

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI
Constitutional Petition No.S-1318 of 2023
[Uzair v. Province of Sindh and others]

Date	Order with signature of Judge
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FOR HEARING OF MAIN CASE.

Date of Hearing : 22.01.2024
Mr. Munaf Memon, Advocate for the Petitioner
Ms. Seema Zaidi, Addl.Prosecutor General Sindh
Mr. Sajjad Farooq Advocate for respondent No.8

ARSHD HUSSIN KHAN, J. Through instant constitutional petition the petitioner, claiming to be the business partner of the private respondents, seeks return of his cheques which he had issued to the private respondents in connection with some business transactions.

From the perusal of case, it clearly transpires that the petitioner while stating nature of the business with the private respondents, seeks return of his cheques which he had given to them in connection with business commitment/amount due. It is further alleged that although the petitioner while fulfilling his commitment has paid the amount which he owed to the private respondents however, they are not fulfilling their commitment and return the cheques. It is now well settled that the contractual rights, commitments, undertaking and obligations have to be enforced through Courts of ordinary jurisdiction, which should not be interfered with by the High Court while exercising its constitutional jurisdiction. In such like situation, the normal remedy to the law being a suit for contractual rights and obligations would be availed instead of filing petition under Article 199 of the Constitution¹.

Besides above the petitioner has raised disputed questions of fact which require evidence of the parties and cannot be decided in writ jurisdiction of this court.

Keeping in view the above legal position when this Court put the question of maintainability of the present petition, learned counsel failed to satisfy the Court on such point. His only argument was that the petitioner has no adequate or alternate remedy under the law except, to seek his relief through Constitutional petition.

¹ Zonal Manager, U.B.L. and another v. Mst. Perveen Akhtar [PLD 2007 Supreme Court 298]

It may be observed that Article 199 of the Constitution casts an obligation on the High Court to act in the aid of law and protects the rights within the framework of Constitution and this extra ordinary jurisdiction of High Court may be invoked to encounter and collide with extraordinary situation and non-availability of any alternate remedy under the law where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts. It is worth mentioning that it is mandatory and obligatory for a party invoking the Constitutional jurisdiction, to establish a clear legal right, which should be beyond any doubt and controversy. Controverted questions of fact, adjudication on which is possible only after obtaining all types of evidence in power and possession of parties, can be determined only by the courts having plenary jurisdiction in matter².

In view of above facts and circumstances, instant petition being not maintainable is dismissed. However, the petitioner is at liberty to avail appropriate remedy, if available to him in accordance with law.

JUDGE

Jamil**

² Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others (2011 SCMR 279).