ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No. S-129 of 2026
(Kashif v Faryal Waseem & another)

DATE **ORDER WITH SIGNATURE OF JUDGE**

1. For orders on office objections
2. For orders on CMA No. 821/2026
3. For hearing of main case

Date of hearing and order:- 30.03.2026

Mr. Saqib Mustafa advocate for the petitioner
Mr. Imdad Ali Sahito advocate for the respondent

O R D E R

Adnan-ul-Kari Memo, J The petitioner, being aggrieved by and dissatisfied with the impugned order dated 22-01-2026 passed by the learned Family Judge-XXI, Karachi South, in G & W Application No. 1846/2024, whereby the petitioner's application for recalling the order dated 29-10-2025 and for reopening his side to conduct cross-examination of respondent No.1 was dismissed, has preferred the instant Constitutional Petition. For convenience's sake, an excerpt of the order is reproduced as under:_

> ***"By this order. I intend to dispose of the application filed by the respondent, Kashif Najam, seeking to recall/set aside the order dated 29-10-2025 and to reopen the side of the respondent for the cross-examination of the applicant. Notice of the application was issued to the other side. The applicant appeared and filed a detailed counter-affidavit, strongly opposing the relief sought by the respondent.***
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> ***The respondent contends that on the date fixed for cross-examination, his counsel was busy before the Hon'ble High Court of Sindh, Karachi, and moved an application for adjournment He further states that the dismissal of said adjournment application and the subsequent closure of his side was due to unavoidable circumstances and prays for the reopening of the side in the interest of justice***
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> ***The applicant's counsel argued that the respondent has been consistently adopting delaying tactics and has failed to show any bona fide cause for his absence. It was pointed out that the respondent's side had already been closed once on 22-09-2025 and was reopened as a matter of grace, yet the respondent repeated the same conduct. It was further contended that on 29-10-2025, the matter was fixed at 11 30 a.m. as a last and final chance at the respondent's own convenience, but he failed to appear. The Court has carefully considered the submissions from both sides and perused the record.***
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> ***The record reflects a persistent pattern of non-cooperation and dilatory conduct by the respondent. It is observed that this Court granted multiple opportunities and even restored the respondent's side once before in good faith on 29-10-2025, despite being granted a "last and final chance," neither the respondent nor his counsel appeared the entire day, and no evidence was produced to justify the engagement in the Hon'ble High Court. Justice cannot be delayed indefinitely due to the negligence or intentional default of a party. The respondent has failed to disclose any sufficient legal ground or exceptional circumstance to warrant the reopening of the side for a second time.***
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> ***In view of the above-stated facts, and the respondent's conduct aimed at lingering on the matter, the application for reopening the side is found to be devoid of merit and is hereby dismissed. The order dated 29-10-2025 stands maintained. The respondent is hereby directed to file his Affidavit-in-Evidence on the next date of hearing. It is made clear that this 15 being granted as a LAST AND FINAL CHANCE, in case of failure to file the evidence on the next date, the respondent's side for evidence shall stand closed automatically without further notice."***

2. The learned counsel for the petitioner submitted that on the date fixed for further cross-examination of respondent No.1, the counsel for the petitioner was busy before this Court in the matter. Therefore, an application for adjournment was made. He contended that the cross-examination of respondent No.1 had already been partly conducted and further cross-examination was reserved due to a shortage of time; however, the learned trial Court closed the side of the petitioner on 29-10-2025 and

later dismissed the petitioner's application for recalling the said order and reopening the side, without properly considering the reasons for his absence. He argued that the petitioner had shown sufficient cause, and the denial of the opportunity to complete cross-examination had caused serious prejudice to the petitioner's case. He prayed to allow this petition.

3. On the other hand, learned counsel for respondent No.1 opposed the petition and submitted that the petitioner had been adopting delaying tactics and had repeatedly failed to avail opportunities granted by the trial Court. He argued that the trial Court had already granted several opportunities and even reopened the petitioner's side once as a matter of grace, but despite a last and final opportunity, neither the petitioner nor his counsel appeared on the relevant date to complete the cross-examination of the witness. He contended that no sufficient cause was/is shown for reopening the case again, and the captioned petition is not maintainable under Article 199 of the Constitution and is liable to be dismissed.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. The learned trial Court, after hearing both sides and examining the record, observed that the petitioner had been given multiple opportunities and even after the grant of the last and final chance, failed to proceed with the cross-examination. The trial Court found no sufficient ground to reopen the side again and held that the application of the petitioner for reopening of the cross-examination was without merit; the same was dismissed vide order dated 22.1.2026, and the order dated 29-10-2025 was maintained, whereby his side was closed.

6. It is a well-settled legal principle that the jurisdiction of this Court under Article 199 of the Constitution is extraordinary and limited in scope. The primary purpose of writ jurisdiction is to cure jurisdictional defect, procedural illegality, perversity, or arbitrariness, and not to act as a substitute for appeal, revision, or re-appraisal of facts already considered and decided by a competent forum.

7. In family and civil matters, where a trial Court has exercised its discretion after considering the conduct of the parties and the evidence on record, this Court has repeatedly held that it cannot re-examine factual findings *or* substitute its own view in place of the trial Court's judgment merely because another conclusion could be drawn. The constitutional petition will not lie simply because a party feels aggrieved by the exercise of judicial discretion or the outcome of cross-examination.

8. In the present case, the trial Court, after perusal of the record and submissions of the parties, found that the petitioner had been repeatedly granted opportunities to cross-examine respondent No.1, including a last and final chance, which he failed to avail. The learned trial Court also noted persistent non-cooperation and delays attributed to the petitioner's side, and after due consideration, exercised its judicial

discretion not to reopen the side for further cross-examination. No jurisdictional defect, misreading of evidence, or violation of law is discernible from the impugned order that would justify interference under Article 199 of the Constitution. The petitioner's absence on the ground that his counsel was busy in another matter does not qualify as sufficient cause in circumstances where multiple opportunities were already afforded and where the petitioner/s counsel failed to justify his absence in the manner required by law.

09. Under Article 199 of the Constitution of Pakistan, 1973, the High Court cannot act as an appellate forum to re-examine factual disputes. The Supreme Court has consistently held that constitutional jurisdiction is limited to correcting jurisdictional errors, arbitrariness, or patent violations of law; it cannot serve as a substitute for appeal or revision. In Ibrahim v. Muhammad Hussain **(PLD 1975 SC 457)** and subsequent cases, the Court emphasized that the right of appeal is purely statutory, and where the statute does not provide for appeal, parties cannot bypass it by invoking constitutional jurisdiction. Similarly, in *President, All Pakistan Women Association v. Muhammad Akbar Awan* **(2020 SCMR 260)**, it was affirmed that constitutional remedies cannot be used to achieve indirectly what the law expressly denies.

10. In family law matters, the Legislature has deliberately precluded further appeal to ensure finality and expeditious resolution. Courts have repeatedly cautioned against re-evaluating facts under Article 199, as seen in *Mst. Tayyeba Ambareen v. Shafqat Ali Kiyani* **(2023 SCMR 246)**, *Shajar Islam v. Muhammad Siddique* **(PLD 2007 SC 45)**, and *Hamad Hassan v. Mst. Isma Bukhari* **(2023 SCMR 1434)**. High Courts are to intervene only where the lower court acted beyond its jurisdiction or committed a patent error of law, not merely because a party is dissatisfied with factual findings.

11. Applying these principles, in the present case, constitutional jurisdiction cannot be invoked to reopen or revise interlocutory orders or proceedings where an adequate statutory remedy of appeal is available, and the petitioner has not demonstrated any patent illegality *or* ultra vires action by the lower forum.

12. In view of the above, the impugned order is well-reasoned and passed with strong justification considering the ground realities. The petitioner has failed to establish any grounds for interference under Article 199 of the Constitution, and for the aforesaid reasons, this petition is dismissed along with all pending applications. However, with no order as to costs.

JUDGE

Shafi