THE HIGH COURT OF SINDH KARACHI

C.P. No. S-1126 of 2026

[Umar Jamshed vs. Mishal Jawaid & others]

Petitioner	:	Umar Jamshed through Ms. Sabahat Kiran, Advocate
Respondent No.1	:	Mishal Jawaid through Mr. Mohammed Vawda, Advocate
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Date of hearing	:	04.11.2026
Date of decision	:	04.11.2026
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O R D E R

Zulfiqar Ali Sangi J.– Through the instant constitutional petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called into question the order dated 15.10.2026, passed by the learned XIIth Additional District Judge/Model Civil Appellate Court, Karachi South, in Family Appeal No.202 of 2026, whereby the appeal preferred by the petitioner was dismissed as not maintainable, as well as the order dated 25.09.2026, passed by the learned XVIth Family Judge, Karachi South, in G&W Application No.2498 of 2022, whereby the application filed by the petitioner seeking recall of the order dated 17.10.2024, closing his side of evidence, and reopening of the same was dismissed.

2. Precisely stated, the facts leading to the filing of the instant petition are that respondent No.1 instituted G&W Application No.2498 of 2022 before the learned Family Court in respect of the guardianship of minor Basel Umar Jamshed, wherein the petitioner, being the father of the minor, was arrayed as respondent. During the pendency of the proceedings, the petitioner's side of evidence was closed vide order dated 17.10.2024, owing to his failure to appear before the learned Family Court despite the matter having been fixed for recording of his evidence as a last and final opportunity. Subsequently, the petitioner filed an application seeking recall of the aforesaid order and reopening of his evidence; however, the same was dismissed by the learned Family Court vide order dated 25.09.2026. Feeling aggrieved, the petitioner preferred Family Appeal No.202 of 2026, which was dismissed by the learned Appellate Court vide order dated 15.10.2026,

holding that the order impugned therein was interlocutory in nature and, therefore, not appealable in view of the express bar contained in section 14(3) of the West Pakistan Family Courts Act, 1964 ***(hereinafter referred to as "the Act")***. Hence, the instant petition.

3. Learned counsel for the petitioner contended that both the impugned orders are contrary to law and have occasioned serious prejudice to the petitioner's right to defend himself in proceedings relating to the guardianship and welfare of his minor child. She submitted that the petitioner's affidavit-in-evidence had already been filed on 29.08.2024 and the matter was thereafter fixed for his examination and cross-examination on 17.10.2024. However, on the said date, the conducting counsel for the petitioner was engaged in proceedings before this Court and, owing to overlapping professional commitments, could not appear before the learned Family Court at the initially scheduled time. It was further contended that an attempt was made through the paralegal to seek an adjustment in the hearing time, whereafter learned counsel appeared before the learned Family Court upon concluding her engagements before this Court. According to learned counsel, the absence was neither intentional nor deliberate, nor was it intended to delay the proceedings, particularly when the petitioner had already filed his affidavit-in-evidence and was willing to subject himself to cross-examination. She further argued that the learned Appellate Court misconstrued the scope of section 14(3) of the Act by treating the order dated 25.09.2026 as interlocutory, without appreciating its legal consequences upon the petitioner's right to lead evidence. Learned counsel, therefore, prayed that both impugned orders be set aside and the petitioner be afforded one final opportunity to conclude his evidence. In support of her submissions, she placed reliance upon the unreported order passed by this Court in ***C.P. No. S-534 of 2026, titled Abbas Jawaid v. Zehra Raza and another.***

4. Conversely, learned counsel for respondent No.1 by filling his Vakalatnama has opposed the petition and submitted that the petitioner had failed to point out any illegality, jurisdictional defect or material irregularity in the impugned orders warranting interference by this Court in its constitutional jurisdiction. He contended that the matter was fixed on 17.10.2024 for recording of the petitioner's evidence as a last and final opportunity, with a specific direction for his personal appearance; nevertheless, neither the petitioner nor his counsel appeared at the scheduled time, even when the matter was

recalled at 9:30 a.m. It was further pointed out that the Vakalatnama filed on behalf of the petitioner bears the signatures of three advocates, including Ms. Sabahat Kiran, yet no plausible explanation was furnished as to why the remaining authorized advocates could not attend the proceedings before the learned Family Court. Learned counsel also submitted that the cause list relied upon by the petitioner pertains to a law firm comprising a panel of fourteen advocates, and the engagement of one counsel before this Court could not, by itself, justify the petitioner's personal absence or prevent other authorized counsel from appearing before the learned Family Court. He maintained that the learned Trial Court had rightly declined to recall its earlier order, particularly when the petitioner had failed to establish sufficient cause for his non-appearance despite having been afforded a last and final opportunity. He further contended that the order dated 25.09.2026 was purely interlocutory in nature and, consequently, the appeal was rightly dismissed as not maintainable under section 14(3) of the Act. In support of his contentions, learned counsel placed reliance upon ***Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited (2020 SCMR 300), Syed Tahir Hussain Mehmoodi and others v. Agha Syed Liaqat Ali and others (2014 SCMR 637),*** and the unreported order passed in ***C.P. No. S-129 of 2026.*** He also filed a counter-affidavit under cover of a statement.

5. I have heard learned counsel for the parties and have carefully examined the material available on record, including the impugned orders, pleadings, affidavits and the judicial precedents cited at the Bar. The controversy essentially gives rise to two questions requiring determination: firstly, whether the order dated 25.09.2026, whereby the petitioner's application seeking recall of the order closing his side of evidence was dismissed, is appealable under section 14 of the Act; and secondly, whether the circumstances pleaded by the petitioner disclose any illegality, jurisdictional defect, material irregularity or arbitrary exercise of authority warranting interference by this Court in exercise of its constitutional jurisdiction under Article 199 of the Constitution.

6. Adverting first to the question of maintainability of the family appeal, it is evident that the order dated 25.09.2026 merely declined the petitioner's request to recall an earlier order closing his side of evidence and to reopen the evidentiary stage of the pending

guardianship proceedings. The said order neither finally determined the controversy relating to guardianship nor adjudicated upon the substantive rights of the parties concerning the custody and welfare of the minor. Its essential character, therefore, remains interlocutory. Section 14(3) of the Act expressly prohibits an appeal or revision against an interim order passed by a Family Court. The underlying object of this statutory restriction is to ensure expeditious disposal of family disputes and to prevent the progress of proceedings from being impeded through repeated challenges to interlocutory orders passed during trial. The nature of an order is to be determined with reference to its substance and legal effect rather than merely the consequences attributed to it by an aggrieved party. An order regulating the production of evidence, or declining to reopen an evidentiary stage, does not acquire the character of a final adjudication merely because it may affect the manner in which a party intends to establish its case. In this regard, the Hon'ble Supreme Court of Pakistan, in ***Khalid Pervaiz ul Haq and another v. Mst. Minha Asif and another (PLD 2025 SC 847),*** while examining the scope and application of section 14(3) of the Act, reiterated that interim or interlocutory orders passed during family proceedings cannot ordinarily be subjected to an independent appeal or constitutional challenge. It was further observed that even where an interim order adversely affects a party's rights, such grievance may, where legally permissible and warranted by the circumstances, be agitated along with a challenge to the final order. The Hon'ble Supreme Court also emphasized the necessity of adhering to the procedure prescribed under the special law so as to preserve its efficacy and ensure expeditious disposal of family disputes.

7. In view of the foregoing legal position, the learned Appellate Court rightly held that the order dated 25.09.2026, being interlocutory in nature, was not appealable in view of the express statutory prohibition contained in section 14(3) of the Act. However, it is necessary to clarify that the statutory prohibition against an appeal or revision under section 14(3) of the Act cannot be construed as an absolute exclusion of the constitutional jurisdiction vested in this Court under Article 199 of the Constitution. The constitutional jurisdiction of this Court is conferred by the Constitution itself and cannot be curtailed merely by a statutory restriction on the availability of an appellate or revisional remedy. Nevertheless, the existence of such constitutional jurisdiction does not mean that every interlocutory

order passed by a Family Court becomes amenable to interference at the instance of an aggrieved party. The exercise of constitutional jurisdiction in such matters remains subject to well-recognized judicial restraints, particularly where the legislature has consciously restricted interlocutory challenges under a special statute. Thus, while the order of the learned Appellate Court is sustainable to the extent that it declined to entertain the family appeal as not maintainable, the constitutional challenge to the underlying order dated 25.09.2026 requires independent examination on the touchstone of Article 199 of the Constitution. Accordingly, the question whether the learned Family Court acted lawfully in declining to recall its earlier order is examined independently in the succeeding paragraphs.

8. Adverting to the merits of the order dated 25.09.2026, the record reveals that on 02.10.2024, the learned Family Court adjourned the matter to 17.10.2024 at 9:00 a.m. for recording of the petitioner's evidence, specifically as a last and final opportunity, with a direction requiring his personal appearance. It further transpires that on 17.10.2024, the matter was taken up at the scheduled time of 9:00 a.m., when neither the petitioner nor his counsel was present. The matter was again called at 9:30 a.m.; however, the petitioner and his counsel remained absent. Consequently, the learned Family Court closed the petitioner's side of evidence and recorded cross-examination as nil. The principal justification advanced by the petitioner for his absence is that his conducting counsel was engaged in proceedings before this Court on the same date and, owing to such professional engagement, could not attend the proceedings before the learned Family Court at the initially fixed time. However, even if the explanation furnished by learned counsel is considered in its entirety, it does not satisfactorily explain the petitioner's own failure to appear. Significantly, the direction issued by the learned Family Court for 17.10.2024 was not confined to the appearance of counsel; rather, the petitioner himself had specifically been directed to appear personally for recording of his evidence. The obligation to avail the opportunity granted by the Court, therefore, rested upon the petitioner as well and could not be treated as one exclusively dependent upon the availability of his counsel.

9. Furthermore, while considering the application for recall, the learned Family Court examined the Vakalatnama available on record and observed that the same bore the signatures of three advocates,

including the conducting counsel. Nevertheless, no satisfactory explanation was furnished as to why the other authorized advocates could not attend the proceedings before the learned Family Court. The cause list produced by the petitioner, on the other hand, indicates that the law firm concerned had several matters fixed before this Court on the relevant date. Respondent No.1 also placed on record the profile of the said law firm, reflecting a panel comprising fourteen advocates. In these circumstances, the mere engagement of the conducting counsel before this Court cannot, by itself, constitute sufficient justification for the complete non-appearance of the petitioner as well as the other authorized counsel before the learned Family Court. It is equally significant that the order dated 17.10.2024 was not passed without prior notice or warning. The petitioner had already been afforded opportunities to file his affidavit-in-evidence, which was ultimately submitted on 29.08.2024. Thereafter, on 02.10.2024, the matter was adjourned at the request of the petitioner's side, and the subsequent date was specifically fixed as a last and final opportunity for recording of his evidence. Thus, the petitioner was fully aware of the date and time fixed for his evidence, as well as the consequence of his failure to avail the opportunity. The mere filing of an affidavit-in-evidence does not dispense with the requirement of the petitioner's appearance for examination and cross-examination, particularly when the learned Family Court had expressly directed his personal attendance.

10. In this context, the reliance placed by learned counsel for respondent No.1 upon ***Moon Enterprises CNG Station, Rawalpindi v. Sui Northern Gas Pipelines Limited (2020 SCMR 300)*** is pertinent. In the said judgment, the Hon'ble Supreme Court of Pakistan underscored that where a party is afforded a last opportunity to produce evidence, accompanied by a specific warning regarding closure of its right, failure to avail such opportunity may validly entail closure of the evidence. The Hon'ble Supreme Court emphasized the necessity of enforcing judicial directions granting final opportunities so that proceedings are not unnecessarily prolonged through repeated requests for adjournment. The principle emerging from the said judgment reinforces the proposition that a party seeking recall of an order passed upon failure to avail a final opportunity must establish sufficient, cogent and convincing cause for such default. Similarly, in ***Syed Tahir Hussain Mehmoodi and others v. Agha Syed Liaqat Ali and others (2014 SCMR 637),*** the Hon'ble Supreme Court of Pakistan observed that the statutory provisions governing closure of

evidence, where attracted, are required to be applied in accordance with law and that procedural indulgence cannot ordinarily be claimed as a matter of right by a litigant who has failed to avail an opportunity afforded by the Court. It was further observed that compliance with the law is a constitutional obligation under Article 4 of the Constitution and cannot be relegated to the status of a mere procedural formality. Although the said judgment arose in the context of Order XVII, Rule 3, CPC, the principles relating to procedural discipline and the consequences of failure to avail a final opportunity are relevant to the controversy under consideration.

11. I have also considered the unreported order relied upon by learned counsel for the petitioner in ***C.P. No. S-534 of 2026, titled Abbas Jawaid v. Zehra Raza and another.*** However, the applicability of a judicial precedent must necessarily be examined in the context of the factual matrix and legal principles involved therein. Mere reliance upon an unreported order, without demonstrating that the material facts and legal issues therein are substantially analogous to those involved in the present case, cannot by itself furnish a basis for granting the relief sought. In the instant matter, the specific direction granting a last and final opportunity, the requirement of the petitioner's personal appearance, his continued absence even after the matter was recalled at 9:30 a.m., and the failure to explain the non-appearance of the other authorized advocates constitute material circumstances distinguishing the present case. Accordingly, the aforesaid authority does not advance the petitioner's case in the facts and circumstances before this Court.

12. The further contention that respondent No.1 had also sought adjournments, changed counsel or moved applications for permission to produce additional evidence does not, by itself, constitute a lawful justification for reopening the petitioner's evidence. The conduct of each party is required to be assessed independently, and any procedural indulgence extended to one party cannot automatically confer upon the other an equivalent entitlement to disregard a specific judicial direction. The question before the learned Family Court was whether the petitioner had demonstrated sufficient cause for his failure to avail the last and final opportunity granted to him. Upon examination of the material available on record, no arbitrary, capricious or unreasonable exercise of discretion is discernible in the decision of the learned Family Court. There can be no cavil with the

proposition that proceedings relating to the custody and guardianship of a minor stand on a distinct footing, wherein the welfare and best interests of the minor constitute the paramount consideration. Nevertheless, the welfare principle cannot be interpreted to mean that parties to such proceedings stand exempted from compliance with procedural directions or that the proceedings may be prolonged indefinitely at their instance. The Family Court is required to determine the question of guardianship in accordance with the paramount consideration of the minor's welfare, on the basis of the material lawfully available before it, while simultaneously ensuring procedural fairness to both parties and maintaining the discipline prescribed by the special law. The petitioner's right to present his case must, therefore, be balanced against the corresponding rights of the other party and, above all, the imperative of ensuring expeditious determination of the guardianship proceedings in the best interests of the minor.

13. It is also pertinent to observe that section 12-A of the Act envisages expeditious disposal of family proceedings within the prescribed period. Repeated reopening of evidentiary stages, particularly where a party has failed to avail a specifically granted last and final opportunity without establishing sufficient cause, would frustrate the legislative object underlying the said provision. The mere fact that the application seeking recall of the order dated 17.10.2024 remained pending for some time does not, in the absence of any demonstrated illegality, jurisdictional defect or material prejudice arising from an unlawful exercise of authority, render the impugned order liable to be set aside. The constitutional jurisdiction conferred upon this Court under Article 199 is extraordinary and discretionary in nature and is not intended to operate as an appellate forum for routine reappraisal of every procedural order passed by a competent Court during the course of proceedings. Although the statutory bar contained in section 14(3) of the Act does not extinguish the constitutional jurisdiction of this Court, the exercise thereof is nevertheless circumscribed by settled principles governing judicial review. Interference is warranted where an order is shown to suffer from want or excess of jurisdiction, patent illegality, material irregularity, perversity or an arbitrary exercise of authority resulting in manifest injustice. The mere possibility of a different view on the facts, or dissatisfaction with the exercise of procedural discretion, does not constitute sufficient ground for invoking constitutional jurisdiction.

14. In the present case, the petitioner has failed to establish that the learned Family Court acted without jurisdiction, exceeded its lawful authority, disregarded any mandatory provision of law or exercised its discretion in an arbitrary or perverse manner. Rather, the record demonstrates that the petitioner was afforded a specific last and final opportunity to produce his evidence, with a direction for his personal appearance, which he failed to avail. The explanation subsequently furnished by him does not satisfactorily account for his own absence or the non-appearance of the other authorized advocates. The learned Family Court, therefore, cannot be said to have committed any jurisdictional error or material irregularity in declining to recall its earlier order. Likewise, the learned Appellate Court correctly applied the statutory restriction contained in section 14(3) of the Act while dismissing the family appeal as not maintainable. Consequently, neither of the impugned orders calls for interference in the constitutional jurisdiction of this Court.

15. For the foregoing reasons and the discussion made hereinabove, I am of the considered view that although the constitutional jurisdiction of this Court under Article 199 of the Constitution is not excluded by the statutory bar contained in section 14(3) of the Act, the petitioner has failed to establish any exceptional circumstance warranting its exercise in the present case. The impugned orders do not suffer from any jurisdictional defect, patent illegality, material irregularity or arbitrary exercise of authority calling for interference by this Court. Accordingly, the instant constitutional petition, being devoid of merit, is hereby dismissed. The learned Family Court is, however, directed to proceed with and decide the underlying guardianship proceedings expeditiously, strictly in accordance with law, keeping in view the paramount consideration of the welfare and best interests of the minor. There shall be no order as to costs.

JUDGE