

**2018 M L D 448**

**[Lahore]**

**Before Jawad Hassan, J**

**Dr. SAMINA ANAYAT---Petitioner**

**Versus**

**ADDITIONAL DISTRICT JUDGE and others---Respondents**

W.P. No.54757 of 2017, decided on 24th November, 2017.

**Guardians and Wards Act (VIII of 1890)---**

---S.12---Family Courts Act (XXXV of 1964), S.14(3)---Constitution of Pakistan, Art.199---Interim custody of suckling minor---Review of visitation hours---Scope---Petitioner/mother contended that both Courts below had failed to consider that it would be hard to bring the minor of 1½ years of age to the court twice a month for meeting with the father---Respondent/father contended that meetings with minor in tender age was necessary to develop affiliation with the father---Validity---While passing the impugned order, the Guardian Court had exercised his jurisdiction vested in it and nothing in the said order was contrary to law and beyond his jurisdiction---Parties also confirmed that said order had been complied with and since then the meetings were being conducted---Order passed by Guardian Court was interim in nature and constitutional petition would not lie before the High Court---Section 14(3) of Family Courts Act, 1964 showed that no appeal or revision would lie against interim order passed by the Family Court---Family Courts Act, 1964 had explicitly barred the remedy of appeal or revision against such an order, therefore, in case a constitutional petition was entertained against such order, the same would amount to circumventing the intention of the legislature and frustrating the express provision of law---No illegality or infirmity having been noticed in the impugned order passed by the Appellate Court---Constitutional petition was dismissed accordingly.

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 ref.

Mrs. Alia Hina for Petitioner.

Mian Shakeel Ahmad for Respondent.

**ORDER**

**JAWAD HASSAN, J.**---Through this constitutional petition, the petitioner has called in question order dated 13.05.2017 and 14.06.2017 passed by learned Senior Civil Judge (Guardian) and Additional District Judge, Sialkot.

2. Arguments heard and record perused.

3. From the perusal of record it reveals that the Petitioner is aggrieved of an order passed by learned Civil Judge 1st Class(Guardian), whereby he vide order dated 29.10.2016 dismissing an application filed by the Respondent No.3, under Section 12(2) of Guardians and Wards Act, 1890 (the "Act") for temporary custody of minor Rajab Adnan, ordered the Petitioner to produce the minor in the Guardian Court on every second and fourth Saturday of a month for his meeting with the Respondent No.3, so that the affiliation of minor towards the Respondent No.3 be developed and minor may not become stranger to the Respondent No.3. Feeling aggrieved by the said order, the Petitioner moved application before the Guardian Judge, Sialkot agitating therein that she is not in position to produce the minor in the court twice in a month. The said application of the Petitioner was dismissed vide order dated 13.05.2017. The Petitioner feeling aggrieved of the same filed appeal before the learned Additional District Judge, Sialkot which was dismissed vide order dated 14.06.2017.

4. It has been argued by the counsel for the Petitioner that both the courts below while passing the impugned orders have failed to take into consideration that the minor is only 1-1/2 year suckling baby and premature baby born at 7th month and it is difficult for the Petitioner to spend continuously six hours in the court premises twice in a month and dismissed the application of the Petitioner illogically for review of visitation hours. On the other hand, counsel for the Respondents has supported the impugned orders by contending that the impugned orders are interlocutory in nature and writ petition against such orders is not maintainable.

5. It has been observed that while passing the impugned order the learned Guardian Judge, has exercised his jurisdiction vested in him and nothing in the said order is contrary to law and beyond his jurisdiction. Both the counsel stated that the order dated 13.05.2017 has been complied with and since then the meetings are conducted. The order passed by learned Guardian Judge is interim in nature and no constitutional petition would lie before the High Court. Perusal of section 14(3) of West Pakistan Family Court 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). Since the impugned order is an interlocutory order and against such an order constitution petition cannot be filed, therefore, the petition before this Court is not maintainable. The learned Additional District Judge has rightly observed in the appeal that appeal or revision against interlocutory matters is not maintainable.

6. Writ petition being devoid of merit is hereby dismissed.

