his jurisdiction. The order passed by learned Judge Family Court is interim/interlocutory in nature against which no constitutional petition would lie before the High Court. Perusal of Section 14(3) of West Pakistan Family Courts Act, 1964, shows that no appeal or revision shall lie against an interim order passed by a Family Court. The Act has explicitly barred the remedy of appeal or revision against such an order, therefore, in case a constitutional petition is entertained against such an order, it will amount to circumvent the intention of the legislation and to

frustrate the express provision of law. Reliance in this respect is placed upon Muhammad Anwar Khan v. Mst. Yasmin Zafar (1987 SCMR 2029), Ms. Quratulain Aleem v. Muhammad Rehman Khan and another (2006 YLR 2604) and Mst. Noor Jehan alias Tasleem Begum v. Muhammad Arshad and another (1986 CLC 442). Reliance is also placed on a recent judgment rendered by Hon'ble Supreme Court of Pakistan in a case reported as President All Pakistan Women Association, Peshawar Cantt. v. Muhammad Akbar Awan and others (2020 SCMR 260), wherein it has been held that:-

"It is settled law that when the Statute does not provide the right of appeal against certain orders, the same cannot be challenged by invoking the constitutional jurisdiction of the High Court in order to gain a similar objective. Where a Statute has expressly barred a remedy which is not available to a party under the Statute, it cannot be sought indirectly by resort to the constitutional jurisdiction of the High Court. "

Since, the order impugned in the constitutional petition is an interlocutory order and against such an order constitutional petition does not lie, unless there is found any blatant illegality which has caused sheer injustice to the rights of the any of the parties. However, in the instant case, multiple opportunities have been granted by the learned Judge Family Court to the Appellant to secure his valuable right, therefore, the learned Single Judge in chamber has rightly passed the impugned order and dismissed the writ petition. Further in view of subsection (2) of Section 3 of the Law Reforms Ordinance, 1972, no appeal shall lie under subsection (1) or subsection(2) from an interlocutory order or an order which does, not dispose of the entire case before the Court.

6. Counsel for the Appellant has failed to point out any illegality or irregularity in the impugned order, the appeal being bereft of merit is hereby dismissed in limine.

SA/A-62/L Appeal dismissed.