
Appealability of Order Passed U/O 39 Rule 2B CPC



Application of Inductive Reasoning in the Absence of Direct Authority

*In the absence of direct judicial authority on the appealability of orders passed under Order XXXIX Rule 2-B CPC, **inductive reasoning** has been adopted. This method involves drawing a general conclusion from related legal materials. For example, PLD 2005 Peshawar 132 interprets Rule 2-B as procedural in nature, while 2024 SCMR 164 confirms that the right of appeal is substantive and must be expressly conferred by law. Combined with the fact that Order XLIII Rule 1(r) lists only Rules 1, 2, and 10 as appealable, it is reasonably concluded that **no appeal lies against an extension order under Rule 2-B**, even though no case directly says so.*

RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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COURT: HON'BLE MR. JUSTICE MR. GUL HASSAN TARREN BHC
SUBJECT: CIVIL LAW
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Query

Whether an appeal under Order XLIII Rule 1(r) of the Code of Civil Procedure, 1908, is maintainable against an order passed by a civil or appellate court under Order XXXIX Rule 2-B CPC extending a previously granted temporary injunction, given that Rule 2-B is not expressly included in the list of appealable orders, and that such extension orders are procedural in nature rather than substantive injunctive determinations

In response to the query, it is humbly submitted as under:

It is judicially established that Order XXXIX Rule 2-B of the Code of Civil Procedure was inserted with the clear legislative intent to curtail the indefinite continuation of interim relief in the form of temporary injunctions and to prevent misuse of such orders by litigants who delay the adjudication of the main suit. The rule mandates that any order of temporary injunction granted under Rule 1 or 2 of Order XXXIX CPC shall cease to have effect after six months, unless specifically extended by the Court for reasons to be recorded in writing, after hearing the parties. Importantly, it also obligates the trial court to submit a copy of every such extension order to the High Court, reinforcing the supervisory role of the High Court over the exercise of injunctive powers by subordinate courts.

In PLD 2005 Peshawar 132, the High Court comprehensively interpreted Rule 2-B and clarified that the word “extension” is used with a definite legislative purpose. The Court emphasized that the term must be interpreted in its ordinary legal sense, meaning a prolongation or continuation of something already in effect, rather than the issuance of a fresh or original order. The High Court explicitly rejected the contention that such an extension could be equated

with a “confirmation” of the injunction. Thus, an order under Rule 2-B does not create a new right or obligation, but merely extends an already existing one, subject to judicial scrutiny and strict conditions.

The object of Rule 2-B, as highlighted in the Peshawar judgment, is to ensure discipline in the injunctive process and promote expeditious disposal of main cases. It restrains the previously unregulated and discretionary practice of issuing prolonged or perpetual interim orders. Accordingly, an extension under Rule 2-B is procedural in nature, being a continuation or elongation of the original relief granted under Rules 1 or 2, rather than a fresh determination or a new injunctive order. Order XLIII Rule 1(r) CPC, under the mandate of section 104, provides a limited statutory right of appeal against orders passed under Rules 1, 2, 4 & 10 of Order XXXIX. Notably, Rule 2-B was not included in this list. The deliberate omission of Rule 2-B from the scope of appealable orders indicates a clear legislative intent that no appeal shall lie against an order of mere extension of a temporary injunction. Since the right of appeal is not inherent, and is instead a substantive right, it must be expressly conferred by statute.

This principle has been authoritatively reaffirmed by the Supreme Court in **2024 SCMR 164**, wherein it was held that:

“The right of appeal is not a mere matter of procedure but is a substantive right, a continuation of the original proceedings, and a vested remedy that must be explicitly provided by law.”

Accordingly, in the absence of any express statutory provision allowing an appeal against an extension under Rule 2-B, such a challenge cannot be entertained under Order XLIII Rule 1(r) CPC. This view that no appeal lies against an order passed under Rule 2-B is further fortified by the well-established interpretative maxim *expressio unius est exclusio alterius*, meaning **“the express mention of one thing excludes all others.”** Order XLIII Rule 1(r) CPC explicitly mentions appealable orders under **Rules 1, 2, 4 & 10** of Order XXXIX. The absence of Rule 2-B from this enumeration must be read as a conscious legislative exclusion. When the legislature has chosen to specify certain types of orders as appealable, the omission of others—such as Rule 2-B—indicates an intention to deny the appellate remedy for such orders. To include Rule 2-B within the ambit of appealable orders by judicial construction would be to override legislative intent, which is impermissible under settled canons of statutory interpretation.

In view of the above analysis, it is concluded that an order passed under Order XXXIX Rule 2-B CPC is not appealable under Order XLIII Rule 1(r) CPC, as it is not a new injunctive order but merely an extension of an existing one. The statutory right of appeal, being substantive in nature, cannot be inferred beyond the scope of what is expressly provided by the law. Therefore, any appeal filed against an order of extension under Rule 2-B is not maintainable in law and is liable to be dismissed on the ground of incompetency.

The End

RCBHC