ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P.NO.S-253 of 2018

DATE	**ORDER WITH SIGNATURE OF JUDGE(S)**

Date of Hearing : 27.02.2018.
Date of Order : 27.02.2018.

Mr. Muhammad Hayat Mughal, Advocate for petitioner.

O R D E R

AGHA FAISAL, J: The present petition has been instituted against an interlocutory order dated 22.01.2018, (hereinafter referred as to the "Impugned Order") passed by the learned Court of Civil and Family Judge No. IX, Hyderabad (hereinafter referred as to the "Trial Court"), in Family Suit No.489/2013.

2. It is pertinent to reproduce the relevant portion of the Impugned Order herein below:

> *"I have considered the arguments advanced by the both sides and perused the record. From a perusal of material available on record. The record shows that guardianship application filed by the defendant namely Arshad Rasool is already pending in learned court of Family Judge Hyderabad bearing G.A. No. 136 of 2013, with respect of custody of minor wherein it is to be decided that with whom the custody of minor lies, but here in the instant matter it appears from the record that custody of minor lies with the plaintiff hence she has filed the present suit for maintenance of minor namely Abdullah Bilal. The record further shows that defendant had already filed an application for amendment of issue and adding fresh issue, which was dismissed by this court vide order dated 20-11-2017. The record further transpires that defendant in his W.S has nowhere mentioned about such facts, which he has mentioned in the present application and seeking permission to produce the documents on ground such facts which have never been part of his pleadings. The case diaries show that matter is at the*

> *stage of defendant evidence since 22-08-2017 and defendant instead of leading his evidence is filing applications which have no merits and considerations, it appears from conduct of defendant he has filed the present application just to linger on the matter.*
>
> *In the light of above discussion I am of the view that instant application has no merits and considerations, hence same is dismissed with no order as to costs. As the matter is old one and pertains to the year 2013, therefore, defendant is strictly directed to proceed with matter and lead his evidence positively and accordingly otherwise court shall proceed with the matter according to law."*

3. At the very outset the objection as to the maintainability, raised by learned Additional Registrar at the time of institution of this petition, was pointed out to the learned counsel for the petitioner, which read as follows:

> *"How this petition is maintainable against the order dated 22.01.2018 passed on Interlocutory Application in Family Suit No.489/2013?"*

4. The learned counsel for the petitioner stated that the said objection is not sustainable and that present petition has been duly instituted and that the petitioner is entitled to the grant of the relief claimed herein.

5. The learned counsel cited the case of KHALID MEHMOOD THROUGH SPECIAL ATTORNEY V. JUDGE FAMILY COURT, FAISALABAD AND ANOTHER, reported as 2010 Y L R 336 [LAHORE], and drew the Court's attention to the following passage.

> *"The Impugned Order passed by the learned Judge, Family Court, is not only clothed with authority but is also fully justified. The Impugned Order dated 16-1-2009 was to all intents and purposes of interlocutory in nature. The law does not provide any appeal or revision in the hierarchy of Family Laws. The petitioner on proper showings would have an opportunity to challenge the same if and when he would bring an appeal against the final decision/judgment in terms of section 14 of the Family Courts Act, 1964. There is no dearth of authority that the expression "decision" means final decision and the same will be read ejusdem generis with "judgment". In other words, the petitioner will have an adequate and alternative remedy at the time of appeal as*

> *aforementioned. Considering the conduct of the petitioner, the learned Judge Family Court was constrained to pass the Impugned Order dated 16-1-1999. There was no illegality or irregularity in passing these orders. The present writ petition is without any substance. It is not entertainable and is consequently dismissed in limini."*

6. The learned counsel further cited the case of WAJID ASGHAR CHEEMA v. MST. ANSHKA and another, reported as PLD 2011 LAHORE 534, and drew the attention of the Court to the following passage.

> *9. There appears to be merit in the preliminary objection raised by the learned counsel for respondent No.1 as to the maintainability of the petition. This Court does not normally interfere with interlocutory orders in exercise of its writ jurisdiction, unless a case of grave miscarriage of justice is made out or where it is a case of lack or excess of jurisdiction. Reliance is place on the judgment reported as Mst.Shereen Masood v. Malik Nasim Hassan, Judge Family Court, Lahore and another 1985 CLC 2748.*

7. This Court is well aware that the Impugned Order has been passed in an interlocutory application and that it has been expressly recorded in the Impugned Order that the institution of interlocutory application is in continuation of the petitioner's efforts to delay/ linger on the proceedings in the said family suit.

8. In the case of ALI ADNAN DAR THROUGH ATTORNEY V. JUDGE FAMILY COURT AND OTHERS, reported as P L D 2016 LAHORE 73, it has been held as follows:

> *9. It has been observed that interlocutory order is an order in which no final verdict is pronounced, but an ancillary order is passed with the intention to keep the same operative till final order/decision is passed in the pending matter. It is also observed that under the relevant laws legislature has not provided remedy of appeal, revision or review against an interim order, therefore, Hon'ble Supreme Court of Pakistan in Syed Saghir Ahmed Naqvi v. Province of Sindh through Chief Secretary S&GAD, Karachi and others (1996 SCMR 1165) 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 in the proper exclusive forum created for the purpose of examining such order.*

Also in Mohtarma Benazir Bhutto, MNA and leader of the Opposition Bilawal House, Karachi v. The State (1999 SCMR 1447) the Hon'ble Supreme Court held:--

> *It is well settled that orders at the interlocutory stages should not be brought to the higher Courts to obtain fragmentary decision, as it tends to harm the advancement of fair party and justice, curtailing remedies available under the law, even reducing the right of appeal. Refer the case of "Mushtaq Hussain Bukhari v. The State" 1991 SCMR 2136, Muhammad Afzal Zullah, the then Hon'ble Chief Justice, at page 168 of the report observed as follows:-*
>
> *"It is a wrong or at least misstatement in our state of law, practice, procedure and proceedings in the Courts of law, that wrong orders should be corrected at the time they are passed because it would take less time for the case to conclude. This might have been true half a century to quarter century ago. Thereafter, the challenge to the interlocutory orders has brought about a deluge in the administration of criminal justice. Cases started piling up with the result that the concept of speedy justice came to a grinding halt and powers that may be, started thinking of curtailing remedies even reducing the right of appeals. Cases like the present one do justify such an angry re-action but with a little change of practice in the technical filed (for example amendment, vis-a-vis, the subject in section 197, Cr.P.C. it is hoped there would be no need to curtail the remedies in that too in the stage where we are passing, right be counter-productive".*

9. The august Supreme Court of Pakistan has dealt with the issue of assailing orders passed on interlocutory applications, in writ jurisdiction, on numerous occasions and one of such pronouncement is in the case of MUHAMMAD BARAN AND OTHERS V. MEMBER (SETTLEMENT & REHABILITATION) BOARD OF REVENUE, PUNJAB AND OTHERS,

reported as P L D 1991 SUPREME COURT 691, wherein it has been held as follows:

> *"Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party, rather it causes a manifest illegality, then the extra ordinary jurisdiction ought not to be allowed to be invoked."*

10. This Court has also dealt with such issues time and time again and a notable pronouncement of the Divisional Bench in regard hereof is in the case of BANK OF PUNJAB THROUGH AUTHORIZED ATTORNEY V. MESSRS AMZ VENTURES LIMITED AND ANOTHER, reported as 2013 C L D 2033 [SINDH], wherein it has been held as follows:

> *19. The authoritative pronouncement in the above cited judgment leaves no room for speculation that for assailing interlocutory orders passed under the Banking laws no right of appeal vests in the litigant and in fact it is specifically barred and resort cannot be made to the revisional and appellate procedure of the C.P.C. or to the constitutional jurisdiction by filing a petition under Article 199 of the Constitution to circumvent this specific bar under the banking law."*

11. Another pertinent pronouncement of this Court in this regard has been in the case of SYED MANSOOR SADIQ ZAIDI V. MST. BEGUM NARJIS ZAIDI AND ANOTHER, reported as 2012 Y L R 2122, wherein it has been held as follows:

> *10. I have also examined the legal aspect regarding the maintainability of constitution petition against tentative order of Rent Controller. No doubt learned Rent Controller has passed the Impugned Order on interlocutory application, which being tentative in nature is to be discouraged by the High Court in its constitutional jurisdiction for the reasons that the very purpose of object of expeditious disposal of rent cases through the Rent Controller would be frustrated. However, in exceptional circumstances the writ jurisdiction under Article 199 of the Constitution of Pakistan 1973 can be invoked to avoid abuse of process of law and grave injustice to a party and to redress such grave illegality*."

12. The upshot of the above discussion is that the practice of assailing interlocutory applications in the constitutional jurisdiction has been disapproved by the successive pronouncements of the superior courts.

13. The only exception to the aforesaid principle is when it could be demonstrated that the petitioner had no remedy available thereto but to invoke the constitutional jurisdiction in order to avoid an abuse of the process of law leading to a grave and irremediable injustice thereto.

14. The arguments of learned counsel for the petitioner have failed to demonstrate any abuse of any process of law and have also failed to show any grave injustice that the petitioner may occasion as a consequence of the Impugned Order remaining in the field.

15. The case law cited by the learned counsel for the petitioner does not support his contentions.

16. It is stated in the case of KHALID MEHMOOD THROUGH SPECIAL ATTORNEY V. JUDGE FAMILY COURT, FAISALABAD AND ANOTHER, reported as 2010 Y L R 336 [LAHORE], that the law does not provide any provision of appeal or revision in respect of interlocutory orders in the Family Laws. However, an aggrieved person would have an opportunity to challenge the same if and when a final decision has been delivered in the proceedings.

17. The aforesaid ratio is clearly applicable to the present facts and fortifies the view of this Court that the present petition is not maintainable.

18. The case of WAJID ASGHAR CHEEMA V. MST. ANSHKA AND ANOTHER, reported as P L D 2011 LAHORE 534, also does not benefit the petitioner as the ratio therein states that unless a grave miscarriage of

justice is made out or where it is a case of lack of or excess of jurisdiction, the constitutional jurisdiction of the High Court is not attracted to interfere with the interlocutory orders.

19. In view of the foregoing and relying upon the ratio of the authorities, stated supra, this Court is of the opinion that the petition is not maintainable and hence the same was dismissed vide short order dated 27.02.2018. The operative part whereof read as follows:

> *"The learned counsel for the petitioner has addressed the issue of maintainability at considerable length and has contended that the subject petition is duly maintainable and that the petitioner is entitled to the grant relief therein.*
>
> *For the reasons to be recorded later this Court is of the view that the contentions of learned counsel for petitioner are in dissonance with law and therefore, this petition is found to not be maintainable and hence dismissed alongwith all listed applications."*

20. These are the reasons for the short order dated 27.02.2018, wherein subject petition was dismissed.

21. It is stipulated that the observations made herein are of a tentative nature and shall have no impact upon the determination of any dispute between the parties before any forum of appropriate jurisdiction in due consonance with the law.

JUDGE

S.Shaikh