

IN THE HIGH COURT OF SINDH, KARACHI

C.P No. D-3669/2025

Sheikh Shan Elahi & another V. M/s Bank Islami Limited & another

C.P No. D-3744/2025.

Faizan Elahi & another V. M/s. Bank Islami Ltd. & another

C.P No. D-3745 of 2025

Sheikh Shan Elahi V. M/s. Bank Islami Ltd. & another

Present:

Mr. Justice Yousuf Ali Sayeed,

Mr. Justice Muhammad Osman Ali Hadi

Date of hearing:	09.02.2026.
Date of decision:	09.02.2026.
Petitioners:	Through Mr. Salim Salam Anasri, Advocate in all Petitions.
Respondents:	Syed Aijaz Hussain Shirazi, Advocate. Mr. Imdad Ali Channa, Advocate. Mr. Khaleeq Ahmed, DAG & Mr. Muhammad Akbar Khan, Assistant Attorney General.

ORDER

Muhammad Osman Ali Hadi, J. The instant Petitions have been filed against Order dated 01.07.2025 passed by the learned Banking Court / Respondent No. 2 in Banking Suit No. 99/2025 (“**Impugned Order**”).

2. It appears that the Petitioners had filed the said Banking Suit No. 99/2025, along with an application under Order 39 Rule 1 & 2 Code of Civil Procedure 1908 (“**CPC**”) seeking interim orders, vis-à-vis suspension of Notices issued to them by Respondent No.1. The said Notices stated that certain mortgaged property held by the Respondent No. 1 was to be auctioned / sold, in lieu of outstanding payments owed by the Petitioners to Respondent No.1.

3. Counsel for the Petitioners has submitted that the Respondents have made frivolous claims against the Petitioners, the amounts of which have been disputed (by the Petitioners). The

Petitioners contended the properties were not liable to be sold by the Respondent Bank, and the same was in derogation of law. In respect thereof, the Petitioners in their Banking Suit, had sought *interim* orders restraining the Respondent Bank from sale of the properties. The said application seeking interim orders was dismissed vide the Impugned Order.

4. However, as the main Suit remains pending, we have confronted the learned counsel for the Petitioners and inquired as to how a Constitutional Petition could lie against the Impugned Order passed by the Banking Court, which is *interim* in nature? Counsel for the Petitioners replied that as it is an admitted position no appeal lies against dismissal of an interlocutory order under the Financial Institution (Recovery of Finances) Ordinance 2001 (“**FIO 2001**”),¹ therefore, the Petitioners have filed the instant Constitutional Petition. Counsel cited two judgments being **2024 SCMR 1385** and **2015 SCMR 233** in support of his contentions.

5. Learned counsel for the Respondent No.1 / Bank submitted that the Impugned Order is a detailed order, whereby the Respondent No.2 has elaborated all the contention raised by the Petitioners, and has given a finding based on the same. He submits that these Constitutional Petitions are not maintainable as the same are contrary to the provision of Section 15(13) of the FIO 2001, and therefore, the Petitions are liable to be dismissed.

6. Counsel for the Petitioners rebutted the submissions of the Respondents, and averred that the Petitioners have followed the proper legal path, and stated that under the provisions of Sections 9 & 10 of the FIO 2001, the Petitioners have followed due process, but that the Respondent No. 2 has failed to properly understand the matter and hence dismissed their applications for interim measures, vide the Impugned Order. Counsel submits that the Petitioners are not defaulters, and therefore, are entitled to benefit under the law.

¹ Also stated in Ground “XII” of the Memo of Petition

7. We have heard the learned counsels and have found the arguments submitted by the Petitioners to be without any legal justification. It is trite law that where a Special Law is provided (i.e. in this case the FIO 2001), then the course provided in such Special Law must be followed. Section 22(6) of FIO-2001 specifically prohibits an Appeal, Review or Revision (in the circumstances relevant hereof) from any interim order; therefore, it is clear that such interlocutory order was not meant to be appealable, as the same would be divergent to the entire purpose to which the FIO 2001 was promulgated, i.e. expeditious disposal in financial banking disputes. Elaborating further on this point, simply because an action is not appealable under statute, does not automatically open the doors for a constitutional petition to be filed under article 199 of the Constitution, as the same would have the effect of negating the law. This has also been long settled in our jurisprudence. In the case of *Bank of Punjab v Messrs Amz Venture Ltd*,² a Division Bench of this Court whilst deliberating an issue similar to the matter-at-hand, opined:

“15. Thus, it would be seen that the Legislature has provided an appeal only against a judgment, decree, sentence or final order passed by a Banking Court but no appeal is provided against an interlocutory order rather the right of appeal has been taken away from the litigants in respect of any interlocutory order. It is worth mentioning that appeal is not provided even against an order which dismisses the leave to defend application because at this juncture the suit has not yet been decreed in favour of the opposing party. It is only the final decree which has been made appealable. The purpose behind such wisdom seems to be expeditious disposal of cases under the F.I.O., 2001 and to avoid unnecessary delays caused by filing interlocutory applications and the appeals filed against orders passed on such applications.”

“16. It is a settled principle of law that when a statute does not provide an appeal against an interlocutory order then the same cannot be challenged by way of a Constitutional Petition as allowing such an order to be impugned by way of a Constitutional Petition would amount to negating the provisions of the statute which does not provide for an appeal against an interlocutory order. According to the principles of interpretation of statute the Court would not act in a manner by which the object of a statute is defeated and the same is rendered nugatory. In the case of Syed Saghir Ahmed Naqvi v. Province of Sindh and another reported in 1996 SCMR

² 2013 CLD 2033

1165, the Supreme Court pronounced that when a statute does not provide an appeal against an interlocutory order the same could not also be challenged by way of a Constitutional petition as allowing such an order to be assailed by way of a Constitutional petition would amount to defeating the object of the statute. A similar pronouncement was made by the Supreme Court in the case of Muhammad Iftikhar Mohmand v. Javed Muhammad and 3 others reported in 1998 SCMR 328. In this case the Hon'ble Supreme Court observed that when no appeal was provided against an interlocutory order then the same could only be challenged in the appeal to be filed against the final order/judgment."

8. Since the provisions of an appeal against interlocutory orders have specifically been excluded from the FIO 2001, there remains no cavil that a constitutional petition against an interlocutory cannot act as a substitute for an appeal and be entertained, in a bid to indirectly achieve that which is not available directly.

9. Furthermore, the Impugned Order is detailed and a perusal of the record shows that Respondent Bank had also issued the Petitioner the three (3) requisite Notices for seeking recovery of outstanding amounts, as required under Section 15 of the FIO 2001, in the manner prescribed under the Statute and accompanying Rules; which has been observed in the Impugned Order. It therefore cannot be said that Respondent No. 2 has not been thorough when passing the Impugned Order, nor has any illegality in the actions of Respondent No. 2 been highlighted by the Petitioner, which would justify invocation of the Constitutional jurisdiction of this Court.

10. Accordingly, these Petitions being devoid of any legal merit were dismissed vide our short order dated 09.02.2026, and above are the reasons thereof.

Petitions dismissed.

Judge

Judge