P L D 2026 Lahore 610

Before Muzamil Akhtar Shabir, J

KANEEZ BEGUM ---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others ---Respondents

Writ Petition No. 75498 of 2025, decided on 18th December, 2025.

(a) Civil Procedure Code (V of 1908)---

----O.XXXIX, Rr.1 & 2---Interim injunction, recalling of---Contumacious conduct of the party---Procedure adopted by the Court---Scope---Perusal of the record showed that ad- interim injunction was granted to the petitioner by the Trial Court, where-after adjournments were sought time and again , spanning over four months, to argue the same till the date of hearing when said order granting ad interim injunction was recalled---The grant and recall of ad-interim injunction by the Trial Court during the pendency of application for interim relief was purely discretionary with the said court, which could regulate its own procedure and could decline to extend ad-interim injunction further due to conduct of parties in further pursuing the matter and the court was not obliged to extend ad-interim relief on each and every date if it was of the opinion that after grant of ad-interim relief, the matter was being un-necessary delayed due to conduct of the party in whose favour said order had been passed and could always refuse to extend the same if it was of the opinion that the said order was being misused or there was abuse of process of law---Every procedure that promoted the administration of justice was permissible unless it was expressly prohibited---Hence, the impugned order passed by the court, with drawing ad-interim injunction in order to regulate its own procedure was a permissible discretionary order and is not to be interfered with by the higher forums under ordinary circumstances unless the said order is found to be perverse, against the law and facts available on record, suffers from some jurisdictional defect or is not justified in the given circumstances of the case---While the application for grant of interim relief filed by the petitioner was still pending, High Court directed that the petitioner or her counsel would argue the application for grant of interim relief on the next date of hearing already fixed for the said purpose before the Trial Court for decision on its own merits in accordance with law---Constitutional petition was disposed of accordingly.

Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarrar and others 2016 SCMR 1; H.M. Saya and Co. v. Wazir Ali Industries Ltd. PLD 1960 SC 65; Abdul Baqi and others v. Haji Khan Muhammad and others PLD 2022 SC 546; Abdul Aziz and others v. Additional District Judge and 4 others 1995 SCMR 991 and Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan and another PLD 1970 SC 139 ref.

(b) Civil Procedure Code (V of 1908)---

----S. 100 & O. XXXIX, Rr. 1, 2---Ad-interim injunction granted by Court , recalling of---Assailing such order---Scope--- case decided ---Scope---Order of grant of ad-interim injunction was recalled by Trial Court after over four months by observing that petitioner /plaintiff was not arguing the matter---Appeal against the said re-calling order filed by the petitioner was dismissed by the District Court as not maintainable for the reason that application for interim relief had not yet been decided---Validity---Had the trial court dismissed the application for

interim relief due to conduct of the party without deciding its merits, the same would be a ground to challenge the said order before the higher forum but where said application is still pending, the proper remedy would be to argue the pending application to enable the court to pass an appropriate order on the same on its own merits---Furthermore, as by recall of ad interim injunction, no final challengeable decision has yet been passed on the application for interim relief and the said order appears to have been passed just to ensure the presence of the petitioner for further arguments on the said application while the Trial Court had adjourned the matter for arguments on the said applications including application for interim relief where the petitioner could raise all the grounds available to her, therefore, in the said circumstances the appellate court was justified to hold that the matter was not a case decided and hence refrained to comment upon merits of the same and rightly held that the appeal was not maintainable---Said procedure was not prohibited and would be deemed to be permitted in accordance with law---The orders passed by the Courts below were justified and could not be treated to be based on any illegality or jurisdictional defect for this, High Court to declare the same to have been passed without any lawful authority and of no legal effect, hence, the same did not warrant any interference at this stage---While the application for grant of interim relief filed by the petitioner was still pending, High Court directed that the petitioner or her counsel would argue the application for grant of interim relief on the next date of hearing already fixed for the said purpose before the Trial Court for decision on its own merits in accordance with law---Petition was disposed of accordingly.

Messrs Zahir Khan and Brothers (ZKB) v. Province of Sindh through Secretary, Investment Department, Karachi and 3 others PLD 2022 Sindh 135 ref.

Ch. Imran Nasir Sandhu for petitioner.

Mohammad Osman Khan, Assistant A.G, Ch. Muhammad Naseer Kamboh, Syed Ali Allow-u-Din, Ms. Sadia Malik, Syed Sabahat Hussain Hamdani, Syed Imran Ehsan, Ch. Imtiazullah Warraich, Sh. Waseem Ahmed, Aitzaz Aslam Chaudhry, Syed Muhammad Haider Kazmi, Mirza Sheharyar Farhan Baig, Dr. Muhammad Azeem Raja and Ms. Zarish Fatima for Respondents.

Mir Haroon-ur-Rasheed, Assistant Attorney General for Pakistan.

ORDER

MUZAMIL AKHTAR SHABIR, J.---The petitioner, Kaneez Begum, filed a suit for Declaration and Consequential Relief before the Civil Court at Gujrat, by claiming that she was the owner in possession of the suit property measuring 16 Kanals 17 Marlas on the basis of oral gift made on 04.02.2021 in her favour by her real brother Muhammad Younas, the defendant No. 1/respondent No. 3, the original owner, in presence of the witnesses, who had thereafter left for America with promise that on his return he would get the property transferred in the name of the petitioner in the revenue record but he did not return till the date of filing of the suit on 17.03.2025. It was claimed that Abdul Ghaffar, defendant No. 2/respondent No. 4 by claiming himself to be the Special Power of Attorney holder of the respondent No. 3 wants to grab the said property by disowning the oral gift in petitioner s favour and prayed that petitioner be declared as owner in possession of the property and respondents be restrained from interfering in the same. Through accompanying application filed under Order XXXIX Rules 1 and 2, C.P.C., interim relief was also prayed for. Vide order dated 17.03.2025 while issuing notices to the respondents for 28.03.2025, the trial court granted ad-interim relief by directing the respondents to maintain status quo over suit property regarding possession and further alienation

till the next date of hearing. During the pendency of said application, the petitioner also filed an application under Order I Rule 10, C.P.C. The respondents filed contesting written statement and replies to applications. The matter was thereafter adjourned and fixed for arguments on both the said applications on various dates. However, the said court recalled the order of ad-interim injunction on 31.07.2025 by observing that petitioner was not arguing the matter. The appeal against the said order filed by the petitioner was dismissed by the learned Additional Judge, Gujrat, vide judgment dated 28.11.2025 as not maintainable for the reason that application for interim relief had not yet been decided. Both the said orders have been called in question through the titled Constitution Petition on the grounds that the impugned orders are against the facts of the case and law on the subject.

2. For ready reference the operative portion of the impugned order dated 31.07.2025 passed by the trial court is reproduced below:

> Record reveals that on 08.07.2025 arguments over application for temporary injunction were heard on behalf the defendant and since then the plaintiff party is not arguing application for temporary injunction. Record further reveals that on the last date of hearing it was ordered that in case of non-arguments on the petitions same will be decided after perusing the file. In the interest of justice file in adjourned on 02.09.2025 for arguments on said petitions with last opportunity. Keeping in view the conduct of plaintiff party the ad-interim injunction granted by the court vide order dated 17.03.2025 is withdrawn and recalled. Now the file is adjourned for arguments on application for interim injunction and under Order I Rule 10, C.P.C. on the date fixed.

3. The operative portion of the order passed by the learned Appellate Court dated 28.11.2025 dismissing the petitioner s appeal is reproduced below:

> 7. Point for determination in this appeal is that whether the impugned order, is against facts and law. The conduct of the appellant was worth retracting discretion of ad interim relief granted to the appellant. Prior to the impugned order the appellant was issued warning and on that date the appellant engaged fresh counsel by filing fresh power of attorney. The same conduct of the appellant, is observed in this appeal as in the same manner, today by filing fresh power of attorney the appellant attempted to get adjournment which was, however, refused.
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> 8. Since the application for interim injunction does not seem to have yet been decided by the learned trial court, the impugned order is not a case decided and this court restrain to discuss about merits of the application for interim injunction despite the fact, it has been argued from the side of respondents. So, glaring display of the conduct of the appellant, not only before the learned trial court but here in this appeal, does not entitle her for discretionary relief of interim injunction. The learned trial court does not seem to have committed any deviation from the facts and law. Resultantly, this appeal fails, it is dismissed.

4. The petitioner claims that the impugned orders are against the facts of the case and law on the subject as the petitioner was entitled to interim relief for the reason that she had shown strong prima facie case and balance of convenience in her favour and she would suffer an irreparable loss if interim relief is not granted. The counsel of the petitioner when confronted with the conduct of the petitioner, who had declined to argue the matter before the learned trial court as well as the learned appellate court on the application for interim injunction, states that petitioner is still

ready to argue the matter but the learned trial court is not deciding the pending application. Perusal of the record shows that ad interim injunction was granted to the petitioner vide order dated 17.03.2025 passed by the learned trial court, where-after adjournments were sought time and again to argue the same till 31.07.2025 when said order granting ad interim injunction was recalled. The grant and recall of ad interim injunction by the trial court during the pendency of application for interim relief was purely discretionary with the said court, which could regulate its own procedure and could decline to extend ad interim injunction further due to conduct of parties in further pursuing the matter and the court was not obliged to extend ad interim relief on each and every date if it was of the opinion that after grant of ad interim relief, the matter was being un-necessary delayed due to conduct of the party in whose favour said order had been passed and could always refuse to extend the same if it was of the opinion that the said order was being misused or there was abuse of process of law. It is pertinent to mention here that in view of principles laid down by the Supreme Court in judgments titled Muhammad Ijaz Ahmad Chaudhry v. Mumtaz Ahmad Tarrar and others (2016 SCMR 1) and H.M. Saya and Co. v. Wazir Ali Industries Ltd. (PLD 1960 SC 65), every procedure that promoted the administration of justice was permissible unless it was expressly prohibited. Hence, the impugned order passed by the court, withdrawing ad interim injunction in order to regulate its own procedure was a permissible discretionary order and is not to be interfered with by the higher forums under ordinary circumstances unless the said order is found to be perverse, against the law and facts available on record, suffers from some jurisdictional defect or not justified in the given circumstances of the case. Reliance is placed on Abdul Baqi and others v. Haji Khan Muhammad and others (PLD 2022 SC 546), Abdul Aziz and others v. Additional District Judge and 4 others (1995 SCMR 991) and Shahzada Muhammad Umar Beg v. Sultan Mahmood Khan and another (PLD 1970 SC 139).

5. Had the trial court dismissed the application for interim relief due to conduct of the party without deciding its merits, the same would be a ground to challenge the said order before the higher forum but where said application is still pending, the proper remedy would be to argue the pending application to enable the court to pass an appropriate order on the same on its own merits. Furthermore, as by recall of ad interim injunction, no final challengeable decision has yet been passed on the application for interim relief and the said order appears to have been passed just to ensure the presence of the petitioner for further arguments on the said application while the trial court had adjourned the matter for arguments on the aforesaid applications - including application for interim relief - where the petitioner could raise all the grounds available to her, therefore, in the said circumstances the appellate court was justified to hold that the matter was not a case decided and hence refrained to comment upon merits of the same and rightly held that the appeal was not maintainable. This procedure was not prohibited and would be deemed to be permitted in accordance with law. Reliance may be made to the principles laid down by the Sindh High Court in Messrs Zahir Khan and Brothers (ZKB) v. Province of Sindh through Secretary, Investment Department, Karachi and 3 others (PLD 2022 Sindh 135). The operative portion is reproduced below:

> 3. We have heard the learned counsel for the appellant, perused the impugned order, as referred to hereinabove, which shows that through impugned order, neither any application seeking injunction or otherwise has been disposed of, nor any final adverse order appears to have been passed, which may otherwise affect the claim of the appellant, which is yet to be determined and decided by the learned Single Judge. We are of the opinion that the impugned order is neither final, nor rights of the parties have been finally

determined, as the injunction application filed by the appellant is still pending for final disposal. It further transpires that while allowing the appellant to participate in the auction proceedings on the scheduled date, it has been further observed by the learned Single Judge that if, the appellant will have any grievance in respect of such auction, appellant may agitate the same on the next date i.e. on 19.10.2021, when the suit is already fixed before the Court.

4. In view of hereinabove facts and circumstances of instant case, we are of the opinion that impugned order is not an appealable order, as it only contains certain directions issued by the learned Single Judge during pendency of the suit, to regulate the process, without finally deciding the fate of any pending application, or the relief being sought in the suit. It has been observed that tendency to challenge every order or directions of interim in nature has increased which not only multiplies the litigation, but also causes delay in disposal of cases on merits. Since the order impugned is neither final nor any pending application has been decided, which could give rise to a grievance to the appellant or would have adversely affected the case of appellant on merits before the learned Single Judge, therefore, is not assailable in appeal. Moreover, the appellant is allowed to raise any objection on the process of auction before the learned Single Judge, therefore, instant High Court Appeal is misconceived and not maintainable, which was dismissed vide our short order dated 08.10.2021 in the following terms:--

"4 and 5. For reasons to be recorded later on, instant High Court Appeal is dismissed in limine along with listed application, however, appellant is at liberty to obtain any restraining order on the injunction application pending before the learned Single Judge in accordance with law, whereas, dismissal of instant appeal will not affect the merits of such application, which shall be decided in accordance with law."

5. Above are the reasons of the said short order.

6. On the basis of the principles laid down in the aforementioned case laws, the orders passed by the courts below are justified and cannot be treated to be based on any illegality or jurisdictional defect for this Court to declare the same to have been passed without any lawful authority and of no legal effect, hence, the same do not warrant any interference at this stage.

7. The application for grant of interim relief filed by the petitioner is still pending and from the order dated 20.11.2025 available on the order sheet attached with the record it is seen that the case is now fixed for arguments on the said application for 12.01.2026, hence, in view thereof, this Petition is disposed of with direction that the petitioner or her counsel shall argue the application for grant of interim relief on the next date of hearing already fixed for the said purpose before the learned trial court, which shall decide the same on its own merits in accordance with law without granting un-necessary adjournment to either of the parties.

MQ/K-5/L Order accordingly.

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