

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-653 of 2025

[Mir Adil v. Mst.Sugra and another]

Petitioner by : Mr.Muhib Ali Laghari, Advocate

Respondent No.1 by : Mr.Naeem Ahmed Junejo, Advocate

Respondent No.2 by : Nemo.

Mr.Muhammad Ismail Bhutto, Additional
Advocate General, Sindh

Date of hearing : **09.02.2026 & 16.02.2026**

Date of Decision : **02.3.2026**

JUDGMENT

ARBAB ALI HAKRO, J.- Through this constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has called in question the legality and propriety of the orders dated 20.05.2025 passed by the learned Family/Guardian Judge-VI, Hyderabad in Guardian Application No.99 of 2024 and the order dated 08.10.2025 passed by the learned District Judge, Hyderabad in Civil Revision Application No.95 of 2025, whereby the petitioner's application under Order VII Rule 11 CPC was dismissed. The revisional Court maintained the said order.

2. The record reflects that respondents No.1 and 2 instituted Guardian Application No.99 of 2024 under Section 25 of the Guardians and Wards Act, 1890, asserting that the minor Baby Yusra is their biological daughter who was temporarily handed over to the petitioner and his late wife, Mst.Meena, owing to her cardiac ailment and emotional attachment with the newborn. It was pleaded that after the demise of Mst.Meena on 27.12.2021, the respondents repeatedly requested the petitioner to return the custody of the minor, but he declined. It is further averred that the petitioner contracted a second marriage on 10.01.2024, and according to the respondents, the minor's welfare demanded that she be

restored to her birth parents.

3. The petitioner contested the guardian application by filing a written statement, categorically denying the respondents' claim of parentage and asserting that the minor is his real daughter. He relied upon the Birth Certificate, Form-B, Family Registration Certificate, succession certificate, school record, medical documents and travel documents to substantiate his claim. The petitioner also filed an application under Order VII Rule 11 CPC seeking rejection of the guardian application on the grounds of limitation, lack of cause of action, bar under Section 9 and Section 19 of the Guardians and Wards Act, 1890 and absence of locus standi.

4. Learned Family/Guardian Judge-VI, Hyderabad, after hearing both sides, dismissed the application under Order VII Rule 11 CPC on 20.05.2025, holding that the objections raised by the petitioner involved disputed questions of fact requiring evidence and that the guardian application disclosed a cause of action. The petitioner's Civil Revision Application No. 95 of 2025 was subsequently dismissed by the learned District Judge, Hyderabad, on 08.10.2025, who concurred with the trial Court's reasoning and maintained the impugned order.

5. Learned counsel for the petitioner contended that both courts below failed to appreciate that the guardian application was inherently incompetent and did not disclose any cause of action as required under Order VII Rule 11 CPC. He argued that the respondents have no locus standi to seek custody of the minor, as the petitioner is the biological father and natural guardian under Section 6(a) of the Guardians and Wards Act, 1890, which is supported by documentary evidence placed on record. It was further submitted that the application is barred under Section 9 and Section 19 of the Act, as well as under Article 118 of the Limitation Act, 1908, and therefore squarely falls within the ambit of Order VII Rule 11(d) CPC. Learned counsel maintained that the respondents approached the Court with unclean hands, concealed material facts, and initiated proceedings only to harass and blackmail the petitioner. He

argued that the courts below misread the record, ignored the petitioner's documentary evidence, and passed non-speaking orders without applying the judicial mind. Lastly, he prayed for setting aside both impugned orders.

6. Conversely, learned counsel appearing for respondent No.1 supported the impugned orders and submitted that the guardian application clearly discloses a cause of action and raises substantial questions regarding the welfare of the minor, which cannot be adjudicated without recording evidence. He argued that the petitioner's application under Order VII Rule 11 CPC was frivolous and intended only to delay the proceedings. It was further contended that the respondents are the real parents of the minor and that the custody was handed over temporarily due to the medical condition of the petitioner's late wife. Learned counsel submitted that the petitioner's objections involve disputed factual controversies, including parentage, welfare and circumstances of custody, which cannot be resolved at the preliminary stage. He maintained that the trial Court rightly held that the application is maintainable and that the matter must proceed to evidence. Lastly, he prayed for dismissal of the petition.

7. Learned A.A.G has submitted that no jurisdictional defect or legal infirmity has been pointed out in the concurrent findings of both courts below. He argued that the scope of Order VII Rule 11 CPC is limited, and that the courts are required to examine only the averments in the plaint, which, in the present case, disclose a clear cause of action. Lastly, he supported the impugned orders and prayed for dismissal of the petition.

8. I have heard learned counsel for the petitioner, learned counsel for respondent No.1 and the learned A.A.G at considerable length, and have carefully examined the material available on record.

9. Before advertence to the rival contentions, it is appropriate to delineate the statutory framework. The Guardians and Wards Act, 1890, is a special enactment "to consolidate and amend the law relating to guardians and wards." Section 7 empowers the Court, where it is satisfied that it is for the welfare of a minor, to appoint or declare a guardian of his person or property or both.

Section 8 specifies who may apply; Section 9 determines the Court having jurisdiction; Section 10 prescribes the form and contents of the application; Section 11 provides the procedure on admission of the application; and Section 13 mandates hearing of evidence before making an order. Section 17 directs that, in appointing a guardian, the Court shall be guided by what appears to be for the welfare of the minor, having regard to age, sex, religion, character and capacity of the proposed guardian, nearness of kin, wishes of deceased parents and the minor's own intelligent preference. Section 19, on the other hand, restricts the Court from appointing a guardian of the person of a minor whose father is living and is not, in the opinion of the Court, unfit to be a guardian.

10. The proceedings in the present case are under Section 25 of the Act, which deals with the title of a guardian to the custody of the ward. Under Section 25(1), if a ward leaves or is removed from the custody of a guardian of his person, the Court may, if it thinks that it will be for the welfare of the ward to return to the custody of his guardian, make an order for his return. The entire statutory scheme thus pivots on the welfare of the minor, and the jurisdiction is essentially equitable and protective in character, though exercised through a judicial process.

11. The petitioner has invoked Order VII Rule 11 CPC to seek rejection of the guardian application at the threshold on the grounds that it does not disclose a cause of action, is barred by limitation, is hit by Section 9 and Section 19 of the Guardians and Wards Act, and that the respondents lack locus standi. This, in turn, raises a foundational question: whether and to what extent Order VII Rule 11 CPC is maintainable or applicable in guardianship proceedings under the Guardians and Wards Act, particularly when such proceedings are now tried by Family Courts.

12. The Guardians and Wards Act is undoubtedly a special statute and, in many respects, a self-contained code on the subject of guardianship and custody. However, it does not expressly exclude the application of the Code of Civil Procedure. On the contrary, Section 10 of the Act requires that an application (if not made by the Collector) "shall be by petition signed and

verified in manner prescribed by the Code of Civil Procedure, 1908 for the signing and verification of a plaint” and Section 11 refers to service of notice “in the manner directed in the Code of Civil Procedure, 1908.” This textual incorporation of CPC provisions indicates that the legislature did not intend to create a procedural vacuum; rather, it envisaged that, where not inconsistent with the special scheme, the general procedural law would supplement the Act.

13. Family Courts ordinarily try the guardianship and custody matters under the West Pakistan Family Courts Act, 1964. Section 17 of that Act does restrict the application of the CPC, but it does not altogether proscribe the use of CPC principles. The superior courts have consistently held that, even where the CPC is not formally applicable in its entirety, the Family Court may be guided by its principles and may, in appropriate cases, adopt or apply provisions of the CPC to advance the cause of justice, provided there is no inconsistency with the special statute. The Family Court is not a forum bereft of procedural discipline; it is a civil Court of limited but specialised jurisdiction, and it cannot be presumed to be powerless to weed out patently incompetent or barred proceedings.

14. Order VII Rule 11 CPC, in essence, is a procedural manoeuvre enabling the Court to reject a plaint where it does not disclose a cause of action, where the relief is undervalued or insufficiently stamped and not corrected or where the suit appears from the statements in the plaint to be barred by any law. The jurisprudential rationale behind this provision is to prevent abuse of process and to avoid unnecessary trials in cases where, even if all averments in the plaint are taken as true, no decree can be passed. This principle is not alien to guardianship proceedings; indeed, the Court seized of a guardianship or custody matter is equally entitled, and indeed obliged, to ensure that its time is not consumed by applications that are *ex facie* incompetent or barred.

15. The question, therefore, is not whether the label “Order VII Rule 11 CPC” can be mechanically affixed to an application in guardianship proceedings, but whether the Court has the jurisdiction to summarily reject a guardianship petition which, on its own showing, discloses no cause of action or is clearly

barred by law. In my view, even if one were to assume, arguendo, that Order VII Rule 11 CPC does not apply *proprio vigore* to proceedings under the Guardians and Wards Act, the Family/Guardian Court nonetheless retains the inherent jurisdiction, as a civil Court of record, to decline to entertain a petition which is demonstrably incompetent on the face of the record. The nomenclature of the application is not decisive; the substance is.

16. In the present case, however, the learned Family/Guardian Judge-VI, Hyderabad did not non-suit the respondents on a technical objection; rather, she examined the guardian application, considered the objections raised by the petitioner and concluded that the application disclosed a cause of action and that the objections involved disputed questions of fact which could not be resolved at the preliminary stage. The learned Judge observed that “for the purpose of rejection of the plaint under Order VII, Rule 11, C.P.C. only the contents of the plaint are to be looked into and they shall be presumed to be based on truth,” and held that the guardian application did disclose a cause of action and that issues such as locus standi, limitation and bar under the Guardians and Wards Act required evidence.

17. Learned District Judge, in revision, undertook an even more elaborate analysis. He reproduced Order VII Rule 11 CPC, examined the contents of the guardian application and held that the respondent had categorically pleaded that she is the biological mother of the minor; that the minor was temporarily handed over to the petitioner and his late wife; that after the demise of the wife, the petitioner contracted a second marriage and that upon refusal to return the minor, the respondent invoked Section 25 of the Guardians and Wards Act. The revisional Court rightly observed that, for the purposes of Order VII Rule 11 CPC, only the averments in the application are to be seen and that disputed questions of fact, such as parentage, welfare and the circumstances of custody, cannot be adjudicated without recording evidence.

18. Examining the matter from a broader doctrinal perspective, I would clarify that, in guardianship and custody matters tried by Family Courts, an application styled under Order VII Rule 11 CPC is not per se incompetent. The Family/Guardian Court may, in an appropriate case, invoke the underlying

principles of that provision or its inherent jurisdiction to reject a petition which, on its own showing, is devoid of cause of action or is clearly barred by law. However, such power must be exercised sparingly and with great circumspection, particularly in matters involving minors, where the paramount consideration is welfare and where factual nuances are often decisive.

19. The petitioner's principal plank is that, in view of Section 19(b) of the Guardians and Wards Act, no guardian of the person can be appointed where the father is alive and is not, in the opinion of the Court, unfit and that, since he claims to be the biological father, the respondents' application is barred by law and must be rejected under Order VII Rule 11(d) CPC. This argument, however, presupposes the very fact which is in dispute, that the petitioner is the father. The respondents assert that they are the real parents and that the minor was only handed over for upbringing to the petitioner and his late wife. The petitioner, conversely, relies on official documents, including a birth certificate, Form B, FRC, passport, school record, and succession certificate, to assert his paternity. The respondents, in turn, have already instituted a separate civil suit for declaration, cancellation, DNA and permanent injunction, precisely to challenge those official documents and to establish their own parentage.

20. In such a situation, the bar under Section 19(b) cannot be said to be "apparent from the statements in the plaint" within the meaning of Order VII Rule 11(d) CPC. The very status of the petitioner as "father" is sub judice, both in the guardianship proceedings and in the declaratory suit. Until that factual controversy is resolved, the Court cannot, at the threshold, invoke Section 19(b) to non-suit the respondents. To do so would be to prejudge the core issue without evidence, which is antithetical to the ethos of guardianship jurisdiction.

21. The plea of limitation under Article 118 of the Limitation Act, 1908, is similarly fact-dependent. The respondents have pleaded that the minor was handed over as a newborn; that the arrangement was to last during the life of the petitioner's wife; that she expired on 27.12.2021, and that after her death and the petitioner's second marriage, they demanded custody and were refused. The precise time when the alleged wrongful retention commenced, and

whether the respondents slept on their rights, are matters that cannot be conclusively determined from the bare averments alone. The courts below were, therefore, justified in holding that the limitation could not be adjudicated at the preliminary stage.

22. The argument that the respondents lack locus standi is also inextricably intertwined with the disputed question of parentage. Section 8 of the Guardians and Wards Act permits an application by "any relative or friend of the minor," in addition to a person desirous of being or claiming to be a guardian. Even if, for the sake of argument, the respondents were not ultimately found to be the biological parents, they would still fall within the broader category of "relative". They could not be non-suited at the threshold on the ground of lack of locus standi. Whether they are better suited than the petitioner and whether the welfare of the minor lies in their custody are questions to be determined under Section 17 after evidence, not under Order VII Rule 11 CPC.

23. The petitioner has also sought to rely on the pendency of the civil suit for declaration and cancellation and has invoked the doctrine of res judicata or at least of parallel proceedings. However, the reliefs in the two proceedings are distinct. The guardianship application under Section 25 seeks custody of the minor on the touchstone of welfare, whereas the civil suit seeks a declaration of parentage, cancellation of official documents and DNA testing. The outcome of one may bear on the other, but they are not mutually destructive in limine. The trial Court, in the earlier revision, had already observed that official documents such as birth certificate, FRC and passport are presumed to be valid unless successfully challenged before a competent forum, and it is precisely in pursuance of that observation that the declaratory suit has been filed. This parallel track, by itself, does not render the guardianship application incompetent or barred.

24. It is also significant that, as per the progress report of the trial Court, issues have already been framed and evidence has commenced. The examination-in-chief of both applicants in the guardian application has been recorded, and one of them has been cross-examined. The proceedings were only held in abeyance due to an interim order passed in this very constitutional

petition. To now accede to the petitioner's plea for rejection of the application at this advanced stage would not only be procedurally incongruous but would also undermine the principle that cases should, as far as possible, be decided on merits rather than on technical knockouts.

25. Viewed from the constitutional lens, the scope of interference under Article 199 is circumscribed. This Court does not sit as an appellate Court over the concurrent orders of the Family/Guardian Court and the revisional Court. Unless the petitioner demonstrates that the courts below acted without jurisdiction, or committed a manifest illegality or perversity in the exercise of jurisdiction, this Court will not substitute its own view merely because another view is theoretically possible. In the present case, both courts have correctly identified the legal test under Order VII Rule 11 CPC, confined themselves to the averments in the guardian application, and concluded that the application discloses a cause of action and raises triable issues. No jurisdictional error or perversity has been shown.

26. In sum, therefore, even after a deeper examination of the Guardians and Wards Act, 1890, the Code of Civil Procedure, 1908, I find no legal basis to hold that the application under Order VII Rule 11 CPC was not maintainable in form, nor any justification to interfere with the concurrent conclusion that, on merits, the stringent conditions for rejection at the threshold were not satisfied. The real controversy between the parties, parentage, welfare and custody of the minor must be resolved on evidence, not on a truncated procedural objection.

27. For the foregoing reasons, the petition is devoid of merit. Consequently, the same is **dismissed**. The orders dated 20.05.2025 and 08.10.2025 passed by the Courts below are hereby maintained.

JUDGE