HIGH COURT OF AZAD JAMMU AND KASHMIR

Family Appeal No.203/2024.
Date of Institution 09.07.2024.
Date of decision 18.10.2024.

Hamid Raza S/o Muhammad Sadiq R/o Bhana Tehsil and District Muzaffarabad, presently residing at Bala Pir near Petrol Pump Muzaffarabad, Azad Jammu and Kashmir.

(Appellant)

Versus

1. Sabiha ul Nisa D/o Muhammad Rafique W/o Hamid Raza.
2. Muhammad Rafique S/o Faqar Din.
3. Manshad Begum W/o Muhammad Rafique.
4. Zulfiqar S/o Reham Din.
5. Samina W/o Muhammad Zulfiqar R/o Timbi Tehsil and District Muzaffarbad, Azad Jammu and Kashmir.

(Respondents)

FAMILY APPEAL

Before:- **Justice Syed Shahid Bahar, *J.***

PRESENT:
Raja Hamid Javed, Advocate for the appellant.
Shoukat Hussain Abbasi and Saima Tariq Abbasi, Advocates for the respondents.

JUDGMENT:

Through instant appeal, the appellant has called in question the interlocutory order passed by Family Court, Muzaffarabad dated 10.06.2024, through which the application filed by the appellant, before Family Court qua bringing on record different messages and photographs, was turned down. Feeling aggrieved from the said impugned order of the Family Court, the appellant opted to file the appeal against the same.

2. At the outset upon the query of the Court as it is *exfacie* reflecting from the entire scheme of Family Court Act, 1993 that no

appeal or revision is provided specifically by the Statute against interlocutory or interim order, thus, question which requires to be resolved is how the appeal at hand is competent, so in this view of the matter I directed the parties to argue this law point at first leaving aside the factual spectrum of the case.

3. The learned counsel for the appellant Mr. Hamid Javed, Advocate pressed the grounds agitated in the memo of appeal and vehemently contended that interlocutory order or final word "decision" implied in Section 14(1) of the Family Courts Act, therefore, he rightly invoked the appellate jurisdiction of this Court. He further contended that as the order impugned, herein, is conclusive in its nature and resolved the controversy involved in the application entirely, therefore, appeal has competently been filed. He relied upon following case laws:-

i. 2018 SCR 908.
ii. 1996 CLC 94
iii. Unreported judgment of Hon'ble Apex Court titled "Uzma Waheed vs. Saqib Munir and another"
iv. Muhammad Afzal vs. Additional District Judge/ Judge Family Court Muzaffarabad and others"
v. Unreported judgment of this Court titled "Khawaja Mujtaba vs. Judge Family Court and another" dated 26.09.2023.

4. While on the other hand, learned counsel for the respondents Mr. Shoukat Hussain Abbasi and Saima Tariq Abbasi, Advocates contended that appeal at hand is not competent in view of Section 14(1) of the Family Court Act, 1993 and only final decision and decree can be challenged through appeal before this Court. The learned counsel prayed for dismissal of the appeal on the basis of

incompetently filed and also referred to and placed reliance on the case reported as 2018 SCR 908.

5. I have heard learned counsel for the parties at considerable length and perused the record.

6. Be that as it may if special law provided specific mode for performance of the act or for that matter provides a specific modus operandi for doing certain things then general law cannot be applied in the said matter. I am fortified to follow the rational of the judgment handed down by the Hon'ble Apex Court of AJ&K in the case titled "Munawar Hussain vs. The University of AJ&K and others" reported as 2011 SCR 27.

7. Words judgment, decree and order have nowhere defined in the Family Courts Act, 1993. For the purpose of bringing clarity and construction of the language employed in Section 14(1) of the Family Court Act (hereinafter called Act), we have to borrow the definitions of above word from CPC and lexicon's;

8. Words judgment, order and decree have been defined as infra:-

-	Words	Definitions according to C.P.C	In Black's Law Dictionary 11th Edition
1.	S.2 (2) "Decree"	means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint [the determination of any question within Section 144, and an order under rule 60, 98, 99, 101 or 103 of Order XXI] but shall not include -- (a) Any adjudication from which an appeal lies as an appeal from order, or	1. Traditionally, a judicial decision in a court of equity, admiralty, divorce, or probate --- similar to a judgment of a Court of law <the judge's decree in favor of the will's beneficiary>. 2. A court's final judgment. 3. Any court order, but esp. one in a matrimonial cause< divorce decree> See Judgment (2); order (3) decision.

		(b) Any order of dismissal for default.	
2.	S.2(9) "Judgment"	means statement given by the Judge of the grounds of a decree or order	The mental faculty that causes one to do or say certain things at certain times, such as exercising on one's own discretion or advising others, the mental faculty of decision-making.
3.	Sec. 2(14) "Order"	means the formal expression of any decision of a Civil Court which is not a decree.	1. A command, direction, or instruction. 2. A written direction or command delivered by a government official, esp. a court or judge.

9. Above definitions are in paralance of their general applicability as per scheme of the general law but the above liberal definitions and construction cannot be taken as it is in paralance of the special law. These definitions are to be constructed in view of the scheme & purpose and intent of special law in a narrow manner which can match with the goal of the special law.

10. Question arises whether the word decision employed in the Section 14(1) covers the interim/ interlocutory orders as well or is to be construed as a final decision of the Family Court.

11. Trite in the realm of canon of construction that Courts must find out the literal meaning of the expression in the task of construction, in doing so, if the expressions are ambiguous then the construction that fulfills the object of the legislation must provide the key to meaning.[1]

12. Albeit there is a presumption that the legislature does not leave any lacuna, when it is equally possible to take the view which would be conclusive to the conclusion that there is no lacuna in the

[1]. H. Shiva Rao vs. Cecilia Percira AIR 1987 SC 248 + 1987 SCC 248 .

legislation. It would be unreasonable to take the view that the legislature has left a lacuna either by negligence or by lack of foresight, or because it did not know its job.

13. The legislature is a proverbial good writer in its own field, no matter that august body is subject to periodical criticism.

14. A Court of law is no doubt is not authorized to supply a causes omissions or to alter the language of a Statue for the purpose of supplying a meaning, even though they may be of the opinion that a mistake has occurred in drawing up the Act, but it is an equally recognized principle of interpretation that where the main object and intention of the statue are clear, it must not be reduced to a nullity by the draftsman unskillfulness or ignorance of law except in case of necessary or the absolute intractability of the language used.[2]

15. A rule of law enunciated in an act is very strong evidence of what the law on the subject actually is, but though the Court is not absolutely bound by its recital, the burden of proving that the legislature has fallen into a mistake is cast upon those who say so.

16. The legislature is deemed not to waste its words or to say anything in vain.

17. The first and most elementary rule of construction is that is to be assumed that the words and phrases of technical legislation are used in their technical meaning if they have required one, otherwise in their ordinary meaning.[3]

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[2]. Salman vs. Duncomb 1986 11 AC 627.
[3]. Max well, Interpretation of Statutes twelfth edn. P 28 + AIR 1937 Lah. 178.

18. The general terms and expressions in a statue are to receive a general construction, that is, they are to be accorded their full and natural meaning, unless the context, or some other admissible consideration indicates that the legislature intended them to be taken in a more limited sense. General terms in a statute may be restrained and limited by specific words with which they are associated. They may be taken in a limited and restricted sense when the construction according to their widest meaning would lead to unjust oppression or absurd consequences. They must be read structurally and in their context, for their significance may vary with their contextual construction.[4]

19. The philosophy and the language of law are not exceptions, words & phrases take colour and character from the contexts and the times and speak differently in different contexts & times.

20. The legislature language will be interpreted on the assumption that the legislature was aware of existing statues, the rules of statutory constructions and the judicial decisions and that if a change occurs in legislature language a change was intended in legislative result whether expression decision used in Section 14(1) of the Act is to be taken in its narrow original sense or wider sense is a question of pivotal importance in the instant case.

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[4]. Nadiad Borough Municipal vs. Nadiad Electric Co.Ltd. AIR 1970 Guj 194.

21. To sum up, decision in its narrow original sense means the final decision of the Family Court and interlocutory orders are not challengeable by way of filing appeal before the appellate fora.

22. No inroads can be allowed through invoking writ jurisdiction qua judicial review of the interlocutory or for that matter final orders of the special courts and tribunals (created under a special law) that too providing a special procedure for disposal of the cases by excluding the application of procedure/general law. In the Family Courts Act, 1993 and rules made thereunder interlocutory orders are not appealable, neither any other remedy by way of review or revision is provided. Remedy of appeal is provided against the decision & decree.

23. **Very purpose of the Statue i.e The Family Court Act require adjudication of the suits within a prescribed period of 04 months, that is why no right of appeal has been provided against interlocutory orders of the Family Court.**

24. **Procedural modalities of CPC and Qanoon-e-Shahdat (General Law)) are not applicable to the proceedings of the Family Court, thus, modus operandi provided in the Family Court Act, and rules made thereunder is literally a procedural roadmap for trial of the Family suits unless any violation of statutory provision or rules is indicated, extra ordinary jurisdiction of the High Court cannot be invoked.** (Emphasis supplied)

25. Establishment of Family Courts is meant for settlement and disposal of the disputes within a prescribed short span of time i.e. 4 months. Provisions of Civil Procedure Code, 1908 and Qanoon-e-Shahadat are not made applicable to the proceedings before the Family court.

26. It is noteworthy to reproduce the preamble clause of the Family Court Act, 1993.

> "Whereas, it is expedient to make provision for that Establishment of Family Courts for the expeditious settlement and disposal of disputes relating to marriage and family affairs and for matters connected therewith."

27. Thus, in this sense Family Courts vests with the judicial powers to entertain the matrimonial matters and other issues connected therewith within a prescribed timeline.

28. It can safely be held that to avoid protracted litigation no appeal or revision is provided against an interim order.

29. Interim orders are being passed by trial Courts/Family Courts pertaining to ancillary matters, which are off shot of the main controversy raised in the suit, and ultimately could be relooked by the Appellate Court in final appeal against the judgment and decree.

(Underlining is mine).

30. It is celebrated principle of canon of construction that any provision of the statute cannot be read in isolation. It is to be read in combine manner alongwith the other provision of the same statute. Thus, in this sense, section 14(1) of the Family Court requires to be read

with provision of section 12 of the Family Court Act, which reads as under:-

> 12 (2) Provided that a Family Court shall finally decide a case before it, within a period of four months from the date of the presentation of the plaint.

31. Above mandatory command of the statute makes it abundantly clear that cases before the Family Court are to be decided within the prescribed timeline.

32. Wisdom of legislature by not giving right of appeal or revision against interim orders is to ensure the adjudication of family matters within prescribed statutory period of 4 months.

33. The learned counsel for the appellant referred the unreported judgment of the Hon'ble Supreme Court titled "Uzma Waheed vs. Saqib Munir and another", civil appeal No.270 of 2018 decided on 16.01.2019 is distinguishable as the same is pertaining to the decision where a mater has conclusively and finally resolved to that extent. The Hon'ble Supreme Court while referring the case titled Muhammad Zaffar Khan vs. Mst. Shehnaz Bibi & others [1996 CLC 94] reproduced the rational of said judgment as under:-

> "Regarding the first question, I am of the opinion that every order passed by a Family Court during the pendency of a suit cannot be treated interlocutory, unless the nature of such order reflects so. To test whether an order passed on any application by a Family Court be treated interlocutory or not the Appellate Court must find out what possible orders could be passed by the Judge Family Court on such applications. If the nature of an order appears to be final then it may not be treated interlocutory. For example, if any of the contesting parties moves an application praying therein that the Court has no

territorial jurisdiction to proceed with the case, therefore the Family Suit be dismissed or the plaint be returned to the plaintiff for filing the same in the Court of competent jurisdiction then the Judge Family Court, after receiving such application has these options i.e., (i) to allow the application, (ii) dismiss the application, or (iii) to defer the application for the time being by passing any order other than allowance or dismissal:

(a) In case the Judge Family Court allows the application, the family suit would be dismissed if the plaint is considered by the Court not to be returned on the ground that C.P.C cannot be invoked to return the plaint. It is thus evident that this type of order is final in its nature. In this option order passed on the application moved by any of the contesting parties cannot be treated "interlocutory".

(b) In the family Court dismisses the application, as was done in the petitioner's case, even then it is evident that the Family Court has finally decided the question of jurisdiction which cannot be raised again during subsequent proceedings before the Court except in appeal. If any point becomes appealable after the disposal of any suit then it is strange that the said point if finally decided during the pendency of the suit, be treated interlocutory. Therefore, I am of the opinion that order of dismissal in these circumstances also possesses the characteristics of finality in its nature.

(c) If the Court neither allows nor dismisses the application on the point of jurisdiction for the time being and orders only to frame an issue on that point to be decided at the initial stage as preliminary issue or at the time of final disposal as one of the issues of the suit, then such an order may be treated interlocutory because the issue raised in the application has not been finally decided.

According to my point of view keeping the issue of jurisdiction pending till the final disposal of the case is against the principles of natural justice, Courts are required to decide such an issue in its initial stage as and when the same is raised provided it has force in it. For example, if an application in respect of any issue has finally decided the said issue, then such an order possesses the characteristic of finality notwithstanding to the pendency or final disposal

of the case on the basis of that order and an appeal against such an order would be maintainable. If no final order regarding an issue has been passed on an application and the point raised by any party has been deferred for the time being, then such order, can be treated as "interlocutory".

It may not be out of place to mention that the words "Interlocutory" in the dictionary meaning means "not final or definitive", pronounced during the course of suit pending final decision as "an interlocutory divorce deed (Websters' New Universal Unabridged Dictionary). Therefore, an order passed on an application cannot be treated interlocutory if the Court has given final or definitive decision on an issue relating to the maintainability of a suit or the jurisdiction of the Court.

In this regard I would also like to refer the concept of "Interlocutory" from Wharton's Law Lexicon (Fourteenth Edition) which appears on page No.529 as under:-

> "Interlocutory". – An Interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."
>
> Similarly section 94, C.P.C also provides some help to understand the real import of an interlocutory order. Section 94, C.P.C runs as under:-
>
> '94. Supplemental proceedings. – In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed.
>
> (a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;
>
> (b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the disposal of the Court or order the attachment of any property;
>
> (c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

(underlining is my own).

The above-quoted clause (e) gives clear impression that any such Interlocutory orders can be passed as may appear to the Court to be just and convenient in order to prevent the ends of justice from being defeated. As the question of jurisdiction finally decides the right of the contesting parties as well as of the Court regarding continuance or ending of proceedings of any case in a Court and moreover such an order is not passed to prevent the ends of justice from being defeated, therefore, I am of the view that an order passed on the point of jurisdiction of the Court, if decided finally and not deferred, can never be treated as interlocutory order.

On the basis of this proposition an order of dismissal (as in the present case) or allowance of an application on the point of jurisdiction, in my opinion, is not an interlocutory order, therefore, an appeal against such order under section 14(1) of Family Courts Act, 1964 (1993) would be maintainability provided the same is not hit by section 14(2) of the said Act.

8. This proposition also embraces the view that expression "a decision given" appearing in section 14 of the Act has to be construed under the rule of ejusdem generis to provide appeals only against orders which are final in their nature and not interlocutory. If the case of present petitioner is tested on the basis of this proposition, then it radiates that as the Jude, Family Court, had finally decided the question of jurisdiction and as the said application was not hit by section 14(2) of the Act, therefore, appeal against the said order under section 14(1) of the Act was maintainable.

In alternate, if it is presumed that neither the order was appealable nor other remedy was available under law against that order of the Family Court, then the aggrieved party would be left with no other alternate but to invoke Constitutional jurisdiction provided the impugned order was passed without jurisdiction and/or was illegal. In the light of above discussion, the question which gained importance before this Bench in this case whether dismissal of

application on the point of jurisdiction by the Judge, Family Court on merits and dismissal of appeal by the Appellate Court on technical ground can attract the Constitutional jurisdiction of this Court or not?

The answer returns in positive. My reasons for holding so are as under:-

If the order of the learned Additional District Judge (South), Karachi is set aside and the matter is remanded back to that Court to decide the same by afresh by treating the impugned order of the Family Court appealable and as a result of remand if the Appellate Court upholds the order of Judge, Family Court on merits, then the petitioner will against rush to the high Court to invoke the Constitutional jurisdiction against the order of the Appellate Court. It is, thus, obvious that it shall cause further delay in disposal of the family suit which is against the spirit of the Preamble of the Act as pointed out in the foregoing lines."

Definitely every order passed by the family Court cannot be regarded as interlocutory order. It is nature of the orders or decision which can determine as to whether it is conclusive in its nature or of shot of the main controversy which can be agitated in the appeal againt the decision of main lis.

Particularly in such like matters and applications where resultantly the cause is buried into to the extent of that particular matter and no final and further remedy is available can be regarded a decision for the purpose of filing appeal. While rest of the interim/interlocutory orders of the family Court connected with the main lis can be challenged collaterally through appeal against the final judgment of the family Court, by inserting a specific ground of attack in the memo of appeal before the appellate fora, such interlocutory orders are immune from challenge in appeal before the court independently. The order impugned herein is not a final order which

disposed of the controversy or matter conclusively. The appellant has got a right of appeal against such order in the main suit, he can attack the order before the appellate fora in main appeal as it will definitely merge in the final decision and decree of the family Court.

(Underlining for emphasis)

34. ***It does not mean that door of filing writ petition is being closed qua challenging the interlocutory orders of Family Court. If in any case it is brought on record and urged that any action or proceeding or order is violation of the statutory law or has been passed in disregard of requisite procedure, writ can be issued, but where only factual inquiry is required, that is not permissible in writ jurisdiction, however, exceptions are always there for indulgence.***

35. Matter qua controversy at hand was came up for consideration before the Apex Court, I am fortified to follow the rational of the judgemade law handed down by the Hon'ble Supreme Court.[5]

36. Corollary, the appeal at hand is not competent, thus, fails and accordingly dismissed.

File shall be kept in archive.

Muzaffarabad,
18.10.2024.

JUDGE

Approved for reporting

JUDGE

[5]. Firdos Barkat vs. Javed Khan 2012 SCR 205 --- Shahnaz Bibi vs. Munawar Din 2005 SCR 409 --- Mohammad Ramzan vs. Rukhsana 2006 SCR 206 --- Naseem Bashir vs. Abdul Jabbar 2004 MLD 510.