

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.4504/2021.

Date of institution 27.12.2021.

Date of decision 08.03.2022.

Saeeda bibi, daughter of Mohkam Din, R/o Niazpura Tehsil & District Muzaffarabad.

....Petitioner

VERSUS.

1. Judge Family Court Muzaffarabad.
2. Ch. Fareed.
3. Muhammad Shareef sons of Ahmed Din R/o Tarkhan Bandi Podemar Tehsil & district Muzaffarabad.

.... Respondents

WRIT PETITION

Before:- Justice Syed Shahid Bahar, J.

PRESENT:

Raja Iqbal Rasheed Minhas, Advocate for the petitioner.

Judgment:

Through the titled writ petition filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, the petitioner has called in question interlocutory order passed by Family Court Muzaffarabad dated 09.12.202, by making following prayer:-

“It is, therefore, very humbly prayed on behalf of the petitioner that this Hon’ble Court may very graciously be pleased by accepting the instant writ petition, the illegal, against the law, against the facts of the case and against the procedure of the law set aside the impugned interim order dated 09.12.2021 and order for the acceptance the application of the petitioner herein dated 15.09.2021 and order for summoning the divorce deed along with deed of agreement for receiving the dower (Talaq Nama and Iqrarnama Wasoli Haq Mehar) from the respondents and cost of

writ is also solicited in the best interest of justice.”

1. Facts in brevity forming background of the instant writ petition are that petitioner-Saeeda bibi, simultaneously filed three (3) suits before the court of Family Judge, Muzaffarabad for the purpose of dower, dowry articles as well as monthly maintenance. After necessary proceedings, the learned Judge Family Court vide order dated 15.09.2021 in light of the pleaded stance of the parties and after consolidation of the suits, framed 4 issues. It is worthwhile to mention here that on the same day, the plaintiff (petitioner herein) submitted an application before trial Court for summoning divorce deed and an agreement regarding receiving of the dower amount from respondent No.2-Muhammad Fareed. Thereafter objections were invited and duly offered, ultimately the trial Court after hearing both the parties, rejected aforesaid application vide order dated 09.12.2021. The petitioner herein, feeling aggrieved from the aforesaid order of the Family Court, quo rejection of her application invoked the extra ordinary jurisdiction of this court by assailing the order of the Family Court, Muzaffarabad.

2. Arguments heard. Record perused.

3. The learned counsel for the petitioner in support of his pleaded stance vehemently contended on behalf of the petitioner that Family Court has fell in grave error by not taking into consideration the submission of the petitioner quo summoning of divorce deed and alleged agreement regarding receiving of dower

amount as the petitioner has categorically alleged in the application that both the documents (sought to be produced) have been obviously in the power and the possession of respondent No.2 (Muhammad Fareed) and in such situation it was incumbent upon the court to pass judicious order quo production of the aforesaid documents. He further added that the trial Court did not apply its judicial mind while passing the impugned order and miserable failed to attempt that both the documents (sought to be produced) were laying in the possession of respondent No.2. He vehemently argued that the documents (sought to be produced) bears pivotal role for adjudication of the case pending before trial Court and it has to be determined from the aforesaid documents, whether dower has been paid or not?

4. Be that as it may, after deep perusal of order impugned, passed by the Family Court it unequivocally reveals that both the parties simultaneously are denying the possession of the documents (sought to be produced) and in such like eventuality even otherwise it was purely disputed question of fact which can be resolved by the trial Court after recording evidence, that too, the initial burden of proof is on the shoulder of the petitioner/plaintiff to adduce the evidence in this regard.

5. The main argument of the petitioner is that as both documents (sought to be produced) are necessary for adjudication of the case and it would be in the larger interest of the justice to consider the aforesaid documents, in my estimation, the

petitioner instead of filing such like application could have pray for framing of specific issue (if pleaded) in this regard but she did not apt to do so and randomly switched over and filed instant writ petition.

6. Keeping aside this fact, controversy raised by the petitioner, the main point which lead to the roots of the case, whether embarking upon disputed question of fact coming within the jurisdictional ambit and domain of Family Court under the special law i.e. Family Court Act this Court can exercise extraordinary jurisdiction by having judicial review over the interlocutory order, in my estimation, such like practice is liable to be curbed and buried in its very inception as right of appeal, revision and review are admittedly creatures of statute. The family Court Act and Rules made thereunder have not recognized any sort of statutory remedy against the interlocutory orders and the wisdom of the legislature is manifest and evident from scheme of law itself which meant expeditious disposal of the litigation pertaining to the family disputes in order to avoid from unnecessary delay. At this juncture, it is worth mentioning that this practice is grooming day by day to attack interlocutory orders of family Court in writ jurisdiction, irrespective of the fact that matter has already been dealt with by the Superior Courts indicating roadmap and parameters of the writ jurisdiction.

7. Although remedy of writ is a window provided by the Constitution to an aggrieved one but same is subject to certain

conditions, mere on the assertion of having no alternate remedy against the interim orders is not sufficient to claim issuance of writ at random. Practice quo filing writ petition against every interlocutory order is liable to be curbed as it is burdening the Court with unnecessary litigation as well as frustrate the basic intent and purpose of the special law, hence prayed relief is declined.

8. Evidence is yet to be produced by the parties before Family Court, the petitioner is at liberty to pray for framing of specific issue pertaining to the documents (sought to be produced) if pleaded.

The nub of above discussion is that instant petition is devoid of merits and not maintainable, therefore, dismissed in limine.

Muzaffarabad,
08.03.2022.^(A)

-Sd-
JUDGE