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

Jalman 1979	
Versus Judge Pamit	y Court Shorkhome
Date of hearing:	
(a) Judgment approved for reporting	Yes No
CERTIFICA? Certified that the judgment/order Principle of law/decides a question of law	is based upon or enunciates a
distinguishes/over-rules/reverse/explains	
	JUDGE
Note:-(1) This slip is only to be used wh	그 교기는 이 건강없는 것이 되었다.
(2) If the slip is used, the Reader first page of the judgment.	r must attach it to the top of the
(3) Reader must ask the Judge u Judgment is approved for repo (4) Those directions which are no	priting the Judgment whether the priting.
	t to be used should be deleted.
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Judgment Upload of Website	Name
Entry in Database	Signature
	Dated

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

		22 - 28%
S.No. of	Date of	Order with signature of Judge and that of parties or
Order/	order/	counsel where necessary
Proceedin	g proceeding	

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

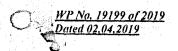
No.2 ("respondent") against the petitioner and the jurisdiction for the said purpose vests with the civil court.

- 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.
- 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

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 **Qudeer 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

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

(MUZAMIL AKHTAR SHABIR) JUDGE

Naveed *

Approved for reporting

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