

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Const. Petition No. S – 128 of 2026

(Irshad Ali v. Imran Ali and others)

Date of hearing : 03.08.2026

Date of decision : 03.08.2026

Mr. Illahi Bux Jamali, Advocate for petitioner.
Mr. Munawar Ali Shikh, Advocate for respondents No.1 & 2.
Agha Athar Hussain Pathan, Assistant Advocate General, Sindh.

ORDER

Arbab Ali Hakro, J. – The petitioner Irshad Ali son of Muhammad Bachal, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, being aggrieved by the concurrent findings of the learned Guardian Judge, Sobhoderro and the learned Additional District Judge, Gambat, whereby his claim for custody of minor Ali Raza was declined.

2. The concise factual background is that the petitioner asserted that he married the deceased, Mst. Azra, on 01.03.2019, supported by a free-will affidavit, and that, from this wedlock, the minor Ali Raza was born on 16.02.2022. Following the unfortunate murder of Mst. Azra, custody of the minor remained with respondent No.2, the maternal grandmother. The petitioner, claiming to be the natural guardian and biological father, instituted Guardianship Application No.15 of 2023 before the learned Guardian Judge, Sobhoderro, seeking permanent custody of the minor. The respondents filed a written statement, controverting the petitioner's claim and asserting that respondent Imran Ali was the lawful husband of the deceased, Mst. Azra, and the real father of the minor, producing a Nikahnama, vaccination records and a birth certificate in support. Issues were framed regarding the welfare of the minor and the petitioner's entitlement to custody. Evidence was led by both sides: The petitioner examined himself and witnesses, while the respondents examined Imran Ali, Mst. Pathani and Nikah Khawan, producing documentary exhibits. The learned Guardian Judge, upon appraisal of the evidence, dismissed the application vide judgment dated 11.10.2024, holding that disputed questions of paternity could not be

conclusively determined in guardianship proceedings and that custody with the maternal grandmother was in consonance with the welfare of the minor.

3. The petitioner thereafter preferred Guardian & Wards Appeal No.01 of 2025 before the learned Additional District Judge, Gambat. Notices were issued, objections were filed, and after restoration of the appeal upon payment of penalty, the matter was heard. Learned Appellate Court, however, dismissed the appeal vide judgment dated 30.03.2026, holding it to be hopelessly barred by limitation and observing that the application under Section 5 of the Limitation Act did not satisfactorily explain delay. The Appellate Court refrained from re-appraisal of merits in view of limitation.

4. Being dissatisfied, the petitioner has now filed the present constitutional petition, challenging both the judgments of the learned Guardian Judge and the learned Appellate Court.

5. Learned counsel for the petitioner contended that the petitioner is the natural father of the minor Ali Raza, born out of lawful wedlock with the deceased Mst. Azra, as evidenced by a free-will affidavit dated 01.03.2019. It was urged that after the murder of Mst. Azra, the respondents unlawfully retained custody of the minor, whereas the petitioner, as the biological father, is entitled to permanent custody. Counsel submitted that the learned Guardian Judge erred in dismissing the application on technical grounds of disputed paternity, which ought to have been resolved through proper adjudication. It was further argued that the learned Appellate Court dismissed the appeal solely on limitation, without deciding the application under Section 5 of the Limitation Act, thereby violating principles of natural justice. Counsel emphasized that the welfare of the minor is paramount and cannot be defeated by procedural technicalities.

6. Learned counsel appearing for respondents controverted the petitioner's claim, submitting that respondent Imran Ali was the lawful husband of deceased Mst. Azra and the real father of minor Ali Raza, supported by Nikahnama, vaccination records and birth certificate. It was argued that the petitioner fabricated documents to falsely claim paternity

and custody. Counsel maintained that the learned Guardian Judge rightly held that intricate questions of parentage cannot be determined in guardianship proceedings and that custody with maternal grandmother is in consonance with the welfare of the minor. It was further submitted that the appeal before the learned Appellate Court was hopelessly barred by limitation and that no sufficient cause was shown for condonation of delay; hence, dismissal was lawful and proper.

7. The learned Assistant Advocate General supported the impugned judgments, submitting that both courts below acted within their jurisdiction and in accordance with the law. He argued that the petitioner failed to establish lawful paternity and that the minor's welfare was rightly secured by placing custody with the maternal grandmother. He further contended that the law of limitation is mandatory and cannot be relaxed on equitable grounds without sufficient cause. Since the petitioner's application under Section 5 of the Limitation Act did not satisfactorily explain the delay, the learned Appellate Court was justified in dismissing the appeal. It was urged that no case for interference under constitutional jurisdiction is made out.

8. The jurisdiction of this Court under Article 199 of the Constitution is not that of a regular appellate Court. It is essentially supervisory and corrective, to be exercised where the impugned order is shown to be without lawful authority, *coram non judice*, perverse, arbitrary, based on no evidence or suffering from patent misreading or non-reading of material evidence.

9. The first question for determination is whether the learned Appellate Court committed any jurisdictional defect in dismissing the appeal as time-barred. The relevant dates are not in dispute. The judgment of the learned Family/Guardian Judge was passed on 11.10.2024, whereas the appeal was filed on 15.01.2025. The learned Appellate Court specifically addressed the question of limitation and observed that the appellant had failed to show sufficient cause in his application for condonation of delay under section 5 of the Limitation Act.

10. The petitioner has placed on record the application under section 5 of the Limitation Act, together with the supporting affidavit. A perusal

thereof shows that the cause pleaded for condonation is that the petitioner is illiterate, not conversant with the law, and unaware of limitation, and that after obtaining a certified copy of the impugned judgment, the petitioner filed the appeal. It is also asserted that the delay was not deliberate or intentional but arose from oversight and lack of legal knowledge.

11. The aforesaid explanation, even if accepted at face value, does not constitute sufficient cause in law. Illiteracy or lack of legal knowledge, without more, cannot be treated as a circumstance beyond the control of the litigant. A party seeking indulgence under section 5 of the Limitation Act is required to furnish a bona fide, plausible and legally acceptable explanation for the period of delay. The Supreme Court of Pakistan, in the case of Lt. Col. Nasir Malik¹, while dealing with a matter arising from Family Court proceedings, held that each day of delay must be explained, and where such delay remains unexplained, dismissal of the appeal on limitation is justified.

12. The limitation applicable to proceedings of the present nature is traceable to the West Pakistan Family Courts Rules, 1965. Rule 2 (e) of those Rules includes within the expression “suits” an application for custody of children or guardianship under the Guardians and Wards Act, 1890, and Rule 22 ibid prescribes a period of thirty days for filing an appeal against the decree or decision of the Family Court, excluding the time requisite for obtaining copies thereof, subject to extension for sufficient cause.

13. The learned Appellate Court’s discussion on the application under section 5 of the Limitation Act, 1908 is undoubtedly brief, but brevity of reasoning by itself does not render the conclusion without lawful authority when the material on record supports the result. The affidavit accompanying the application did not disclose any illness, fraud, wrong advice, unavoidable impediment, mistaken pursuit of a remedy before a wrong forum, or any circumstance that could legally prevent the petitioner from filing the appeal within time. The only ground was ignorance of law, which cannot be elevated to sufficient cause. Therefore, the learned Appellate Court’s conclusion refusing condonation of delay does not

¹ Lt. Col. Nasir Malik v. Additional District Judge, Lahore and others (2016 SCMR 1821)

suffer from any jurisdictional illegality requiring correction under Article 199.

14. Even otherwise, the merits of the case do not justify constitutional interference. The controversy before the learned Guardian Court was not an ordinary custody dispute between an admitted father and a maternal grandmother following the mother's death. The very foundation of the petitioner's claim, i.e. his paternity of minor Ali Raza, was seriously disputed. The petitioner asserted that deceased Mst. Azra was his wife and that minor Ali Raza was born of that wedlock. Conversely, respondent Imran Ali claimed to be the lawful husband of deceased Mst. Azra and the father of the minor, and relied on documentary evidence, including Nikahnama, vaccination record and birth certificate.

15. The earlier proceedings before this Court under section 491, Cr.P.C., also demonstrate that the dispute regarding parentage had already surfaced. This Court, while disposing of the criminal miscellaneous application, observed that both Irshad Ali and Imran Ali claimed to be the father of the minor and the husband of the deceased, Mst. Azra, and that the genuineness of the documents produced by both sides could only be determined after evidence, which could not be done in proceedings under section 491, Cr.P.C.

16. In this context, the learned Guardian Judge was required to proceed with caution. The Guardians and Wards Act, 1890 does not treat custody as a matter of entitlement flowing automatically from a bare assertion. Section 17 *ibid* requires the Court to be guided by the welfare of the minor, and section 25 *ibid* also makes the return of custody dependent upon the Court's opinion that such return would be for the welfare of the ward. Therefore, even a person claiming guardianship cannot demand custody as of right unless the Court is satisfied that such an arrangement advances the best interests and welfare of the child.

17. The Learned Guardian Judge examined the evidence and found that the question of parentage could not be conclusively resolved in guardianship proceedings in the manner suggested by the petitioner. That approach cannot be characterized as perverse or unlawful. Guardianship proceedings are primarily welfare-oriented. Where paternity

and marital status are seriously contested and each side relies on rival documents, the Guardian Court may legitimately refrain from giving a final declaration of status and confine itself to the immediate welfare of the minor.

18. The minor is of tender age. His mother is no longer alive. The minor is currently in the custody of his maternal grandmother. The petitioner failed to establish, by cogent material, that the minor was being neglected, maltreated, deprived of care, exposed to danger, or that his welfare was being compromised in the custody of the maternal grandmother. In the absence of such material, an abrupt transfer of custody to a person whose paternity is itself disputed would not be a cautious or welfare-oriented exercise of jurisdiction.

19. The contention that the petitioner is financially better placed is not decisive. Financial capacity is only one factor and cannot override the paramount consideration of welfare, particularly when the existing custodian has not been shown to be unfit and the petitioner's foundational claim of parentage remains disputed. Similarly, the plea that the maternal grandmother is illiterate or not earning independently does not, without proof of neglect or harm to the minor, provide a sufficient basis to disturb custody.

20. This Court cannot, in exercise of its Article 199 jurisdiction, reappraise the entire oral and documentary evidence as if sitting in appeal. The petitioner seeks a fresh determination of disputed facts relating to marriage, legitimacy, paternity and comparative welfare. Such an enquiry lies outside the scope of limited constitutional review unless the findings of the courts below are shown to be palpably perverse or based on the exclusion of material evidence. No such defect has been demonstrated.

21. Learned Guardian Judge's decision to maintain custody with the maternal grandmother, while leaving the disputed question of parentage to be resolved in appropriate proceedings, is a cautious and legally sustainable course. It preserves the minor's existing stability and avoids unsettling his custody on the basis of a disputed status claim. Learned Appellate Court, on its part, found the appeal barred by limitation and rejected the application for condonation upon noting that no sufficient

cause had been shown. Neither order discloses any jurisdictional defect that would justify interference under Article 199.

22. For the reasons recorded above, the instant petition is **dismissed**. Consequently, the judgment dated 30.03.2026 passed by the learned appellate Court and the judgment dated 11.10.2024 passed by the learned Family/Guardian Judge are maintained. There shall be no order as to costs.

J U D G E

Naveed Ali