

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-825 of 2017

Amir Bashir.....PETITIONER

Versus

Mst. Nosheen Fatima and another.....RESPONDENTS

Date of hearing: 07.07.2017

Mr. Lutfullah Arain, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- In the captioned Petition, the Petitioner has impugned Order dated 6.4.2017 passed by the learned Family Judge, Malir, Karachi, whereby the Interlocutory Application of Respondent No.1, under Section 12 of Guardian And Ward Act, 1890 was allowed.

2. Brief facts of the case are that Respondent No.1 filed Habeas Corpus Petition No. 44 of 2016, Under Section 491 Cr.P.C. before the learned Additional Sessions Judge-V Malir, for recovery of minor children namely Muhammad Ahmed aged about 11 years and Muhammad Huzafa aged about 7 years, both the sons of Petitioner. The learned Additional Sessions Judge vide order dated 26.4.2016 disposed of the Petition by allowing both the minors to go with the Petitioner, being their

real father with further direction to the parties to approach the Family Court for custody of wards. Petitioner claims to have filed Guardian and Ward Application No. 133 of 2016 before Family Judge Malir, under Section 25 of Guardian and Wards Act, for the custody of Minor Umama Maryam daughter of Petitioner only.

3. On 14.2.2017 Mst. Nousheen Fatima/Respondent No.1 moved an application for visitation rights with the minors namely Muhammad Ahmed, aged about 12 years and Muhammad Huzaifa, aged about 8½ years before the learned Family Judge, Malir, in Guardian and Ward Application No. 133 of 2016. The learned Family Judge vide Order dated 6.4.2017 allowed the application of mother/Respondent No. 1 to meet minors twice in a month subject to payment of Rs.800/- as fare charges to the Petitioner, the meeting shall be held within premises of the Court from 10:00 a.m. to 12:00 noon on second and fourth Saturday of each month. In case of non-production of the minors as per schedule the Respondent No.1 shall be provided additional meeting on next Saturday. Thereafter the Petitioner being aggrieved by and dissatisfied with the impugned order dated 06.04.2017 passed by the learned Family Judge, Malir, has approached to this Court for setting aside the said order.

4. Notice of the instant petition was issued to the Respondent No.1 which was returned un-served.

5. Learned counsel for the Petitioner has contended that the impugned Order dated 6.4.2017 is against the basic spirit of law as the Respondent No.1 did not file separate case/Guardian Application for

visitation rights. But, she filed an application under Section 12 of Guardian and Wards Act, for interim custody/meeting which was allowed. He next contended that Respondent No.1 is residing with a stranger therefore; the minors/wards are not ready to meet her. He lastly contended that the impugned Order has adversely affected the basic right of the Petitioner therefore; the same is nullity in the eyes of law and may be set-aside.

6. I have heard learned counsel for the Petitioner and perused the material available on record.

7. Record reflects that Respondent No.1 is mother and natural guardian of minors namely Muhammad Ahmed, aged about 12 years and Muhammad Huzaifa, aged 8½ years. The learned Family Judge, Malir, Karachi vide Order dated 6.4.2017 allowed interlocutory application of Respondent No.1 for visitation rights to meet her sons.

8. I am of the view that under the law a parent can claim visitation right of a minor child. Admittedly, the Respondent No.1 is real mother and natural guardian of above named minors therefore, she has every right to meet her children which is enforced by the learned Family Judge, Malir, Karachi.

9. Learned counsel for the Petitioner failed to point out any illegality and irregularity in the impugned Order dated 6.4.2017 passed by the learned Family Judge, Malir, Karachi.

10. I am persuaded to maintain the impugned order. The proposed arrangement made by the learned Family Court was just fair and equitable and was not only in the interest of minors, but also reasonably protected the rights of both the parties.

11. In the light of the facts and circumstances mentioned above the instant petition is dismissed along with listed applications.

12. Foregoing are the reasons of short order dated 07.07.2017.

JUDGE

Menohar / P.A.