

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S – 217 of 2025

Present

Mr. Justice Muhammad Jaffer Raza

Ruqqiya Lehar Petitioner.

Versus

Shayan Zakaria Chottani Respondent.

Mr. Muhammad Arif Latif, Advocate for the Petitioner.

Respondent Shayan Zakaria Chottani in person.

Date of Hearing: 29.04.2025.

Date of announcement: 13.05.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA –J: The instant petition has been filed by the Petitioner who is aggrieved with the impugned judgment dated 31.01.2025 passed in Family Appeal No.75/2024. The said Family Appeal emanated from the judgment passed in Guardian & Ward Application No.4550/2022 dated 01.02.2024. Brief facts of the case are encapsulated in the paragraphs hereinunder.

2. The Respondent filed Guardian & Ward Application No.4550/2022 (**“Application”**) under Section 25 of the Guardians and Wards Act, 1890 (**“Act”**). The said Application was partially allowed vide judgment dated 01.02.2024. Succinctly stated, the Application for permanent custody was dismissed and visitation rights were granted to the Respondent. Relevant part of the judgment of the learned Family Court is reproduced below: -

“14 Given the circumstances, the applicant is not granted permanent custody of the minor at this time. However, visitation rights, which

are the applicant's fundamental right, are provided as follows to allow him to establish a relationship with his daughter.

- (a) Every second Sunday of English Calendar month, the applicant can have temporary custody of the minor from 02:00 PM until 6:00 PM.*
- (b) During the scheduled summer vacation months of June and July every year, the applicant shall have right to take temporary custody of the minors for the first week of each month.*
- (c) Similarly, during winter vacations, the applicant will have temporary custody of the minor for the first three days.*
- (d) On both big EID festivals the applicant can pick up the minor from the respondent's house on the second day of Eid at 12:00 PM and return the minor on the same day at 6:00 PM.*
- (e) On the birthdays of both the applicant and the minor the applicant is entitled to a meeting/visitation for at least six hours through mutual arrangement between the parties.*
- (f) In the case of family functions or the death of close blood relatives, where the applicant wishes the minor to attend, he must inform the respondent, who should not unreasonably prevent the minors from attending such family events or functions.*
- (g) The applicant is also entitled to contact the minor through any form of social media or phone call once in a every week, and the respondent is directed to facilitate such contact rather than interfering with it.*
- (h) Both parents are directed to cooperate in ensuring that the minor receive her routine medical care, dental check-up, counseling and other health care services. The parties are required to share the minor medical and prescription records. In case of any health emergency or other issues concerning the minor, the custodial person must inform the non-custodial person within one hour.*
- (i) Neither party is allowed to take the minor abroad and they cannot permanently relocate the minor beyond the territorial jurisdiction of this court without the court's permission.*
- (j) Considering that the minor is at an impressionable age, both parents are expected to act sensibly and be conscious of their social and moral responsibilities. They should not engage in any actions or behaviors that may negatively influence the minor's perception of the other parent.”*

3. Thereafter the Petitioner filed Family Appeal No.75/2024 and the said appeal was dismissed vide impugned judgment.

4. Learned counsel for the Petitioner has argued that she is generally not aggrieved with the visitation schedule coined by the learned Family Court, however, she is only aggrieved with the visitation schedule in respect of the minor visiting the house of the Respondent. Learned counsel has stated that the minor after visiting the house of the Respondent comes back in a visibly disturbed condition which is detrimental to the interest and health of the minor. In this respect learned counsel has prayed that the visitation place may be shifted from the house of Respondent to either the Court premises or any other place other than the house of the Respondent, as the same is also inhabited by his second wife and child (step sibling of the minor). Lastly learned counsel has stated that the maintenance given towards the minor is only Rs.15,000/- per month which does not cover the monthly expenses of the minor.

5. Conversely Respondent has appeared in person and has vehemently opposed the submissions made by the Petitioner's counsel. He has stated that he only wishes to meet the minor at his residence and does not wish to meet the minor in the Court premises, which according to him is not a suitable place for the purposes of a conducive meeting. He has stated that he desired that the minor should have access with his step child as well as paternal aunts and uncles. He therefore prayed that the instant petition be dismissed and he may be allowed to meet the minor in accordance with the meeting schedule as coined by the learned Family Court.

6. I have heard the learned counsel and Respondent in person and also perused the record. During the course of arguments, a medical report has been placed before me, which shows that the minor was taken to the hospital, more particularly in the emergency department due to complains of aggression, restlessness and altered behavior. There was also serious complain of "self harm" due to which she was suffering from anxiety and was given injected "valium"

during treatment and hospitalization. Whilst I am aware and mindful of the jurisdiction of this Court in given the concurrent findings of both the Courts below, especially in family matters, I cannot be oblivious to the mental state of the minor who is under six years of age. I am not inclined to adopt a rigid view in the instant petition and the present adjudication shall only be based on the only relevant criterion i.e. welfare. Reliance in this regard can be placed on a recent pronouncement of the Honourable Supreme Court in the case of **Shaista Habib Versus Muhammad Arif Habib**¹ wherein it was held as under: -

“As already noted above, while determining the welfare of the child in the context of custody disputes the court may grant the custody to a person other than the parents e.g. the grandparents or aunt, if doing so would promote the welfare and best interest of the child. As a general rule the guardian and family court is the final arbiter for determining the question of custody, except when it has made a determination in an arbitrary, capricious or fanciful manner i.e. when the fundamental principle of welfare of the child has not been considered or determined in the light of the variables which are relevant in the given circumstances. If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable. The court, in its endeavor to assess and determine the welfare of a child, is not bound to follow rigid formalities, strict adherence to procedure or rules or technicalities if doing so may hamper the determination or undermine the fundamental criterion of the best interest of the child. In a nutshell, the overarching and fundamental principle that must prevail and guide a court in determining custody disputes is the welfare of a child. The court has to adopt a course that would be in the best interest of the child because his/her welfare must always be the paramount consideration.” (Emphasis added)

9. The same principle was expounded in the case of **Asjad Ullah Versus Mst. Asia Bano and others**² wherein it was held by the Honourable Supreme Court as under: -

“10. It is the duty of the Court to ensure that the welfare of the minor is of paramount concern, and that the actions of the litigating parties are not motivated by personal vendettas, vanity, or emotional desires for affection, but solely in the best interest of the minor. In matters concerning the custody of a child, the Family Court is not obliged to delve into the intricacies or technicalities of the case but must focus on determining what is in the best interest of the minor.”

7. It is the unalienable right of the Respondent to meet his daughter and after hearing the parties at length it is apparent that the minor has been exposed to

¹ P L D 2024 Supreme Court 629

² Civil Petition No. 3920 OF 2024

extended family members of the Respondent, which to say the least, is overwhelming, considering the tender age of the minor. I have also personally examined the parties present in my chambers, in an effort to reach an amicable solution in the interest of the minor. Unfortunately, the stance adopted by the respective parents is rigid, the ultimate cost for which is being paid by the minor. I have also noted that the relationship between the Petitioner and the Respondent is strained and the same reflects in the relationship the Respondent has with the minor. Having noted the above I am not inclined to completely overturn the visitation schedule coined by the learned Family Court, however, certain modifications in the circumstances of the present case are necessary keeping in mind the “*child-centered approach*” and guidelines given by the Honourable Supreme Court in the case of **Malik Mahmood Ahmad Khan Versus Malik Moazam Mahmood and others**³. The same shall be condensed in the paragraphs below.

8. The visitation schedule coined by the learned Family Court shall remain unchanged with the exception that the same will be implemented in letter and spirit from the time the minor turns 7 years of age.

9. Till that time the Respondent shall meet the minor as per the schedule hereinbelow: -

- i. Every alternate Saturday for three (03) hours at Dolmen mall, Clifton, from 4pm to 7pm. The Petitioner or her representative shall bring the minor to the above location and hand over custody of the minor to the Respondent in the presence of the Bailiff of the family court. Cost of the bailiff @ Rs. 2,000/meeting to be borne by the Respondent. If the Petitioner is unable to bring the minor (for unavoidable reasons) for the purposes of the said meetings, the Petitioner shall propose another date for the missed meeting and shall inform the Bailiff in advance.
- ii. The same schedule shall be enforced on the 4th day of Eid-ul-Fitr and Eid-ul-Adha respectively, and also on the day after the minor’s birthday.

³ P L D 2025 Supreme Court 247

- iii. To avoid monotony, the Respondent is at a liberty to propose another similar place for meeting, application for which shall be preferred before the learned Family Judge, who will issue notice to the Petitioner for the changed location. It is specified that the alternate place for meeting shall be either a public park, mall or restaurant.
 - iv. It is further specified that the Respondent shall meet the minor only in the presence of the Bailiff as mentioned above, and to the **exclusion** of the Petitioner or any other family member/s of the respective parties.
 - v. The Bailiff shall furnish a report to the learned Family Judge in case something untoward is witnessed.
 - vi. Petitioner shall ensure that the minor is in contact with the Respondent through phone or video call at least once every week.
 - vii. Petitioner is restrained from taking the minor abroad without the permission of the learned Family Judge.
10. The respective parties are expected to comply with the modified arrangement, codified above, in letter and spirit to ensure that the acrimonious relationship between them has no adverse implications on the welfare and wellbeing of the minor.
11. The instant petition stands disposed of in the above terms.

J U D G E

Nadeem Qureshi "PA"