

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. S-1784 of 2016

Date Order with signature of Judge

Hearing/Priority Case:

1. For hearing of CMA No. 5387/2017.
2. For hearing of main case.
3. For hearing of CMA No. 7773/2016.

10th July 2017

Mr. Neel Keshav, Advocate for the Petitioner.
Mr. Mushtaq Ahmed Chandio, Advocate for Respondent No.3.
Ms. Yasmin Sultana, State Counsel.

Petitioner namely Dr. Indu Mohan (mother) has filed application for permission to visit United Kingdom along with ward namely Dinesh Kumar during summer vacations. Listed application bearing CMA No. 5387 of 2017 is supported by Petitioner's affidavit.

After notice Mr. Mushtaq Ahmed Chandio, learned counsel for Respondent No. 3 filed Counter Affidavit/objection to the listed application. Copy whereof is supplied to the learned counsel for the Petitioner who stated that he is ready to argue the listed application without filing rejoinder.

Mr. Neel Keshav learned counsel for the Petitioner has contended that Petitioner is real mother of ward namely Dinesh Kumar who is living with her since she was ousted from the house of Respondent No. 3 (husband). He further added that the learned Guardian & Ward Court vide judgment dated 25.08.2014 declined restoration of custody of ward to Respondent No. 3 (father) while allowing visitation rights only. He next asserted that minor Dinesh Kumar is aged about 14 years and studying in Class 8th in Beacon House School System, Jubilee Campus, and Karachi. He next argued that Petitioner's two brothers are settled in United Kingdom and ward Dinesh Kumar is emotionally attached with his maternal uncles and their children. He further argued that the Petitioner and ward are invited by her brothers to visit United Kingdom in summer vacations and their travel will not cause any sort of prejudice to Respondent No. 3/father who is not living with the ward since more than ten years. He next contended that declining permission to travel abroad alongwith minor in summer vacation would adversely affect the mind of the ward. Therefore, the Petitioner and ward may be permitted to travel abroad in summer vacation. He next added that Petitioner

undertakes to come back to Pakistan along with ward Dinesh Kumar before start of School in the first week of August, 2017. He lastly prayed that the Petitioner is willing to furnish security to the satisfaction of this Court to ensure the return of ward back to Pakistan after summer vacation.

Mr. Mushtaq Ahmed Chandio, learned counsel for Respondent No. 3 has contended that Respondent No. 3 is real father and natural guardian of minor Dinesh Kumar. He further states that Respondent No. 3 has grave apprehension that Petitioner in connivance with her family members has hatched a conspiracy to permanently shift the custody of ward from Pakistan to United Kingdom with sole purpose to keep ward away from Respondent No. 3. He next asserted that Petitioner has failed to produce copy of passport of ward as well copy of Visa of visiting country and no invitation letter has been produced. He next added that Respondent No. 3 is in possession of passport and B-Form of ward Dinesh Kumar and without these documents the minor cannot travel abroad. He further added that Petitioner has not disclosed as to whether she has prepared another passport of minor or otherwise. Per learned counsel this factum has been concealed from this Court in order to take away the custody of minor from the jurisdiction of this Court. He next added that minor is neither emotionally attached with the brothers of the Petitioner nor their children. He next contended that brothers of Petitioner have not visited Pakistan therefore; question of emotional attachment of ward with parental uncles and their children does not arise. He lastly contended that under the British Law it takes at least three months to apply for Visa and petitioner has not obtained consent of father of minor. And, since the Petitioner has not applied for such Visa therefore, question of visiting United Kingdom in summer vacation along with ward does not arise therefore, the listed application may be dismissed.

I have heard the learned counsel for the parties, on the listed application and perused the material available on record.

Record reflects that Respondent No. 3/Dr. Mohan is real father of the minor-Dinesh Kumar and the learned Trial Court has allowed him visitation rights. The orders of both the learned Trial Court/Appellate Court have been assailed before this Court and the right of the parties to claim the custody of minor is yet to be adjudicated by this Court in the captioned petition on merits.

I am cognizant of the fact that welfare of the minor is a dormant factor while determining question of custody.

I have noted that Petitioner has filed the listed application on 18.5.2017 and failed to append the copy of passport and B-Form of minor as well as copy of invitation to visit United Kingdom. Whereas Respondent No. 3 has placed on record the photo copy of passport of minor along with B-Form which establishes that the Petitioner is yet to apply for Visa of minor Dinesh Kumar to visit United Kingdom. Secondly, per Respondent No. 3 under the British Law it takes atleast 3 months to get Visa. Therefore, Petitioner has hardly any time left to apply for visa as the summer vacation are ending in the first and second week of August, 2017 throughout Sindh.

I am of the view that rights of the parties are yet to be adjudicated by this Court in the instant Petition. Therefore, for the reasons alluded herein above allowing the Petitioner to remove the custody of minor Dinesh Kumar from the jurisdiction of this Court, at this stage is not called for. The listed application bearing CMA No. 5387/2017 is dismissed accordingly. The above observation is tentative in nature which shall not prejudice either party at any stage.

2 & 3. Adjourned.

J U D G E