

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.S-413 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A. No.1754/2023

2. For orders on M.A. No.1755/202

13.11.2023

Mr. Abdul Aziz advocate for applicant.

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1. Granted.

2. This is a review application. Learned Counsel seeks review of order dated 20.10.2023 which reads as follows:

“20.10.2023

Mr. Abdul Aziz advocate for petitioner.

Mr. Muhammad Yousif Ralpoto Asstt. A.G.

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Mr. Naeem Lund Baloch Advocate files Vakalatnama on behalf of respondent No.1, taken on record.

Present petition challenges an interim order of the family Court. At the very outset, petitioners' learned counsel is confronted as to how such a petition can be entertained; he is unable to provide a cogent response. This petition is misconceived, hence, hereby dismissed.”

It is admitted that the order impugned is *interlocutory*, however, it is insisted that since an application was decided, therefore, it ought to have been assailable.

The Supreme Court has maintained in *Gul Taiz Khan Marwat*<sup>1</sup> 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.

If a statute does not provide any right of appeal against an interim order, then the law ought not to be circumvented by resort to writ jurisdiction. An aggrieved person party may wait till final judgment and then approach the appellate forum for examining the validity of the said order<sup>2</sup>. 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<sup>3</sup>. 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<sup>4</sup>.

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<sup>1</sup>Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

<sup>2</sup>*Saghir Ahmad Naqvi vs. Province of Sindh* reported as *1996 SCMR 1165*.

<sup>3</sup>*Benazir Bhutto vs. The State* reported as *1999 SCMR 1447*; *Mushtaq Hussain vs. The State* reported as *1991 SCMR 2136*.

<sup>4</sup>*Muhammad Hussain Munir vs. Sikandar* reported as *PLD 1974 SC 139*.

This Court has recently disapproved of resort to writ jurisdiction to assail interlocutory / interim orders of subordinate fora (especially in family matters), in the *Atiya Abdul Karim case*<sup>5</sup>, therefore, in *mutatis mutandis* application of the reasoning and ratio illumined no case was made out to entertain the petition, hence, the dismissal order.

The present application seeks a review of the dismissal order and It is clear that 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.

This Court has duly appraised the contents of the present application 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. It is thus the considered view of this Court that this application is devoid of merit, hence, the same is hereby dismissed *in limine*.

Judge

Ali Haider

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<sup>5</sup>Per *Muhammad Junaid Ghaffar J* in *Atiya Abdul Karim vs. Sadiq Ali Khawaja* – Judgment dated 23.10.2023 in CP S 862 of 2023.