

HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 03 of 2025

[Rehana Parveen Shaikh and another v. Mehmood Ahmed Shaikh and others]

Petitioners by : Mr. Nadir Khan Burdi, Advocate

Respondents by : M/s Mukesh Kumar G. Karara, Advocate
and Israr Ahmed Shah, Assistant Advocate
General Sindh

Date of Hearing : 10.08.2026

Date of Announcement : 21.08.2026

ORDER

ARBAB ALI HAKRO J. – Through the instant Constitutional Petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioners have challenged the judgment dated 02.12.2024 and the decree dated 16.12.2024, passed by the learned 2nd Additional District Judge, Sukkur, in Guardian & Wards Appeal No.09 of 2022, whereby the appeal preferred by the present petitioners was dismissed and the order dated 18.05.2022, passed by the learned Family Judge, Sukkur, in Guardian & Wards Application No.87 of 2018, was maintained. By virtue of the aforesaid order, custody of the minor children, namely Fahad Hamad Shaikh and Shehbaz Ahmed Shaikh, was directed to be handed over to respondent No.1.

2. Briefly stated, petitioner No.1, Mst. Rehana Parveen, married respondent No.1, Mehmood Ahmed, on 03.03.2012 at Khairpur Mir's. From this marriage, two male children, Fahad Hamad Shaikh and Shehbaz Ahmed Shaikh, were born. Due to matrimonial differences, the marriage between the parties ultimately ended in divorce on 04.01.2015. Subsequently, petitioner No.1 married petitioner No.2, Faheem Ahmed Shaikh, on 16.02.2018, while respondent No.1 also remarried and established a separate family. Since the dissolution of marriage, the minors have remained in the custody of their mother.

3. On 01.10.2018, respondent No.1 instituted Guardian & Wards Application No.87 of 2018 before the learned Family Judge, Sukkur, under Sections 7 and 10 of the Guardian and Wards Act, 1890, seeking a

declaration of guardianship in respect of the minors, along with consequential reliefs, including the restoration of their custody and visitation rights. It was alleged by respondent No.1 that after the remarriage of petitioner No.1, the minors were residing in the house of their stepfather and that their welfare would be better secured under his care as their natural father.

4. The petitioners appeared before the learned Family Court and contested the proceedings by filing objections. In addition to disputing the allegations levelled by respondent No.1, they raised a preliminary objection to the maintainability of the application. They contended that the minors had always remained under the care, custody and supervision of petitioner No.1, and that their welfare, education, upbringing and emotional well-being were adequately safeguarded. It was further asserted that respondent No.1 was not entitled to the relief claimed in the manner sought through the guardianship proceedings.

5. After recording evidence of the parties and hearing their respective counsel, the learned Family Judge, Sukkur, through order dated 18.05.2022, allowed the application and directed the delivery of custody of both minors to respondent No.1, while also regulating the visitation rights of petitioner No.1. Aggrieved thereby, the petitioners preferred Guardian & Wards Appeal No.09 of 2022 before the learned appellate Court.

6. The appeal was initially allowed vide judgment dated 10.10.2023, and the matter was remanded for determination of certain legal questions. However, respondent No.1 challenged the remand order before this Court through C. P. No. S-238 of 2023. The petition was decided on 31.05.2024, whereby the remand order was set aside and the learned appellate Court was directed to frame and decide the legal issue regarding the maintainability of the Guardian & Wards proceedings while adjudicating the appeal afresh.

7. Pursuant to the directions of this Court, an additional issue regarding maintainability was framed by the learned appellate Court, evidence of the parties was recorded and the matter was re-heard. Thereafter, vide impugned judgment dated 02.12.2024, the learned appellate Court held that the proceedings were maintainable and further concluded that the welfare of the minors lay with respondent No.1. Consequently, the appeal was

dismissed, and the order passed by the learned Family Court was maintained.

8. The petitioners, dissatisfied with the concurrent findings recorded by the Courts below, have instituted the present Constitutional Petition seeking the set-aside of the impugned judgment, decree and order.

9. Learned counsel for the petitioners contended that the impugned judgments and orders passed by the Courts below were contrary to law and to the settled principles governing guardianship and custody matters. He argued that respondent No.1 had instituted only a guardianship application under Sections 7 and 10 of the Guardian and Wards Act, 1890, seeking a declaration as guardian of the minors, whereas no independent custody proceedings under Section 25 of the Act were ever adjudicated. According to the learned counsel, the learned Family Court exceeded its jurisdiction by granting custody of the minors, despite the fact that neither the principal relief sought nor the issues framed related to permanent custody. He maintained that guardianship and custody are distinct legal remedies governed by separate provisions of law and that one cannot be substituted for the other. Learned counsel further submitted that, even otherwise, the record demonstrated that both minors had been residing with petitioner No.1 since their tender age and were being provided with proper education, maintenance, religious upbringing and a stable family environment. He emphasized that the minors had developed a strong emotional attachment to their mother and stepfather, who had been looking after them for several years. Reference was made to the statement of minor Fahad, in which he expressly stated before the learned Family Court that he wished to reside with his mother, yet such preference was not accorded due weight by the Courts below. It was argued that the welfare of the minors had not been assessed in its true perspective and that material evidence favourable to the petitioners was either ignored or not properly appreciated. Learned counsel also argued that the remarriage of petitioner No.1 could not, by itself, constitute a valid ground for depriving her of custody, particularly when there was no finding of neglect, misconduct, disqualification or adverse treatment towards the minors. He submitted that the Courts below committed material irregularity in treating procedural deficiencies as inconsequential while

simultaneously overlooking the legal framework governing guardianship proceedings. On these premises, he prayed that the impugned judgment, decree and order be set aside and that the custody of the minors be allowed to remain with petitioner No.1. In support of his contentions, learned counsel for the petitioners relied upon case law reported as **PLD 2024 Supreme Court 629, 2022 SCMR 2123, 2020 P Cr. L J 1079, PLD 2014 Lahore 317, 2009 CLC 905 and PLD 1987 Karachi 239.**

10. Conversely, learned counsel for respondent No.1 supported the impugned judgments and argued that no jurisdictional defect, illegality or material irregularity had been committed by the Courts below warranting constitutional interference. He submitted that respondent No.1 is the biological father and natural guardian of the minors and had throughout sought custody of the children, in addition to a declaration of guardianship. According to him, the substance of the proceedings and the reliefs claimed clearly brought the matter within the ambit of Section 25 of the Guardian and Wards Act, 1890, and a mere defect of nomenclature or drafting could not override the substantive rights of the parties or defeat consideration of the welfare of the children. Learned counsel maintained that a separate application under Section 25 of the Act had in fact been filed before the learned Family Court, and objections thereto had also been submitted by the petitioners. He argued that both parties had fully contested the matter on the question of custody and led evidence relating to the welfare of the minors; therefore, no prejudice whatsoever had been caused to the petitioners. He further submitted that the learned Family Court, as well as the learned appellate Court, had concurrently found that the welfare, education, financial security and future prospects of the minors would be better served under the care and supervision of respondent No.1. Such concurrent findings of fact, according to the learned counsel, could not be disturbed in constitutional jurisdiction in the absence of patent illegality or perversity. Learned counsel, lastly, contended that family disputes relating to custody are to be decided on the paramount consideration of the welfare of the minors rather than on technical objections. He therefore prayed for dismissal of the petition.

11. Learned Assistant Advocate General Sindh adopted a neutral stance and assisted the Court on the legal aspects of the controversy. He submitted

that in matters arising under the Guardian and Wards Act, 1890, the paramount consideration is always the welfare and best interests of the minors. He further submitted that the legality and propriety of the impugned Judgment and Order are to be examined in light of the evidence on record, the statutory scheme governing guardianship and custody matters, and the principles laid down by the superior Courts. He left the matter to the Court's discretion for appropriate adjudication in accordance with law.

12. I have heard learned counsel for the parties, as well as the learned Assistant Advocate General Sindh at considerable length and have carefully perused the material on record.

13. Before advertence to the merits, it is necessary to recall the scope and limits of this Court's jurisdiction under Article 199 of the Constitution when invoked, as here, against concurrent findings of fact recorded by a Family Court and an Appellate Court under the West Pakistan Family Courts Act, 1964. The Act, 1964 provides only a single right of appeal (Section 14); the legislative scheme contemplates no second appeal or revision, its object being to shorten the agony of litigant parties and to provide them justice as early as possible¹. It is settled beyond controversy that constitutional jurisdiction under Article 199 is not an appeal in disguise, nor a substitute for revision and that this Court, in its extraordinary writ jurisdiction, is not to reopen or reappraise controverted questions of fact concurrently determined by the Family Court and the Appellate Court upon an appraisal of evidence. The Supreme Court of Pakistan, in Fozia Mazhar², has authoritatively held:

“High Court, in exercise of its constitutional writ jurisdiction, is not supposed to interfere in the findings on controversial questions of fact based on evidence. Scope of judicial review by the High Court under Article 199 of the Constitution in such cases is limited to the extent of misreading or non-reading of evidence, or if the finding is based on no evidence, which may cause a miscarriage of justice... findings of facts rendered by the District Court on appeal under the Family Courts Act, 1964, must as a rule be treated final and any interference in the same by the High Court in its constitutional writ jurisdiction should only be resorted to as an exception in cases where the findings are based on no evidence or the findings are the

¹ Farzana Rasool and 3 others v. Dr. Muhammad Bashir and others (2011 SCMR 1361)

² Fozia Mazhar v. Additional District Judge, Jhang and others (PLD 2024 SC 771)

result of gross misreading or non-reading of material evidence, making the findings without lawful authority and of no legal effect in terms of Article 199(1)(a)(ii) of the Constitution.”

14. Even where such an infirmity is shown to exist, it does not follow that this Court may substitute its own appreciation of the evidence for that of the Family Court and, as though sitting as a Trial Court, determine where the welfare of a minor lies. The Supreme Court has cautioned in **Maqbool Ali and another**³ that a High Court, in constitutional jurisdiction, cannot “arrogate to itself the powers of a family court” to decree such matters; the correct course, where genuine interference is warranted, is to remand rather than substitute its own findings. Interference with concurrent findings is, therefore, “an exception and not the rule”, available only where the Courts below “acted illegally, with material irregularity, exercised jurisdiction not vesting in them or passed orders which were in excess of their jurisdiction”. It is with this touchstone that the grounds urged by learned counsel for the petitioners must be examined.

15. The principal plank of the petitioners’ case, canvassed at length both below and before this Court, is that Guardian & Wards Application No.87 of 2018 was instituted and titled as a proceeding under Sections 7 and 10 of the Guardian and Wards Act, 1890, for the declaration or appointment of a guardian, and that no application under Section 25 thereof, which governs the restoration of custody, was ever properly adjudicated; hence, it is argued, the Trial Court exceeded its jurisdiction in directing delivery of custody.

16. Learned single Bench of this Court in C. P. No. S-238 of 2023 (Mehmood v. Rehana Parveen & others), vide order dated 31.05.2024, after considering that very argument, returned an unambiguous finding, inter partes, as follows:

“I have no doubt that the application that was maintained by the petitioner in Guardian & Wards Application No-87 of 2018 although titled as an application under section 7 read with section 10 of the Guardians and Wards Act, 1890 on account of the prayer clauses maintained therein was actually an application under section 25 of the Guardians and Wards Act, 1890... I am not one to be impressed by technicalities and agree with Mr. Mukesh Kumar

³ Maqbool Ali and another v. Mst. Raheela and others (2025 SCMR 1275)

Karara[']s contentions that the Court should always look at the substance of the lis before it and not the form and which technicalities, I think the family court Sukkur when seized of Guardian & Wards Application No-87 of 2018 has correctly ignored... As has correctly been contended by Mr. Mukesh Kumar Karara and as has been held by the Supreme Court of Pakistan, the Family Court and the Appellate Court should focus on 'substantive justice over procedural technicalities' and pass decisions on a 'welfare-centric approach' to 'shorten the agony of the litigant parties and to provide them justice as early as could be possible'."

17. It is, however, necessary to correctly appreciate the true character and effect of that order, since it is not, as such, a final and conclusive adjudication of the maintainability question inter se the parties, but, in its operative part, was an order of remand. The Learned Single Judge, agreeing in substance with the reasoning extracted above, did not finally decide the issue of maintainability; instead, he set aside the earlier remand judgment dated 10.10.2023, by which the Learned Appellate Court had proposed to send the matter back to the Trial Court on this very question, and directed the Learned Appellate Court itself to frame the legal issue of maintainability and to decide the Appeal afresh, within a stipulated time. Reliance in that behalf was placed on **Mst. Shahida Zareen v. Iqrar Ahmed Siddiqui (2010 SCMR 1119)**, to the effect that remand is warranted only in "exceptional circumstances" necessary to determine a question of fact essential to a right decision. The actual, substantive determination of the maintainability issue was thus, by express and specific direction, left to be made by the Learned Appellate Court itself; the order dated 31.05.2024, not having been further assailed, has attained finality only qua the direction so given and not as an independent, free-standing decree on the merits of maintainability.

18. Pursuant to that direction, the learned Appellate Court, on remand, framed the additional issue of maintainability as Point No. I of the impugned judgment dated 02.12.2024, permitted the parties to lead further evidence on that issue, heard them afresh, and returned its considered finding that the Guardian & Wards Application No.87 of 2018 was maintainable.

19. Firstly, respondent No.1 admittedly filed, contemporaneously with the main application, a separate application invoking Section 25 of the Act, 1890;

the petitioners themselves, in paragraph “B” of their preliminary objections before the Trial Court, expressly acknowledged that “instant case/application for the purpose of custody or seeking visitation rights/meeting is also not maintainable as independent custody case under Section 25 of Guardian and Wards Act, 1890 is to be filed, which applicant has already filed”, an admission, from the petitioners’ own pleadings, that undercuts the very objection now revived. Secondly, the prayer clauses of the main application (Clauses “C” and “D”) sought “immediate handing over of the custody of the minor children” and “immediate removal of custody... from Faheem Ahmed Shaikh”, reliefs germane only to Section 25, so that, tested by substance rather than nomenclature, the true character of the proceeding was never in real doubt. Thirdly, it is not disputed that the petitioners had full notice of and contested, both applications, filed detailed objections, cross-examined respondent No.1 and his witnesses and led their own evidence on custody and welfare without demur, no prejudice of the kind that would vitiate the proceedings has been shown at any stage. It is well settled that mere wrong citation or omission to cite, the correct provision of law does not oust a jurisdiction otherwise possessed by a Court, provided the substance of the *lis* and the relief sought bring the matter within it, in case of **Mst. Hameed Mai**⁴, it was held that “the paramount consideration is welfare of the minor... the expression ‘welfare’ shall be construed in a way as to include in its compass all the dominant factors essential for determining the actual welfare of the minor. Technicalities of law are not adhered in such type of cases.” Fourth, the specific objections raised under Section 10(3) and Section 19(b) of the Act, 1890 are, with respect, misconceived on the facts. As regards Section 10(3), the record itself shows that respondent No.1 filed, along with his application, a Declaration of willingness signed by him and attested by two witnesses namely Ghulam Mustafa Shaikh and Abdul Jabbar Shaikh, satisfying, on the very record, the requirement said to be wanting. As regards Section 19(b), respondent No.1 is, by operation of Muhammadan law, the natural guardian of the minors *ipso jure*; he did not require the Trial Court to constitute him guardian afresh and Section 19(b), which restrains appointment of a guardian other than the natural guardian absent a finding of the latter’s unfitness, has no field of application where the natural guardian

⁴ Mst. Hameed Mai v. Irshad Hussain (PLD 2002 SC 267)

himself seeks restoration of custody. The prayer for a formal “declaration” of guardianship was, in the circumstances, superfluous rather than essential and its absence from the operative directions does not undermine the legality of the custody directions in fact made.

20. For the foregoing reasons, the question regarding the maintainability of the Guardian & Wards Application is answered against the Petitioners, and the application is maintainable.

21. The petitioners’ remaining grievance is that the learned Appellate Court, having rejected the two specific grounds on which the learned Trial Court proceeded, the remarriage of petitioner No.1 and her financial dependence upon petitioner No.2, went on to substitute its own, different reasons in support of the very same conclusion, thereby, it is said, exceeding the legitimate function of an Appellate Court.

22. This grievance does not withstand scrutiny. An appeal under Section 14 of the Family Courts Act, 1964, read with Section 47 of the Guardian and Wards Act, 1890, is by way of rehearing on both fact and law; the Appellate Court is neither confined to nor bound by the reasons assigned by the Trial Court, and is both entitled and duty-bound to independently reappraise the evidence on record and arrive at its own conclusion on welfare, including, where warranted, affirming the result below upon a different or additional basis, provided the parties had a full opportunity to lead evidence on the issues framed, which is not disputed here. It may be noted that the additional evidence recorded post-remand was confined, as directed by this Court in C. P. No. S-238 of 2023, to the issue of maintainability; the question of welfare itself was determined by the learned Appellate Court upon the very evidence already adduced at the trial, both sides having closed their evidence on that aspect before the Trial Court. This is the ordinary and unremarkable exercise of first-appellate jurisdiction, not an illegality, and furnishes, without more, no ground for constitutional interference.

23. Nor, on a careful reading of the impugned judgment, can the appraisal of evidence by the learned Appellate Court be said to suffer from misreading or non-reading. It was noted and the record bears out, that petitioner No.1 despite the welfare of her own sons being a matter of the most intimate and

personal knowledge to her, did not herself step into the witness-box, choosing instead to depose through her brother/attorney Abdul Qudoos and two further witnesses whose testimony was shown, on cross-examination, to be hearsay and mutually contradictory even on so basic a matter as the location of the minors' school, the attorney-witness placing it near Qasim Park and the other witness on Military Road, with no documentary evidence of admission, attendance or academic performance produced despite the specific pleaded assertion of "well-reputed" schooling. Respondent No.1, by contrast, gave his own evidence and submitted himself to cross-examination, and no fact was elicited, despite searching cross-examination, to suggest addiction, cruelty, moral turpitude or any other disqualifying trait; indeed, the petitioners' own attorney-witness candidly conceded, in cross-examination, that respondent No.1 is the minors' natural guardian. On this state of the evidence, the concurrent conclusion that the welfare of Fahad Hamad and Shehbaz Ahmed presently lies with their father cannot be characterized as perverse, as founded on no evidence, or as the product of a misreading or non-reading of the record; at best, the petitioners invite this Court to reweigh the same material and arrive at a different assessment, an invitation that Article 199 jurisdiction does not permit this Court to accept⁵.

24. The ancillary grounds urged require brief notice. (a) Remarriage of petitioner No.1: it is well settled that a mother's second marriage does not, by itself and automatically, disentitle her to custody; the touchstone remains the welfare of the minor and departure from the ordinary rule of Hizanat requires exceptional circumstances established on evidence⁶. It bears emphasis that the learned Appellate Court did not, in fact, rest its conclusion on this circumstance. It expressly observed that, since respondent No.1 too had remarried, remarriage simpliciter could not discriminate between the parties and instead rested its conclusion on the comparative evidentiary position summarized above. No infirmity arises under this head.

25. (b) Financial dependence of petitioner No.1: this, by itself, is not a valid ground to deny a mother custody, the obligation to maintain minors

⁵ (Fozia Mazhar, PLD 2024 SC 771; Sajjad Hussain Bhatti v. Mst. Quratulain Zehra Memon, 2025 YLR 387, Karachi)

⁶ (Muhammad Rashid v. Bibi Fatima, 2025 MLD 1751, Quetta; Arshad Ali v. Mst. Uzma, 2026 MLD 79, Karachi)

being that of the father in law⁷. It is, however, significant that the learned Appellate Court expressly discarded this very ground; it did not, in the event, enter into the ultimate finding under challenge.

26. (c) Preferential statement of minor Fahad: Section 17(3) of the Act, 1890 permits, but does not oblige, a Court to give effect to the intelligent preference of a minor; it is not decisive and yields to the Court's independent determination of welfare upon the totality of the evidence, particularly where a minor of tender years remains susceptible to the influence of prolonged exposure to the custodial household. Both Courts below considered the preferential statements, and did not simply disregard them; they declined to treat them as conclusive, which was within their province⁸.

27. (d) Non-summoning of respondent No.1's second wife and her alleged unwillingness to receive the minors: the summoning of witnesses lies within the discretion of the Trial Court in regulating its own proceedings; that discretion was tested and found not wanting on appeal. The assertion of the stepmother's unwillingness rests upon an extra-judicial communication, unproved on the record, and cannot found a case of illegality vitiating the concurrent findings. It is, however, appropriate to observe that, in the paramount interest of the minors rather than as a finding on any presently proved fact, should any material change of circumstance genuinely bearing upon the minors' welfare arise or come to light hereafter, it shall remain open to the petitioners to invoke the continuing and supervisory jurisdiction of the competent Family Court in appropriate proceedings; the doors of that forum are not and cannot be closed by the present order.

28. (e) the imputation that respondent No.1 acted out of malice traceable to the 2014 divorce of his sister from petitioner No.1's brother: even assuming the circumstances of that separate matrimonial history to be as alleged, they bear, at best, on the motive with which the present proceedings may have been initiated, but shed no independent light on the demonstrated present-day capacity and conduct of respondent No.1 towards his own sons, which is the true subject-matter of a welfare enquiry under the Act, 1890. No

⁷ (Gul Sadeem Khan v. Mst. Halima, 2025 PLD 47 SC; Zulekha v. Muhammad Nabi, 2026 CLC 92, Quetta)

⁸ (Muhammad Rameez Khan v. Iram Iftikhar, 2026 YLR 1078, AJK; Zulekha v. Muhammad Nabi, 2026 CLC 92, Quetta)

adverse finding as to his conduct or character towards the minors themselves has been recorded or is borne out by the record, and this ground too must fail.

29. For the foregoing reasons, none of the grounds urged on behalf of the petitioners, whether taken singly or cumulatively, bring the case within the narrow and well-defined exceptions under which this Court may, in exercise of its constitutional jurisdiction under Article 199, disturb concurrent findings of fact recorded by a Family Court and an Appellate Court under the Family Courts Act, 1964. The objection as to maintainability does not survive scrutiny, whether tested against the finding of the learned Appellate Court rendered on remand, consistently with the observations of this Court dated 31.05.2024 in C. P. No. S-238 of 2023, or, independently, on its own merits. The concurrent findings that the welfare of the minors Fahad Hamad Shaikh and Shehbaz Ahmed Shaikh presently lies with respondent No.1 are grounded in a proper appraisal of the evidence brought on record by the parties, are not shown to be perverse, arbitrary, or the product of any misreading or non-reading of material evidence, and do not suffer from any want or excess of jurisdiction. This petition, being devoid of merit, is accordingly **dismissed**.

30. However, it is made clear that this dismissal is confined to the constitutional challenge to the impugned judgment, decree and order, and that it imports no finding, one way or the other, as to the fitness of petitioner No.1 as a mother, whose affection and concern for her sons are not in question. Consistent with the paramount and continuing nature of the Court's solicitude for the welfare of minors, and to ensure that the change of custody occasioned by the impugned order does not itself work hardship upon the minors, it is directed that:

- i. The visitation, contact and holiday arrangements already set out by the learned Trial Court vide order dated 18.05.2022, which drew appropriate guidance from the comprehensive custodial framework laid down by the Supreme Court of Pakistan in Mst. Madiha Younus⁹, shall continue to be strictly

⁹ Mst.Madiha Younus v. Imran Ahmed (2018 SCMR 1991)

observed and given full effect by both parties, in letter and in spirit, unless varied by a competent Family Court;

- ii. respondent No.1 shall not, directly or indirectly, obstruct or discourage the minors' daily telephone or video contact with Petitioner No.1, nor their periodic overnight stays with her as already fixed by the learned Trial Court;
- iii. the learned Family Judge, Sukkur, shall retain seisin, on appropriate application, to review and, if necessary, vary the said arrangements, or the question of custody itself, should any material change of circumstances affecting the welfare of the minors be brought to its notice.
- iv. both parties, being the natural mother and father of the minors and their respective spouses, shall conduct themselves with the responsibility that the impressionable age of the minors demands and shall refrain from any act or utterance calculated to prejudice the minors' minds against the other parent.

31. This petition is, accordingly, **dismissed** in the above terms, together with any pending applications. Given the nature of the controversy and the relationship of the parties, there shall be no order as to costs. The Office is directed to communicate a copy of this order to the learned Trial Court and the learned Appellate Court for information and compliance.

J U D G E

Abdul Basit