IN THE HIGH COURT OF SINDH AT KARACHI

CP D 7209 of 2022	:	Pakistan International Airlines Corporation vs. Full Bench NIRC & Others
CP D 7210 of 2022	:	Pakistan International Airlines Corporation vs. Full Bench NIRC & Others
For the Petitioner	:	Mr. Salman Ahmed Kazi, Advocate
Date/s of hearing	:	19.08.2024
Date of announcement	:	19.08.2024

ORDER

Agha Faisal, **J**. Pakistan International Airlines Corporation ("PIA") had assailed respective interlocutory orders rendered by the NIRC in the present petitions; and the same were dismissed vide order dated 30.11.2022. The present review applications[1] were preferred, ostensibly beyond the pale of limitation[2] on 05.01.2023, and are to be determined presently.

2. The dismissal of the petitions was *inter alia* predicated upon the observation that since the governing law, IRA 2012, contained no provision of appeal in respect of interlocutory orders, therefore, the same could not be construed to automatically become assailable in writ jurisdiction. It is considered illustrative to reproduce the relevant order herein below:

> *"These petitions assail respective interlocutory orders of the learned Single Member NIRC, whereby interim orders passed earlier were confirmed. Per learned counsel, appeals have been filed before the learned Full Bench NIRC, however, the same could not be entertained since the forum remains non-functional. In such context these petitions seek to have the interlocutory orders of the learned Single Member NIRC set aside by this Court, in the exercise of writ jurisdiction.*
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> *2. At the very onset, petitioner's counsel was confronted with respect to maintainability, inter alia, as there appeared to be no provision in section 58 of the IRA 2012 to assail interim / interlocutory orders before the Full Bench NIRC; in the presence of a statutory dispute resolution hierarchy recourse to writ jurisdiction appeared unmerited; and without prejudice to the foregoing, if the petitioner was not aggrieved by the respective interim orders at the time that they were rendered or thereafter then how could mere confirmation of such orders accrue any cause or grievance.*
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> *3. Petitioner's counsel admitted that there was no provision for assailing interim orders in the IRA 2012 and furthermore failed to provide any cogent response to questions of maintainability raised by the Court.*
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> *4. The learned counsel has been unable to articulate any reason for the petitioner being aggrieved by mere confirmation of interim orders when he admittedly did not agitate any grievance with respect to the multiple orders at the time that they were rendered. More importantly, on the legal plane the counsel was unable to set forth any case for the impugned interlocutory orders even being assailable before the Full Bench NIRC, hence, the issue of its non-functionality becomes of no consequence. Finally, it is settled law that in the presence of a statutory dispute resolution hierarchy recourse to writ jurisdiction is unwarranted.*
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> *In view hereof, these petitions are found to be prima facie misconceived, hence, hereby dismissed along with pending applications.*"

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[1] CMA 1026 of 2023 and CMA 1027 of 2023.

[2] As queried vide order dated 27.02.2023.

3. The applicant's counsel argued that section 58(2) of IRA 2012 did contain a provision to assail interlocutory orders. Upon being requested to identify the relevant constituent in the provision, he submitted that a copy of the statute was not available therewith. The Court then read out the relevant provision / statute to the learned counsel, however, he remained unable to identify any constituent therein to corroborate his argument.

4. It was further articulated that the absence of any provision for a statutory appeal provided entitlement to prefer a writ petition. While such an argument was *prima facie* in conflict with his earlier submission, however, once again the learned counsel remained unable to substantiate his averment with any law.

5. The Supreme Court has maintained in *Gul Taiz Khan Marwat*[3] that an appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed. Further that the absence of an appellate provision / forum gives no automatic occasion to prefer a writ petition. An aggrieved person / party may wait till final judgment and then approach the appellate forum for examining the validity of the said order[4]. It is trite law that interlocutory orders may not be ordinarily assailed to obtain fragmentary decisions, as it tends to harm the advancement of fair play and justice, curtailing remedies available under the law; even reducing the right to Appeal[5]. The law[6] requires that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. Unmerited interference could make the High Court's jurisdiction indistinguishable from that exercisable in a full-fledged appeal, which *prima facie* is not the mandate of the Constitution[7]. This Court has recently disapproved of resort to writ jurisdiction to assail interlocutory / interim orders of subordinate fora, in the *Atiya Abdul Karim case*[8], and the said judgment is hereby cited with approval.

6. The jurisdiction of this Court in review proceedings is limited to the ambit of Section 114 read with Order 47 CPC. The entire thrust of the arguments advanced by the counsel was directed towards merits of an already dismissed case and there was absolutely no effort to identify any mistake or error apparent on the face of the record or any other sufficient reason justifying a review of the Order.

7. This Court has duly appraised the contents of the present applications and the arguments advanced by the counsel and is of the considered opinion that no grounds for review have been made out. The applicant has not demonstrated the discovery of any new and important matter which could not have been addressed earlier; has failed to identify any mistake apparent on the face of record; and finally no reason has been advanced to justify the review of the Order.

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[3] Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.
[4] *Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.
[5] *Benazir Bhutto vs. The State* reported as *1999 SCMR 1447*; *Mushtaq Hussain vs. The State* reported as *1991 SCMR 2136*.
[6] Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.
[7] *Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.
[8] Per *Muhammad Junaid Ghaffar J* in *Atiya Abdul Karim vs. Sadiq Ali Khawaja* – Judgment dated *23.10.2023* in *CP S 862 of 2023*.

8. It is thus the considered view of this Court that these applications are frivolous, devoid of merit, hence, were dismissed, with costs[9] of Rs. 25,000/- each to be deposited in the account of the Sindh High Court Clinic, vide our short order announced in Court earlier today at the conclusion of the hearing. These are the reasons for our short order.

Judge

Judge

[9] In line with recent observations of the Supreme Court; Per *Syed Mansoor Ali Shah J* in order dated 30.07.2024 in *Asma Haleem vs. Abdul Haseeb Chaudhry & Others* (*CPLA 3300 of 2024*).