

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
MIRPURKHAS**

**Constitutional Petition No.S-76 of 2025**  
[Mst. Zubaida v. Muhammad Ashraf and another]

For the Petitioner: Mr. Afzal Karim Virk, Advocate.

For the Respondent No. 1: Mr. Muhammad Yousuf Narejo, Advocate.

For the Respondent No. 2: Mr. Muhammad Sharif Solangi, Assistant Advocate  
General Sindh.

Date of Hearing: 17.12.2025

Date of Judgment: 31.12.2025

**JUDGMENT**

**RIAZAT ALI SAHAR, J.:** This matter pertains to the custody and guardianship of a female child, Eshal Fatima, which is disputed between her real father, Muhammad Ashraf (Respondent No. 1) and her maternal grandmother, Mst. Zubaida (Petitioner).

2. It would appear that the Respondent No. 1 filed Guardianship Application No. 02 of 2021 under sections 7 and 10 read with section 25 of the Guardians and Wards Act, 1890 ("1890 Act") before the learned Guardian Judge, Samaro, against the Petitioner, for the custody and guardianship of Eshal Fatima. In the application, he pleaded that the Respondent No. 1 was married to the daughter of the Petitioner namely, Mst. Sidra on 12.05.2018, who was a patient of Cancer at the time of marriage but this was concealed from the Respondent No. 1. It is further alleged that right from the beginning of the marriage, the Respondent No.1 provided complete maintenance to Mst. Sidra and in the month of March 2019 due to her illness she was shifted from the house of the Respondent No.1 to the Petitioner's house with the Responent's permission; that on 07.08.2019, Mst. Sidra gave birth to Eshal Fatima of which delivery expenses were borne by the Respondent No.1; that on 28.05.2020 when Mst. Sidra was on her death bed, the sons of the Petitioner who are police officials got Family Suit No.10 of 2020 filed before Family Court by producing a dubious lady in place of the wife of the Respondent No.1 whereas Mst. Sidra passed away on 30.06.2020 at 07:55 p.m. and the said suit was dismissed as infructuous vide Order dated 10.02.2021; that the

Respondent No.1 and his family members were not allowed to attend the funeral of Mst. Sidra; that the Petitioner filed Family Appeal No.01 of 2021 against the Order dated 10-02-2021 which was also dismissed; that such facts show that the Petitioner and her family has extraordinary level of *mala fide* and bad blood towards the Respondent No.1 as well as the welfare and wellbeing of Eshal Fatima; that the Respondent No.1 has not been allowed to meet his own daughter nor her custody is being provided to him by the Petitioner and her family; that the Respondent No.1 earns well having his own private business and, being the father of Eshal Fatima, is her natural guardian as well having a preferential right of *Hizanat*; that the Petitioner is an old-aged woman and is not able to properly upbringing Eshal Fatima on such account; that the best interests of the minor lies with the Respondent No.1 who is willing to maintain her properly and take care of her material needs and educational requirements; that the Petitioner is an illiterate lady having no education and depending upon the limited income of her sons who have their own families whereas the husband of the Petitioner (maternal grandfather of Eshal Fatima) has already expired; that the atmosphere of the house of the Petitioner is not good as her son is an addict of intoxication; that for the purpose of appointment of guardian/custody, the Court has to consider welfare of the minor, nearness of kin, age as well as sex and all of these ingredients lie in favour of the Respondent No.1; that the Respondent No.1 is sending money orders of Rs.3,000/- per month to the house of the Petitioner to maintain Eshal Fatima which are constantly being refused by the Petitioner. On these facts, the Respondent No.1 prayed to appoint him as the legal guardian *ad litem* of the Minor as well as to handover her custody to him.

3. Against the Application, the Petitioner filed her Objections/Written Statement in which she denied the case of the Respondent No.1 and pleaded that Mst. Sidra was not ill at the time of marriage and that she was physically and mentally tortured by the Respondent No.1 and his family members; that her medical treatment was afforded by the Petitioner and her family members and the Respondent No.1 did not provide any expenses; that Mst. Sidra was shifted to her parents' house because she was maltreated by the Respondent who did not maintain her properly nor bore the delivery expenses; that the signatures of Mst. Sidra on Family Suit No.10 of 2020 were genuine and the learned Guardian Judge did not pass any orders on it; that the Applicant and her family

members take great care of Eshal Fatima whereas the Respondent No.1 only started sending money orders few weeks prior to filing the G&W application; that Eshal Fatima is living peacefully and in a great environment with the Petitioner and her family members who are providing good love and affection to her; that they have not illegally confined the Minor; that the Petitioner being the maternal grandmother of Eshal Fatima is fully able to take care of her while the Respondent No.1 is engaged in business which means that he is mostly out of the house and will not be able to take care of his daughter; that the maintenance of the Minor should be decided judicially rather than the personal preference of the Respondent No.1; that the Respondent No.1 is not legally entitled to be appointed the guardian of Eshal Fatima. Finally, the Petitioner prayed for dismissal of the G&W application with costs.

4. From the pleadings of the parties, the learned Trial Court framed four relevant issues on which the parties recorded their evidence. The Respondent No.1 being the Applicant examined himself and four other witnesses, whereas the Petitioner examined herself and three other witnesses. Thereafter, a post-trial was held (which ended in failure) and finally the learned Guardian Judge passed Order dated 23.08.2024 the operative part of which reads as follows:

“From the detailed discussion on Issues No. 01 to 03, it is borne out on the record that the welfare of minor baby Eshal Fatima lies with Opponent No. 1 Mst. Zubaida and Applicant Muhammad Ashraf is not entitled to be appointed as Guardian of person or property of minor or to receive custody of minor from Opponent No. 01. Moreover, since, the welfare of the minor lies with Opponent No. 01 Mst. Zubaida hence she is entitled to be appointed as Guardian of the person and property of minor and to retain custody of minor. However, being natural father of minor, Applicant Muhammad Ashraf is entitled for visitation rights with minor Baby Eshal Fatima. Therefore, Guardian & Wards Application filed by Applicant is hereby disposed of in following terms:

- (i) Custody of minor namely Baby Eshal Fatima shall remain with the Opponent No. 01 Mst. Zubaida who is maternal grandmother of minor.
- (ii) Opponent No. 01 shall not remove the minor Baby Eshal Fatima abroad without prior permission of this Court.
- (iii) Applicant Muhammad Ashraf being father of the minor is entitled for visitation/temporary custody of minor Baby Eshal Fatima for one day twice in a month for which purpose Opponent No. 01 shall handover custody of minor Eshal Fatima to Applicant on every 01st and 03rd Saturdays of each month at time 04:00 pm and Applicant shall return the custody of the minor to Opponent No. 01 on every such upcoming Sunday at time 04:00 PM.
- (iv) Applicant shall be entitled for visitation rights/ temporary custody of minor on 02nd day of occasions of Eid-ul-Fitr and Eid-ul-Azha for which purpose Opponent No. 01 shall handover custody of minor Eshal

Fatima to Applicant on 02nd day of each of such Eid at time 10:00am and Applicant shall return the custody of minor to Opponent No. 01 on same day at time 06:00pm.

- (v) Applicant shall be entitled for visitation rights/ temporary custody on each birthday of minor i.e. 07th day of August for three hours for which purpose Opponent No. 01 shall handover custody of minor Eshal Fatima to Applicant on each Birthday of minor at time 03:00pm and Applicant shall return the custody of minor to Opponent No. 01 on same day at time 06:00pm.
- (vi) Applicant being father of the minor is entitled for visitation rights/temporary custody of minor Eshal Fatima for fifteen (15) days during Summer vacation each year for which purpose Opponent No. 01 shall handover custody of minor Eshal Fatima to Applicant on 15th day of June each year at time 10.00am and Applicant shall return the custody of minor to Opponent No. 01 on 30th day of June of same year at time 10:00am.
- (vii) Applicant being real father of the minor is entitled for visitation rights/temporary custody of minor Eshal Fatima for four (04) days during Winter Holidays each year for which purpose Opponent No. 01 shall handover custody of minor Eshal Fatima to Applicant on 25th day of December each year at time 10.00 am and Applicant shall return the custody of minor to Opponent No. 01 on 29th day of December of the same year at time 10:00 am.
- (viii) The manner of taking and handing over custody of minor would be such that Applicant shall receive custody of minor in person from house/address of Opponent No. 01 and after completion of time of meeting/interim custody, Applicant in person will return custody of minor to Opponent No. 01 in person or any of her authorized family member at house/ address of Opponent No. 01. Opponent No. 01 will submit names of her authorised family members within 07 members. In case no such list is submitted by Opponent No. 01, any family member present at address of Opponent No. 01 may hand over custody for minor to Applicant as per schedule detailed above and receive the same from Applicant after completion of visitation hours.
- (ix) If the Opponent No. 01 delays in handing over custody of the minor to the Applicant at the specified time, the Applicant may extend the custody period by the duration of the delay. Similarly, if the Applicant commits late in returning custody to the Opponent No. 01, the corresponding time will be adjusted during the next scheduled meeting, as detailed above.
- (x) Since the Applicant resides in Kot Ghulam Muhammad, approximately 15 kilometres from Samaro town where the minor lives with the Opponent No. 01, the Applicant will arrange private conveyance/transportation, according to his means, to take the minor to his residence and return her to the Opponent No. 01's residence at the end of the visitation period.
- (xi) In case both or any of the parties do not observe discipline and punctuality in taking and handing over custody of minor to entitled party and any complaint in such respect is received from either side, for all future meetings/interim custody proceedings, the Bailiff of this Court will undertake the responsibility of taking custody of minor from house/address of Opponent No. 01 and handing over the same to Applicant at his house/address and after completion of time of meeting/interim custody, the Bailiff of this Court will take the custody of minor from house/address of Applicant and return the same to the Opponent No. 1 at her residence/house. In such respect, charges of Rs. 2000/- rupees will be paid by Applicant to the Bailiff at the time of receiving custody of minor and charges of Rs. 2000/- will be paid by

Opponent No. 01 to the Bailiff at the time of return of custody of minor to him. However, transportation charges of both sides will be paid by Applicant. In case both or either of parties do not comply the directions contained in this order and do not allow access to Bailiff, the Bailiff will seek assistance from Police of nearest Police Station for carrying the order of the Court. For such purpose, let the directions contained in this order be communicated to SHO PS Samaro and SHO PS Kot Ghulam Muhammad.

- (xii) All the meetings shall be held in peaceful atmosphere.
- (xiii) Applicant will furnish indemnity bond in the sum of Rs. 500,000/- (Five lac) rupees before this Court within 07 days of passing of this order to indemnify himself from not committing breach of directions/orders in respect of handing over/returning custody of minor to Opponent No. 01 and with respect to undertaking of taking proper care of minor during period custody of minor remains with him.
- (xiv) Both parties will be responsible for good health and care of minor during the period minor remains with them.
- (xv) In order to monitor proper health and wellbeing of minor, Opponent No. 01 or any one of her authorized family members will take minor Eshal Fatima at Agha Khan Maternal & Child Care Center, Hyderabad, once every year for routine checkup of minor Eshal Fatima before a Pediatrician practicing at such Hospital and ensure proper screening/diagnosis of minor if and as advised by such Medical Practitioner. Applicant Muhammad Ashraf may attend such visit of minor at such Hospital in person alone for which purpose, Opponent No. 01 will inform date and time of appointment to Applicant in advance. The costs on such consultations and diagnosis will be shared equally by Applicant and Opponent No. 01 while both parties will pay travelling expenses at their own. **In case date of appointment is not communicated to Applicant by Opponent No. 01 side, all expenditures will be paid by Opponent No. 01 herself.** First of such consultation is to be made in the month of September 2024 and annual consultation to be followed in month of September each year. In case the Pediatrician refers the minor for further assessment to Agha Khan University Hospital, Karachi, the consultations and diagnosis and all expenses will be shared by both parties equally. Applicant is directed to provide his Cell/WhatsApp number to Opponent No. 01/her Attorney and submit the same through statement in the Court for record.
- (xvi) In order to monitor proper education of minor, the Opponent No. 01 is directed to submit assessment/result card of minor issued by School of minor on annual basis along with other academic record of minor.

All other prayers unless expressly allowed herein above shall be deemed to have been declined. All interim orders passed stand modified accordingly. Parties will bear their own costs.

Application for taking action against Opponent's Attorney and one Shahzeb (brother of Attorney of Opponent) and direction to opponent to provide treatment to minor from Agha Khan Hospital, Karachi stands disposed of in terms of paragraph 40(xv) of this Order."

Against the Order dated 23.08.2024, the Petitioner filed G&W Appeal No.5 of 2024 while the Respondent No.1 filed G&W Appeal No.06 of 2024. Both were heard together by the learned II<sup>nd</sup> Additional District Judge, Umerkot and finally disposed of by him vide Judgment dated 11.04.2025

whereby he set-aside the Order dated 23.08.2024 and passed the following order:-

“In view of my finding on points supra, the G&W Appeal bearing No. 05/2024 filed by Mst. Zubeda through her Attorney Qamar-Ul-Zaman is hereby dismissed. The G&W Appeal bearing No. 06/2024 filed by Muhammad Ashraf is hereby allowed. The impugned order is hereby set-aside. Mst. Zubeda (maternal grandmother of the child) is hereby directed to handover the custody of the child to the appellant/father within 10 days hereof without any court-motion notice. In the event that the mother-in-law fails to comply with the order, the learned Trial Court shall take efforts to enforce the order passed by this Court in order to handover the custody of the minor to the father.

Since the minor also require to be meet with the grandmother side the learned trial Court is directed to issue schedule of meeting with the consent of the parties for meeting of the minor with the grandmother and her maternal uncles in Court.”

5. This case is now before this Court as a petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) by which the Petitioner (Mst. Zubaida) has prayed as follows:

“Prayer that this Honourable Court may be pleased to ascertain the legality, propriety and correctness of the impugned judgment and set-aside it, dismiss the Guardian Appeal No. 06 of respondent grant the stay till disposal of this Revision Application (Call the R&P from Additional Session Judge-II of Appeal No. 06 and from trial court of Guardian Application No. 02) or pass any appropriate order on consideration of the facts and grounds mentioned below.”

6. During the hearing of the case, the learned Counsel for the Petitioner reagitated the grounds of the petition. He submitted that the impugned Judgment is contrary to the law and facts; that the Respondent No.1 deliberately avoided to pay the delivery expenses and maintenance of the minor; that the Respondent No.1 has cruel tendencies; that the guardianship application was filed by the Respondent No.1 after almost an year of the birth of the minor which shows that he was negligent towards the welfare of the child; that the Petitioner regularly conducted the visitation meetings of the minor with the Respondent No.1 as per the directions of the learned Trial Court; that the child has been living with the Petitioner since her birth with peace and affection; that she has been getting all religious and other education and her upbringing is being done perfectly and that the income of the Respondent No.1 is low and he is unable to maintain the minor.

7. On the other hand, the learned Counsel for the Respondent No.1 vehemently opposed the petition and contended that the same is not mainainable in law and that it must be dismissed. He defended the

findings of the learned Additional District Judge in the impugned Judgment and argued against the conduct of the Petitioner and her family members towards the Respondent No.1 and his family. He specifically highlighted the instances of failing to avoid to produce the Minor before the learned Guardian Judge for visitation with the Respondent No.1 and causing hindrances in such meetings (the same also being observed by the learned Additional District Judge). He lastly prayed for the dismissal of this petition with costs.

8. Heard. Perused.

9. In his Order dated 11.04.2025, the learned Additional District Judge has carried out an in-depth appraisal of the evidence and facts of the case and also applied the law in detail. There are various observations in the impugned Order which are supported through documentary evidence, which have not been specifically challenged in this petition, and which clearly go against the conduct of the Petitioner/grandmother. The learned Additional District Judge was of the clear view that this was a case of clear hostility between the parties, where the Petitioner/grandmother was taking advantage of her custody to take revenge from the Respondent No.1 of his alleged role in the death of his wife (mother of the minor). The learned Additional District Judge also observed that the Petitioner and her family had a clear role in depriving the Respondent No.1 from meeting with his daughter, including through remaining absent during visitation meetings, shifting the minor from the jurisdiction of the learned Guardian Judge to another place and causing hurdles during meetings which were held. These findings of the learned Additional District Judge are well-supported through the judicial record and evidence which has been reproduced in the Order dated 11.04.2025. The learned Additional District Judge also referred to the clear (and contradictory) observations of the learned Trial/Guardian Court in the Order dated 23.08.2024 regarding the adverse conduct of the Petitioner towards the Respondent No.1 and the minor:

**“Although the Opponent No. 1 admitted that they did not inform the Applicant about death of his wife and did not allow him to participate in the funeral, which is indeed regrettable, this does not overshadow her otherwise positive role in the minor’s life. Similarly, there are some unpleasant incidents which took place while residence of minor with Opponent No. 1 which include giving a pistol to minor as shown in the photographs produced by Applicant during his additional USB (Ex.A/1-N) and other photographs produced at Ex.A/1-I [i to (iii)]; attempting to shift minor at Mirpurkhas during pendency of this**

**Guardianship Application on pretext of education of minor; injury sustained by minor during pendency of this Guardianship Application on her head and contradictions in reply of Opponent No. 1 and her witnesses with respect to such injury; non-production of record of School of minor despite asserting that minor is admitted in Global Public, School, Samaro and report dated 07-08-2024 of Dr. Nasrullah, Medical Officer, THQ Hospital, Samaro that minor was found to suffer from Anemia (shortage of blood). However, such incidents do not overshadow over all positive role of Opponent No. 1 and her family members in the life of minor.” (emphasis added)**

10. The Petitioner has not raised a single ground to refute the above findings and observations of the learned Additional District Judge. The grounds advanced by the Petitioner have already been considered at length by the learned Additional District Judge who has properly justified his conclusion with reference to the evidence brought forward at trial as well as the judicial record.

11. Similarly, it is on record that the learned Additional District Judge called Eshal Fatima in Court for interviewing her. The findings of the learned Additional District Judge as to the child’s interview are recorded in the impugned Judgment, which have also not been challenged before this Court, and are taken to be admitted/ unchallenged:

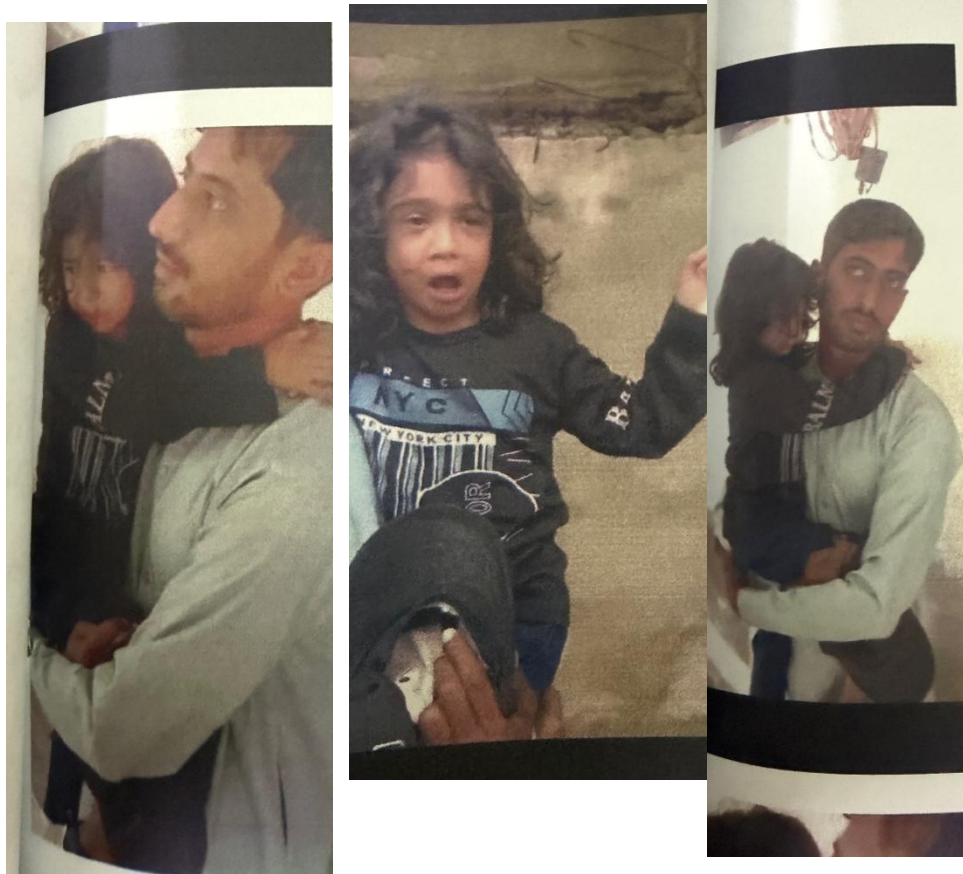
**“During the courts of arguments in appeal under disposal I also called the minor in open Court to see her. I have observed that she lacks nutrition, not replying properly, even in reply to the question put to her: who is your father? And what is your father’s name? she pointed towards her maternal uncle Qamar-ul-Zaman (Attorney of Mst. Zubeda/grandmother); she was shivering. I have also observed that the Minor was in fear and was constantly looking towards the Appellant’s Attorney. She was not looking towards her real father who was available in the Court in front of her. On questioning, the Minor replied in a very slow tone named her maternal uncle Qamar-Ul-Zaman is her father. When she was asked her name, she again replied in a very slow tone that her name is “Sidrat-ul-Muntaha”. I have reason to believe that the Minor was giving answers to the questions asked as if she was already taught. During that family members of both the contesting parties along with their children were also present before this Court, although no such direction was given earlier but the minor was not looking towards any members of both the contesting parties.”** (Emphasis added)

12. The above observations of the learned Additional District Judge regarding the condition of the Minor while in the custody of the Petitioner are serious in nature and show that the minor was not being properly maintained during her time with the Petitioner, although it is the Petitioner’s case that she brought up the minor with all love and affection. As against this, the Respondent No.1 has filed the photographs of Eeshal Fatima in this petition from before and after her custody with her father



and there is a huge difference in her condition for the better. The record shows that the minor has been admitted by the Respondent No.1 in a school and he has been making good efforts to ensure a proper upbringing of the minor. The said photographs have been filed before this Court and the same are reproduced below for ready reference:

**While in the custody of the Petitioner:**



**While in the custody of the Respondent No. 1:**



13. The record reflects that the Respondent No.1 has been making serious efforts to recover the custody of his daughter from the very inception of the case and he has not been successful in doing so due to the avoidant and vengeful conduct of the Petitioner which has been amply noted in the impugned Judgment and even accepted by the learned Guardian Judge in his judgment which was set-aside. Even after passing of the impugned Judgment, the Petitioner made all efforts to avoid the handing over of the minor's custody to the Respondent No.1, including possible connivance with police officials, as noted in the learned Guardian Judge's recent Order dated 10.05.2025, which is reproduced below:

“This non-compliance indicates a lack of seriousness and possible collusion. The NBWs issued on 06.05.2025 have not been executed against a serving police official, Qamar Zaman. Therefore, the DSP, Samaro is again strictly directed to execute the NBWs, which are hereby extended until 19.05.2025, along with the search warrants for the production of the minor. The previous police reports alleging that the minor has been shifted to Punjab were submitted without any supporting evidence. Such baseless/unproven reports may amount to providing false information to the Court, which is a criminal offence. Despite explicit warnings, the concerned police officers have repeatedly submitted such unsupported claims, showing apparent complicity with the opponent in concealing the minor.”

14. It appears from the above discussion that the Petitioner, while attempting to form an attachment with the minor, has played a negative role in disconnecting her from her alive father by, *inter alia*, causing hindrances in implementation of judicial orders, not allowing proper visitation meetings and also depriving the minor from her identity and her father's details. The result of the Petitioner's conduct is that, until very recently, the minor was not allowed a conducive and positive atmosphere with her father. And, even otherwise, from the photographs of the minors from the time of her custody with the Petitioner and the admitted incidents which have been noted by the learned Courts below (and reproduced by me above), it appears that the upbringing of the minor was not adequate in the hands of the Petitioner vis-à-vis with the Respondent No.1.

15. In addition to the above, it is also not denied by the Petitioner that she is an old woman having no independent means of her own. She herself is being sustained by her own family members. On the other hand, in regards to the Respondent No.1, the observations of the learned Additional District Judge were that he is eager to upbringing his daughter; that he is an able-bodied man having his own means; that he has not remarried for the

sake of his daughter; and that he is residing in a joint family setting with his sisters and brothers.

16. In *Farooq Ahmed and 2 others v Muhammad Aqib Javed and 2 others* **2022 CLC 2022 (Balochistan)**, a similar matter came before the Balochistan High Court where the custody of a female child was disputed between her father and her maternal grandmother. The Court took notice of the factors involved and held that the welfare of the child lied with her father. For reference, the relevant portion of the case is reproduced:

“9. Considering the facts and circumstances and by perusing the available record and in view of the reply filed by respondent No. 3 before the trial Court, we observe that absolutely nothing has been alleged against respondent No. 1 which could disqualify or disentitle him from custody of the minor girl. It is admitted fact that respondent No. 1 is educated and does not suffer from any disqualification envisaged by law. Furthermore, respondent No.1 right from inception is vigorously pursuing the remedies to obtain the custody of his daughter. In this regard he had filed habeas corpus application before the Additional Sessions Judge-II, Quetta and thereafter Constitution Petition No. 1227/2020 was also filed but same was withdrawn in order to approach the relevant Family Court under the Guardians and Wards Act, therefore the contention of the petitioners that respondent No. 1 has no feelings towards his daughter and he has deliberately left the daughter at the house of petitioners after the death of his wife has no force.

The paramount consideration has always been the welfare of minor so considering this aspect and in view of the conduct of the petitioners before the trial Court provided; absolutely no disqualification, was/is alleged against the respondent No.1, the petitioners have not been able to persuade us to interfere in the concurrent findings of the Courts below. In this regard, reliance is being placed upon the case titled as *Nasir Raza v. Additional District Judge Jhelum*<sup>3</sup>. Relevant portion whereof reads as under:

‘The petitioner, who is real father of the children, is ready and willing to look after the children and has the financial resources to fulfil their material needs and educational requirements. He has neither returned to his job abroad nor remarried keeping in view the welfare and best interest of his children. His mother, a younger sister of Respondent No.1, is also available in the house to help him look after and raise the children. Therefore, prima facie, the best interest and welfare of the minors lies in handing over their custody to the petitioner, the real father. There is nothing on record to suggest and it has not even been alleged that he is unfit, unable or unwilling to perform his duties as a guardian of his children. In our opinion, it would be unjust and unfair to deprive the children of the company, love and affection of their real father. Specially so, where the father does not suffer from any legal disability that may deprive him from his legal right to have custody of his children.’

Considering the aforementioned judgment of the Hon’ble Supreme Court of Pakistan (in which contest was between real father and real maternal grandmother of the minor) and after thorough analysis of the material available on record, we find no merits in this petition. Same is dismissed in limine.”

The judgment of the Hon’ble Supreme Court quoted by the learned Balochistan High Court is reported as *Nasir Raza v Additional District Judge, Jhelum* **2018 SCMR 590**.

17. In another case, *Mst. Sardaran (deceased) through LRs v District Judge, Mianwali and 2 others* **2016 MLD 801**, the Lahore High Court was faced with an identical matter, whereby the mother of the female child involved had died due to cancer and the child was living initially with her maternal grandmother. However, the Court observed that the welfare of the child was better served by her real father who was also her natural guardian and so it held as follows:

**“6. In both the petitions, learned counsel for the petitioners submits that the minors namely Sumaira Bibi and Mst. Gurriya were born from the wedlock of Hayat Ullah Khan and Mst. Naziran Bibi as Mst. Naziran Bibi was a cancer patient, so, immediately before her death, she was shifted to her parents house along with two minor daughters. He contends that after death of Mst. Naziran Bibi, minors remain in custody of Mst. Sardaran Bibi, their maternal grandmother. He further adds that respondent No.3 forcibly removed the minor Sumaira Bibi from the custody of her maternal grandmother...**

8. Having heard the learned counsel for the parties and after perusal of the record, this Court observed that the learned courts below were persuaded with the evidence that respondent No.3 is the father of the minors and he has not contracted second marriage. Furthermore, he is living with his parents and above all, he can better look after the minors. The evidence led by both the sides clearly suggests that respondent No. 3 being fatehr of the minors is their natural guardian and he also got admitted the minor Sumaira Bibi in school where she is studying and both the courts below after duly appreciating the evidence available on record reached at the conclusion that welfare of the minors vests with respondent No. 3. It is also an admitted fact that Mst. Sardaran Bibi maternal grand mother of the minors had died during pendency of the instant petition.”

(Emphasis added)

18. Similarly, in *Mst. Chiragh Bibi v Khadin Hussain* **PLD 1967 Lahore 382**, the custody of the children involved was handed over to their father since he was wrongly deprived of the same by a female relative. In this context, it was held that not permitting access of a child to his or her father is tantamount to causing injury to the child. Furthermore, it was observed that the female relative of the children in that case was dependent on the pension of her husband whereas their real father was personally earning and had no discredit to his character. Thus, the children’s custody was given to the father. The relevant portion of the judgment reads:

**“10. It transpires from the record of the proceedings that the learned Guardian Judge, by an interim order, made over the custody of the children to the respondent and that Mst. Chiragh Bibi preferred an appeal against that order to the High Court and that the High Court treating it as a revision petition stayed that the interim order with the direction that Khadim Hussain should be allowed to see his children but that Mst. Chiragh Bibi did not allow [Khadim Hussain] to see his children as directed by the High Court, and that he had to bring this matter to the notice of the High Court by an application for proceedings for contempt of Court being taken against Mst. Chiragh Bibi.**

It is all too obvious to me that Mst. Chiragh Bibi has not been permitting Khadim Hussain access to his children. It a women who has the hizanat of a child denies the father of the child, who is under Muslim law his or her natural guardian, access to the child, she must be considered not only to have removed the child from the constructive custody of the father but also to have done something which is against the welfare of the minor. That the hazina deprives the minor child of an opportunity to meet his or her father, means that she is doing something injurious to the mental and emotional well-being of the child. And if to this unreasonable attitude of the hazina is added as in the present case the circumstances that she is an old women with no independent means who can support herself and the minor children only on a paltry pension of her husband, the hazina must be deemed as not quite fit to retain the custody of the child. In the circumstances, such as mentioned above, if the father, the natural guardian of the minors, who has a better financial position and has no discredit to his able character, applies for the restoration of the actual custody of the children to him, he must succeed in his application...”

19. I have thus come to the conclusion that the findings of the learned Trial Court were not appropriate in the sense that, although it made clear observations against the conduct of the Petitioner, it failed to consider them in their true context and as a result strawmanned the entire case of the Respondent No.1 as the real father of the child. Contrarily, the findings of the learned Additional District Judge are supported through the evidence of the case and the judicial record and it seems to me that the learned Additional District Judge rightly decided that the welfare of Eshal Fatima lies with her father, the Respondent No.1. For this reason, I have relied heavily on the factual findings delivered by the learned Additional District Judge.

20. This brings me to the last point before I conclude, namely this Courts jurisdiction over the matter. This Court is not sitting as an ordinary Court of appeal against the impugned Judgments but rather entertaining this matter in its jurisdiction under Article 199 of the Constitution. In terms of Section 47 of the Guardians and Wards Act, 1890 (“1890 Act”), there is only one appeal and both the parties have exhausted that remedy against the Order dated 23.08.2024 by filing their respective appeals before the learned Additional District Judge which was decided vide the impugned Judgment. In this Court’s extraordinary jurisdiction, it has neither the power to fully reopen the controversy between the parties nor to dive into the internal details of the matter.

21. This Court, nonetheless, is cognizant of its role as the protector of the fundamental rights of people under the Constitution and so it exercises an extraordinary form of power in cases where the question is of the life, liberty and welfare of children, known as *loco parentis* or parental

jurisdiction. The dynamics of this Court's *loco parentis* role in tandem with its constitutional jurisdiction under Article 199, as settled in law, are different from usual cases, because in such matters, as already said, the lives, liberty, welfare and wellbeing of minor children are involved and so a higher level of attention is required. Therefore, the usual practice of this Court where a petition is filed against final orders/judgments passed in appeals under Section 47 of the 1890 Act is to entertain such matters and take a view in favour of the welfare and wellbeing of the child party involved wherever it is clear that an error of law or jurisdiction is made by the subordinate Courts.

22. In holding this view, I am guided by an earlier judgment of this Court in *Yasir Mumtaz Ali v Mst. Huma Rafiq and 2 others* **2025 CLC 953** which held as follows:

“12. This Court, in the exercise of its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has to exercise parental jurisdiction and is not precluded in any circumstance, from giving due consideration to the welfare and well-being of the minor and to ensure that no harm or damage comes to him/her physically or emotionally by reason of the breakdown of the family tie between the parents. The Courts are custodian of the Constitution to protect and safeguard the interest and welfare of the minor to ensure that as far as possible his/her physical safety, emotional well-being and welfare is secured and protected after a balanced and dispassionate assessment of the situation. Reliance may well be made to the cases of *Mirjam Aberras and Mst. Madiha Younus v. Imran Ahmed* (2018 SCMR 1991).”

23. The dynamics of this Court's parental jurisdiction under Article 199 of the Constitution are also dealt with in *Iza Nowak through Authorized Representative ANZ v Federal Investigation Agency (FIA)* **PLD 2025 Islamabad 315**, *Riasat Mehmood v Mst. Nadia Parveen* **2014 MLD 374**, *Shahray Khan v Mst. Aziz Fatimah* **2010 YLR 599**, *Umar Farooq v Khushbakhat Mirza and 2 others* **PLD 2008 Lahore 527** and *Mst. Sahib Bibi v Guardian Judge Jhang and 2 others* **1987 CLC 807**. All these cases, the welfare and well-being of the child parties involved was given the highest importance and therefore appropriate orders were made by the respective High Courts in line with the children's welfare as per the circumstances of each and every case.

24. Therefore, while striking balance between this Courts jurisdiction as a whole and its *loco parentis* authority, this Court will avoid to interfere in findings of fact by subordinate Courts in proceedings for custody and/or guardianship under the 1890 Act unless and until the findings are based

on no evidence at all or on such a view of evidence as would be against the welfare or the well-being of the child involved. In the event of conflicting findings of fact, preference, as far as justifiable, must be accorded to the findings of the Court higher in the judicial hierarchy.

25. In view of the above, I hold that the impugned Judgment dated 11.04.2025 is legal and valid; however, requires some modifications. Consequently, by invoking the parental jurisdiction, following directions are issued: -

- (i) The welfare and well-being of Eshal Fatima lies with the Respondent No.1 (Muhammad Ashraf) who is her real father and natural guardian. Her custody has already been handed over to the Respondent No.1, who is directed to furnish surety in the sum of Rs.500,000/- (rupees five lac only) before the learned Guardian Judge, Samaro. This surety must be submitted within fifteen (15) days of this Judgment and will be discharged when the child attains the age of majority.
- (ii) The Respondent No.1 is bound down to ensure that a conducive, comfortable and safe environment is provided to the Minor in which she is brought up and maintained easily and conveniently without any mental or physical agony to her. For this purpose, and to remove any doubts, the Minor shall be provided proper food, clothing, leisure time and playful environment as any child deserves. The Respondent No.1 shall ensure the provision of proper education, healthcare and all essential amenities to the child without fail. The same directions are issued to the Petitioner when the Minor is with her for temporary visitations/custody.
- (iii) The Minor shall be produced every six (06) months before the Trial Court whereby the learned Presiding Officer shall assess and satisfy him/herself with regard to the upbringing of the Minor. If the learned Trial Court finds any need for improvement in the upbringing of the Minor, it may issue appropriate directions to the Respondent No.1.

- (iv) The entire educational record and medical record of the Minor shall be maintained properly and be filed before the learned Trial Court whenever directed.
- (v) Since the custodial rights of the Minor has been transferred to the Respondent immediately, the Petitioner and her family are held to be entitled to visitation/interim custodial rights with the Minor, which are given according to the following schedule which shall start from the month of January 2026:

**Visitation Schedule for the Petitioner's side**

- (1) On the first and third weekends of every month, from 2:00 PM on Friday to 02:00 PM on Saturday;
  - (2) On the second day of her birthday, i.e. 07th August, from 02:30 PM to 06:30 PM;
  - (3) On the first (1st) and second (2nd) day of every Eid-ul-Fitr from 03:00 PM on the first day to 05:00 PM on the second day;
  - (4) On the second (2nd) and third (3rd) day of every Eid-ul-Azha from 03:00 PM on the second day to 05:00 PM on the third day;
  - (5) During the Minor's summer vacations for ten (10) days from 11:30 AM on the third (3rd) day of her vacations to 11:30 AM on the thirteenth (13th) day of her vacations;
  - (6) During the Minor's winter vacations for five (5) days from 11:30AM on the first (1st) day of her vacations to 11:30 AM on the fifth (5th) day of her vacations.
- (vi) The above visitation/interim custody schedule shall be flexible and both the parties are bound down to modify the same according to the wishes of the child. If the minor desires to spend more time with her maternal family, then she shall not be stopped by the Respondent No.1, and, likewise, if she desires to spend more time with her paternal family, the Petitioner shall not cause any problems.
  - (vii) For the purposes of visitation/temporary custody, the Petitioner is directed to forthwith, and in no case later than fifteen (15) days from this Judgment, submit surety in the sum of Rs. 500,000/- (Rupees five lac only). This surety will also be discharged when the minor attains the age of majority.



- (viii) For the purposes of visitation/temporary custody, the Respondent No.1 shall drop the minor at the house of the Petitioner. On conclusion of the visitation/temporary custody, the Petitioner shall drop the minor at the house of the Respondent No.1. On every such instance, the parties shall sign a handing/taking over document.
- (ix) It is clarified that the time taken in pick-and-drop of the minor is not to be counted towards visitation times.
- (x) If any hurdles are caused by either party in handing/taking over the custody of the minor, the aggrieved party may move an application to the learned Guardian Judge who shall impose necessary conditions on the other party including imposition of fine.
- (xi) If the Petitioner takes any steps to remove the custody of the minor from the Respondent No.1, as seen from her previous conduct, the Respondent No.1 shall immediately report to the Guardian Judge who will ensure recovery of the child immediately and through engaging all necessary State apparatus. In the event that this happens, the Petitioner will disqualify herself from the visitation/ custody rights of the minor.
- (xii) In the unfortunate event that Eshal Fatima falls sick, the Respondent No.1 shall without any conditions permit the Petitioner and her family to meet with her, wherever she is being treated, i.e. at the residence of the Respondent No.1 or at the concerned hospital.
- (xiii) The Minor shall not be shifted or taken abroad without the permission and satisfaction of the learned Trial Court. If the Petitioner or the Respondent No.1 intend to perform religious tours with the Minor, such as Hajj and/or Umrah, the learned Trial Court shall not withhold permission unnecessarily. For such permission, the parties shall be bound to produce travel documents including Passport, Visa, tickets, etc. The learned Trial Court is also at liberty to satisfy itself on this matter by

securing separate PR/Solvent Surety/Indemnity Bonds from either of the parties, when and if the need arises.

- (xiv) The above arrangement shall continue until the Minor she reaches the age of eighteen (18) years, after which it shall be her personal discretion to live with either the Petitioner or the Respondent.
  - (xv) Both the parties are advised to sort out their dispute in a mature manner and ensure workable terms between each other for the sake of the child. They are advised to consider that Eshal Fatima has lost one parent and depends on them for all purposes and intents. They will ensure, in any case, that because of their differences, no harm is caused to the minors health or wellbeing. Any harm caused to the minor by either party and proven on record will be taken as a violation of this Court's directions and therefore as contempt.
26. The petition stands **disposed of** in the above terms. There is no order as to costs.

**JUDGE**