

HIGH COURT OF AZAD JAMMU AND KASHMIR

Writ Petition No.1542/2025,
Date of Institution. 26.06.2025,
Date of Decision. 16.10.2025

Muhammad Waheed Khan S/o Muhammad Afsar Khan Caste Rajpoot presently working at Dubai (UAE) through attorney Muhammad Manhiwal Khan S/o Muhammad Afsar Khan R/o Village Komikot Ghail Tehsil and District Muzaffarabad.

...Petitioner.

VERSUS

1. Judge Family Court Muzaffarabad having her office at new District Courts complex Nalochi Muzaffarabad;
2. Nusrat Rasheed D/o Muhammad Rasheed Khan W/o Muhammad Waheed Khan;
3. Mehran Ahmed;
4. Usman Waheed sons of
5. Faiza Waheed;
6. Sawara Waheed D/o Muhammad Waheed Khan R/o Ghail Komikot Tehsil & District Muzaffarabad presently respondents No. 2, 4 to 6 R/o Lower Plate Tehsil & District Muzaffarabad No. 3 presently working at Dubai (UAE) through Attorney respondent No. 5, Faiza Waheed R/o Lower Plate Tehsil and District Muzaffarabad.

... Respondents

WRIT PETITION

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

J.

PRESENT:

Mir Tanvir Hussain, Advocate for the petitioner.

Raja Tariq Mehmood Khan Advocate for respondents No. 2 to 6.

ORDER:

The titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby following relief is solicited by the petitioner.

“It is, therefore, very humbly prayed on behalf of the petitioner that by accepting the instant writ petition the impugned order passed by the learned trial Court dated 04.05.2025 may kindly be set aside and application filed by the petitioner for

production of documents as well as to produce the new alternate list of witness/witness may please be accepted. Any other relief which this Hon'ble Court deems fit may also be granted in favor of petitioner in the interest of justice."

Facts of the case are that the petitioner is 1st Class State Subject of Azad Jammu & Kashmir and presently working at Dubai (UAE), he has appointed his real brother namely Mianwal S/o Muhammad Afsar Khan R/o Ghail Tehsil and District Muzaffarabad as attorney. It is stated that respondent No. 2 (Nusrat Rasheed) is wife of petitioner, who is appointed as Primary Teacher in the year 1996 and now she is serving as Senior Teacher General line and is posted at Govt. Girls High School Komikot whereas the rest of private respondents No. 3 and 4 are sons and 5 and 6 are daughters of petitioner. It is further stated that respondents No. 2 and 4 filed a suit for maintenance against the petitioner before the Judge Family Court Muzaffarabad. The petitioner appeared before trial Court and filed written statement and refuted the whole claim of the private respondents. It is alleged that during pendency of writ petition ex-parte order was passed against the petitioner on 13.06.2022. The petitioner also filed a suit for restitution of conjugal rights, however, the suit was also dismissed for non-prosecution on the same date. The petitioner has filed an application for setting aside the ex-parte order dated 14.07.2022, the learned trial Court after obtaining objections from the other side set aside the ex-parte proceedings vide order dated 07.10.2022. It is submitted that the after concluding the evidence of the private respondents, the petitioner was directed to produce evidence and the petitioner produced few witnesses

before the trial Court but due to leave of Presiding Officer the statement could not be recorded. It is further stated that the petitioner filed another application to grant a permission to produce alternate new list of witnesses due to the reason that the earlier witnesses mentioned in the list namely Waqar Ahmed who went with Tablighi Jamat, witness Muhammad Shahzad is a Heart Patient who is under treatment and Aqash is a businessman who is residing at Lahore. After hearing the learned counsel for the parties, the Court below dismissed the application, hence, the instant petition.

The writ petition was admitted for regular hearing vide order dated 02.09.2025 and the respondents were directed to file written statement. Written statement has been filed, wherein, it is stated that the petitioner has no locus standi to file the instant writ petition, hence, the same is liable to be dismissed. It is further stated that the titled writ petition has been filed with mala fide intention to drag the private respondents into unnecessary and fruitless litigation for the purpose to delay and obstruct the proceedings. It is alleged that the impugned order passed by the Family Court is legally perfect and no illegality or irregularity has been committed by the Family Court. It is submitted by the petitioner that petition could attach/annex documents with the written statement particularly when the same were in his power and possession but failed to annex the same. The respondents have prayed for dismissal of writ petition.

Mir Tanvir Hussain, the learned counsel for the petitioner argued that the Court below fell in grave error while passing the

impugned order. The learned counsel maintained that the petitioner filed an application for permission to file fresh list of witnesses and additional documents but the Court below without any legal justification rejected the application. The learned counsel further maintained that according to Azad Jammu and Kashmir Family Court Act 1993, the Court can allow any witness to produce any document on record for fair administration of justice but the Court below did not consider this aspect of the matter. The learned counsel argued that the respondent No. 2 is a wife of petitioner who is also serving as Senior Teacher General Line and respondents Nos. 3 & 5 and 6 were 25 years 22 years and 20 years of age when the suit was instituted and all have crossed the age of minority. The learned counsel argued that the court below rejected the application without applying judicial mind. The learned counsel placed reliance on the following case law;

2012 MLD 216

2002 CLC 180

On the other hand, the learned counsel for the respondents contended that all the witnesses of petitioner mentioned in the earlier list provided by the petitioner are alive and the petitioner failed to produce them before the Court and on failure, he filed an application for seeking a new list of witnesses without any lawful reasons. The learned counsel further argued that the impugned order passed by Court below is legally perfect and no illegality or irregularity has been committed by the Family Court. He submitted that the petitioner was legally bound to attached all documents with the written statement on

which he relied upon but neither annexed any such document nor he filed any application to produce the same at later stage and now after elapse of 3 years and 3 months the petitioner has no legal right to produce these documents at belated stage. The learned counsel prayed for dismissal of writ petition.

I have heard the learned counsel for the parties and gone through the record of the case.

A perusal of record shows that a suit for maintenance was filed by respondents Nusrat Rasheed and her minor son Usman Waheed against Muhammad Waheed Khan, the petitioner, herein. The suit was filed in the Court of Family Judge Muzaffarabad. During trial the petitioner moved an application for submission of documents and new list of witnesses. The learned Judge Family Court dismissed the above mentioned application moved by the petitioner vide order dated 04.05.2025. The petitioner want to bring on record an “agreement to sell” regarding sale deed dated 15.10.2017 and the said sale-deed was executed in favour of real respondent No. 2 and the suit was filed for maintenance allowance so there is no nexus with these documents. The respondents claim that the petitioner also filed a suit for restitution of conjugal rights before court below which was dismissed for non-prosecution and the petitioner has attached all these documents with that suit but the petitioner did not try to restore the suit for restitution of conjugal right before Court below so all the documents on which the petitioner relied upon were in his possession and he also not annexed these documents with the written statement. It is worthwhile to mention

here that according to Section 09 of the Azad Jammu and Kashmir Family Court Act, 1993 the petitioner was bound to annex with the written statement all copies of entire documents but he failed to annex any such documents before the Court below. It may be stated here that the said documents remained available and in the possession of the petitioner but the petitioner did not attach these documents at the time of filing written statement. So, in my considered view, no illegality or irregularity has been committed by the court below while passing the impugned order.

Remedy of writ is an extraordinary relief which is meant for redressal of the grievances of the person who is left with no other adequate remedy at all, subject to his/her clean handed approach, change in list of witnesses at belated stage as well as failure on part of the petitioner to bring on record the documents by annexing the same with written statement, particularly when the same were available to him are eventualities suffice for denial qua exercise of extraordinary jurisdiction coupled with other facts, proceedings are being carried on under special law i.e Family Court Act and rules made thereunder which requires expeditious disposal of the cases as per settled timeline, that is why technical shackles of general law are not attracted.

While embarking upon the interlocutory orders of the Family Court in the compass of writ jurisdiction, the scope of writ is narrow and limited. Criteria for issuance of writ when challenge is made to the interlocutory orders can be set in a way:-

- (i) If order is contrary to the scheme of codal law (i.e. Special Law) and arbitrary.
- (ii) Order is without jurisdiction.

While in juxta position rest of the interlocutory orders, even where discretionary powers are exercised cannot be reversed in writ jurisdiction and writ in this regard is not competent, as all the interlocutory orders ultimately merges into final judgment. Thus, proper recourse is to attack the final judgment and decree in appeal. Filing writ against interlocutory order without meeting the above criteria frustrate the very purpose of special statute wisdom of statue by not providing a right of appeal against interlocutory orders is exposed by a timeline given for disposal of the suits.

(emphasis supplied)

For the forgoing reasons, the instant writ petition being meritless, it hereby dismissed with no order as to the costs. File shall be consigned to record.

Muzaffarabad,
17.10.2025(A)

Judge

Approved for reporting.

Judge