

**2018 M L D 1131**

**[Lahore]**

**Before Jawad Hassan, J**

**MOHAMMAD SHAHZAIB---Petitioner**

**Versus**

**MISHAL FATIMA and others---Respondents**

Writ Petition No.161497 of 2018, decided on 22nd February, 2018.

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

---Ss. 5 & 14---Constitution of Pakistan, Art.199---Constitutional petition---Alternate and efficacious remedy---Interim order---Striking of defence---Suit for recovery of maintenance---Petitioner (husband) failed to cross-examine witnesses of plaintiff (wife) despite lapse of more than three years, therefore, Trial Court closed his right to cross examine the witnesses---Validity--Legislature specifically prohibited filing of appeal or revision against an interim order---If constitutional petition was allowed to be filed against such order, same would tantamount to defeating and diverting intent of Legislature---Petitioner had adequate remedy available to him by challenging order in question in appeal, which he could file against ultimate order / judgment if the same was passed against him---High Court declined to entertain constitutional petition as the same was hit by Art. 199(1) of the Constitution---No illegality or material irregularity existed in the order passed by Family Court calling interference in Constitutional jurisdiction---Constitutional petition was dismissed in circumstances.

Aman Ullah Khan v. District Judge and 3 others 2012 CLC 679; Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary S&GAD, Karachi and others 1996 SCMR 1165 and Muhammad Sabir v. Mst. Azra Bibi and 2 others 2011 CLC 417 rel.

Ch. Zulfiqar Ai for Petitioner.

Ch. Akbar Ali Shad for Respondents.

## **ORDER**

**JAWAD HASSAN, J.**---Through this writ petition, the Petitioner assailed the validity of the order dated 22.07.2017 passed by the Judge Family Court, Lahore whereby his right to cross-examine the witnesses was closed.

2. The facts, in brief, are that Mst. Shaukia Bano/Respondent No.2 instituted a suit for recovery of maintenance allowance etc. against the Petitioner. The Petitioner put in appearance and filed written statement, denying all the averments made in the plaint filed by Mst. Shaukia

Bano, the aforementioned.

3. Learned counsel for the Petitioner submits that on 22.07.2017, the witnesses could not be cross-examined on account of his preoccupation in a Seminar conducted by Lahore High Court Bar Association and this fact was brought to the notice of the Court by his Associates but the learned Judge Family Court seized with the suit neither mention their attendance nor talk about request for adjournment and proceeded to close the right of the Petitioner to cross-examine the witnesses. In support of this petition, learned counsel for the Petitioner contends that on the face of it, the impugned order is not sustainable in the eyes of law as it was passed in haste. He makes the submission that probably the Court concerned was in a hurry to pass the impugned order. The Petitioner feeling aggrieved, filed review application which was also dismissed on 30.10.2017.

4. Learned counsel for Respondents has refuted, rebutted and controverted the arguments made by the learned counsel for the Petitioner. He has laid a great deal of emphasis on the fact that a number of opportunities were provided to the Petitioner to cross-examine the witnesses produced by the Respondents/Plaintiffs. When the Petitioner did not avail of those opportunities, the learned Judge Family Court, Lahore had no option but to close his right to cross-examine the witnesses. He concludes by making the submission that the Petitioner has only himself to blame.

5. Arguments heard. Record perused.

6. It is reflected from perusal of record that the suit was filed by the Respondents on 04.03.2014. The trial Court first time on 10.05.2014 directed the Petitioner to file written statement and adjourned the case for 19.05.2014. On the said date, the Court was on leave and case was adjourned for 10.06.2014. On aforesaid date, again case was adjourned to 14.06.2014 for filing of written statement. On 14.06.2014, written statement was filed and case was adjourned to 09.07.2017 for arguments as well as payment of interim maintenance. The case was gradually adjourned for 09.07.2014, 24.07.2014, 10.09.2014, 30.09.2014, 23.10.2014, 03.12.2014, 20.12.2014, 07.01.2015 and 14.01.2015 for reconciliation between the parties. On 12.02.2015, the Court framed certain specific issues by fixing interim maintenance allowance and adjourned the case for 16.03.2015 for production of evidence and for payment of interim maintenance allowance. On 16.03.2015, the Court was on leave. On 06.04.2015, evidence of the Respondents/plaintiff side was completed and case was adjourned to 09.05.2015 for cross-examination. On aforesaid date, one witness of the Respondents' side was present and case was adjourned to 03.06.2015. On said date, some receipts were submitted by the Respondents' side and case was again adjourned to 20.06.2015. On 20.06.2015, the case was adjourned as per previous order. On 04.06.2015, case was adjourned for compromise between the parties as well as for evidence. On 10.09.2015, efforts for amicable settlement were failed and case was adjourned for 14.09.2015. On this date, the Court was on leave and case was adjourned to 15.10.2015. On 15.10.2015 again case was adjourned to 07.11.2015 for cross-examination. On 07.11.2015, the Court was on leave. On 25.11.2015, evidence of Respondents/plaintiff side was present however, a request for adjournment had been made on behalf of the Petitioner/defendant side and case was adjourned to 09.12.2015. On 09.12.2015 and 22.12.2015, the Court was on leave. On 07.01.2016, again request for adjournment had been sought on behalf of Petitioner/defendant side and Court observed that in case of non-cross-examination, the right of cross-examination will be closed. On 27.01.2016, the Court was on leave. On 13.02.2016, the

Petitioner/ defendant submitted that he is ready to handover dowry articles except gold ornament and in this respect case was adjourned for filing of list of dowry articles for 20.02.2016. On 20.02.2016, the Court was on leave. On 24.02.2016, report of bailiff was submitted and case was adjourned for 02.04.2016 for filing of objection petition as well as for payment of maintenance. On 02.04.2016, the Court was on leave. On 16.04.2016 again case was fixed for filing of objections. On 30.04.2016, the parties were directed to appear before the transferee Court on the same day. However, on that day the Court was on training and case was adjourned to 09.05.2016. On said date the lawyers were not appearing due to strike and case was adjourned for 18.05.2016. On 18.05.2016, case was adjourned for 14.06.2016. On 14.06.2016, the case was adjourned to 13.07.2016 for payment of maintenance. On 13.07.2016, the case was adjourned for remaining claim of dowry articles as well as for cross-examination for 27.07.2016. On 25.07.2016, an adjournment was sought by the Petitioner/defendant on the ground that his counsel is busy before learned Division Bench of Lahore High Court which was allowed with last opportunity to cross-examine otherwise right of cross-examination of the Petitioner/defendant will be closed. On 10.06.2016, position was the same as per previous order. On 19.09.2016, witnesses were present however, a miscellaneous application was submitted and case was adjourned for filing of reply as well as arguments on 24.09.2016. On 24.09.2016, reply was submitted and case was adjourned for arguments on 29.09.2016. On 29.09.2016, the Court was on leave. On 04.10.2016, case was adjourned for remaining arguments for 13.10.2016. On 13.10.2016, the Court was on leave. On 24.10.2016, a separate order was passed on the objections filed by the Petitioner/defendant and case was adjourned for cross-examination on 12.11.2016. On 12.11.2016, the case was adjourned to 28.11.2016. On said date, the case was again adjourned for cross-examination on 03.12.2016. On 03.12.2016, a miscellaneous application was submitted by the Respondents/plaintiffs for framing additional issues, and case was adjourned for submission of reply on 22.12.2016. On 22.12.2016, the Court was on leave. On 09.01.2017, case was adjourned for submission of reply as well as payment of maintenance allowance on 19.01.2017. On 25.01.2017 the case was again adjourned to 31.01.2017. On 31.01.2017, absolute last opportunity was granted and case was adjourned to 08.02.2017. On 08.02.2017, case was adjourned to 21.02.2017 as per previous order. On 21.02.2017, request for adjournment was made for arguments on application and case was adjourned to 02.03.2017. On 02.03.2017, the situation was the same as per previous order. On 06.03.2017, the Court was on leave. On 08.03.2017, application was decided through separate order however, case was adjourned for cross-examination for 28.03.2017. On 28.03.2017, the case was adjourned to 18.04.2017. On 18.04.2017, evidence was present however, cross-examination could not be completed due to non-availability of Petitioner/defendant counsel and case was adjourned for 06.05.2017 with absolute last opportunity. On 06.05.2017, evidence was present and case was adjourned for cross-examination with last opportunity alongwith cost for 27.05.2017. On 27.05.2017, case was adjourned to 03.06.2017 as per previous order with double cost with absolute last opportunity. On 03.06.2017, last opportunity was sought by the Petitioner/defendant side which was allowed with cost and case was adjourned to 10.06.2017. On 10.06.2017, the Court was on leave. On 17.06.2017, case was adjourned for cross-examination for 01.07.2017. On 01.07.2017, case was adjourned to 08.07.2017. Ultimately on 08.07.2017, absolute last opportunity was granted with cost and case was adjourned to 15.07.2017. On 15.07.2017, the Court was on leave. Resultantly on 22.07.2017, the Court closed the right of the Petitioner\defendant to cross-examine the witnesses of the Respondents/plaintiffs.

7. The above mentioned history of interim orders demonstrate that the Petitioner/defendant failed to cross-examine the witness of the Respondents/plaintiffs despite elapse of almost three years, four months and nineteen days and also despite absolute last opportunities. Further, the Petitioner in this petition has challenged the order passed by Judge Family Court which is an interlocutory/interim order and when the statute had specifically prohibited the filing of constitutional petition against such order, it would tantamount to frustrating and defeating the intent of legislature. Reliance in this respect is placed upon "Aman Ullah Khan v. District Judge and 3 others" (2012 CLC 679). Admittedly, the case is still underway and during its pendency, the order passed by the Family Court, for all intends and purposes is an interlocutory order, as the lis is pending before the Family Court and it has still to render its final verdict. The legislature has made such order as an non-appealable by specifically making a provision in that respect by virtue of sub-section (3) of Section 14 of the West Pakistan Family Courts Act, 1964 (the "Act"), which is reproduced below:--

**"Appeal.**---(1) Notwithstanding anything provided in any other law for the time being in force, a decision given or decree passed by a Family Court shall be appealable.

(a) .....

(b) .....

(2) .....

(a) .....

(b) .....

(c) .....

(3) No appeal or revision shall lie against an interim order passed by a Family Court.

8. In these circumstances, when the Legislature has specifically prohibited the filing of an appeal or revision against an interim order and if the constitutional petition is allowed to be filed against such order, it would tantamount to defeating and diverting the intent of the legislature. Reference in this context is made to the case of "Syed Saghir Ahmad Naqvi v. Province of Sindh through Chief Secretary S&GAD, Karachi and others" (1996 SCMR 1165), wherein the Hon'ble Supreme Court of Pakistan has held as under:--

"Constitutional jurisdiction, exercise of statute excluding a right of appeal from the interim order could not be bypassed by bringing under attack such interim orders in constitutional jurisdiction. 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. "

9. The Petitioner has got an adequate remedy available to him by challenging the impugned order in appeal, which, he may file against the ultimate order/judgment if the same would be passed against the Petitioner. This petition is hit by Article 199(1) of the Constitution, hence cannot be entertained. Reliance in this respect is placed upon "Muhammad Sabir v. Mst. Azra

Bibi and 2 others" (2011 CLC 417).

10. Furthermore, the learned counsel for the Petitioner could not point out any illegality or material irregularity in the impugned order passed by the learned Family Court, calling for interference in the constitutional jurisdiction, therefore, this petition is, hereby, dismissed. The Family Court is however directed to decide the suit within the time prescribed under Section 12(a) of the Family Courts Act, 1964.

MH/M-52/L

Petition dismissed.