ORDER SHEET

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P No.S-292 of 2025

[Javeed Hyder vs. Mst. Malook Zadi]

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For orders on office objection(s)
2. For orders on exemption application
3. For orders on application for stay
4. For hearing of main case

19.09.2025

Mr. Imam Ali Chang, advocate for the petitioner

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1to4. Through this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (**The Constitution**) the petitioner has challenged the legality and veracity of judgment dated 26.07.2025 passed by learned Additional District Judge-IV Shaheed Benazirabad (*Appellate Court*) in Family Appeal No.11 of 2025, whereby said appeal was allowed and in result whereof Order dated 24.03.2025 passed by learned Family Judge-II Sakrand (*Family Court*) in Guardian and Ward Application No.04 of 2025 has been set aside.

Facts of the matter in nutshell are that petitioner Javed Hyder filed a Guardian and Ward Application No.04 of 2025 before Family Court whereby he being real father sought custody of the minors. Upon service the present respondent through her attorney filed an application under Section 9(3) of Guardian and Wards Act 1890 for return of guardian and ward application on the ground that she has been shifted to Karachi alongwith minors, therefore, Family Court lacks jurisdiction. However, the Family Court after hearing the arguments advanced by the parties dismissed the said application vide Order dated 24.03.2025. Being aggrieved by such order the respondent preferred Family Appeal No.11 of 2025 before Appellate Court that has been allowed vide impugned judgment dated 26.07.2025 thereby order passed by the Family Court has been set aside with directions to Family Court to return the Guardian and Ward Application alongwith annexures to the petitioner for presentation

before the competent Court having jurisdiction, hence petitioner preferred this petition.

Learned counsel for the petitioner argued that findings of the appellate Court are against the law and facts; that appellate Court has failed to consider the report submitted on behalf of the SHO concerned, which clearly reflects that respondent resides at Sakrand; that appellate Court failed to consider that in power of attorney the address of the attorney of the respondent is mentioned as Nibaho Para Taluka Sakrand; that order passed by the Family Court is sound and well-reasoned that was not required to be interfered by the Appellate Court; that minors are still getting education in Tehsil Sakrand, therefore, it cannot be believed respondent has shifted to Karachi alongwith minors.

Arguments heard and record perused.

In family proceedings once the issue is finally decided by the Courts below, same is not open to challenge before High Court under writ jurisdiction unless the order impugned suffers from glaring illegality, as the legislature intended to place full stop after decision by the Appellate Court. The purpose behind this was to expeditious decision in the family matters. I am fortified in my view by the case of *Arif Fareed*[1], wherein the Apex Court while dealing with the matter observed as under:

> "*7. Before parting with this judgment, we may reiterate that the right of appeal is the creation of the statute. It is so settled that it hardly needs any authority. The Family Courts Act, 1964 does not provide the right of second appeal to any party to the proceedings. The legislature intended to place a full stop on the family litigation after it was decided by the appellate court. However, we regretfully observe that the High Courts routinely exercise their extraordinary jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as a substitute of appeal or revision and more often the purpose of the statute i.e., expeditious disposal of the cases is compromised and defied. No doubt, there may be certain cases where the intervention could be justified but a great number falls outside this exception. Therefore, it would be high time that the High Courts priorities the disposal of family cases by constituting special family benches for this purpose.*

[1] 2023 SCMR 413

Accordingly, leave to appeal is refused and petition stands dismissed".

I have minutely gone through the orders passed by both Courts below. It appears that Family Court mainly founded its findings on the report furnished in the matter by the SHO concerned, without appreciating that said report is not supported by the independent witnesses of the locality as required under the law. Family Court further observed that though the respondent claimed that she is residing with her brother Arif Ali in Karachi, however, her said brother in Guardian and Ward Application bearing No.22 of 2024 himself mentioned his address within the jurisdiction of Tehsil Sakrand. This observation of Family Court is blind under the law for the reasons that the referred Guardian and Ward Application was admittedly instituted by the attorney/brother of the respondent in the year 2024, whereas the present proceedings were instituted in the year 2025. Even it is not prohibited by the law that a person residing in one city/village cannot shift to some other place.

Though Family Court itself observed in the Order dated 24.03.2025 that respondent instituted a suit for maintenance at Karachi, however, discarded the said fact by observing that Guardian and Ward Application was filed on 16.01.2025 whereas the suit for maintenance was instituted on 24.01.2025. This observation on part of the Family Court is, prima facie, based on the fact that perhaps the respondent shifted to Karachi after institution of guardian and wards proceedings. It does not attract a prudent mind that a person shifted to some other city within eight days (*i.e in between 16.01.2025 to 24.01.2025*) only in order to circumvent the guardian and wards proceedings, as the respondent admittedly has also instituted the suit for maintenance at Karachi and she has to pursue the same. In addition to above though it was argued by the learned counsel for the petitioner that minors are getting education in Sakrand Taluka, however, despite specific directions vide Order dated 29.08.2025 he has

failed to file school attendance sheet/certificate(s) to prove his said argument.

On overall consideration, the impugned judgment passed by the Appellate Court does not disclose any illegality, infirmity, perversity, or jurisdictional defect. Therefore, in view of the settled principle referred to above, this Court while exercising writ jurisdiction cannot sit in appeal over the discretion of the Family Court. Resultantly, the instant constitutional petition is not maintainable and is dismissed in limine along with pending applications.

JUDGE

Sajjad Ali Jessar