

IN THE HIGH COURT OF SINDH, KARACHI
C.P. No. S-418 of 2022

Petitioner : Syed Muhammad Baqar, through
Ms. Anosha Abdul Wahab, advocate

Respondent No.1 : Mst. Syeda Rubab Rizvi @ Fatima (*Nemo*)

Respondent No.2 : Xth Additional District Judge, Karachi-East
(*Nemo*)

Respondent No. 3 : IXth Civil/Family Judge, Karachi-East (*Nemo*)

Date of hearing : 09.05.2022

Date of order : 09.05.2022

=====
ORDER

ZAFAR AHMED RAJPUT, J: Respondent No. 1 herein filed Guardian and Ward Application No. 2131 of 2019, under section 7 read with Section 10 of the Guardian and Ward Act, 1890 against the petitioner before the Court of Civil & Family Judge-IX, Karachi-East, alleging therein that she was married to the petitioner on 21.05.2014 in Karachi against dower amount of Rs. 14,000/-; that out of said wedlock one female issue, namely, baby Zehra Baqar was born on 27.01.2017 at Florida Hospital U.S.A, who is in her care and custody since birth; that the respondent No. 1 started to live with petitioner as an obedient Muslim wife but his conduct always remained inhuman and unethical with her, who left her along with minor in three wearing clothes and he neither gave any care, love and affection to them nor fulfilled their basic requirements and the parents of the respondent No. 1 bore all the expenses of the minor; hence, she prayed for her appointment as guardian of the minor and to declare that she was fit and proper person to be appointed as guardian of the said minor and that the welfare of the said minor lies under her custody and guardianship.

2. The petitioner contested the matter by filing written statement and also filed G & W Application No. 3392/2019, under section 25 of the Guardian and Wards Act, 1890, against the respondent No. 1. It was the case of petitioner that

the respondent No. 1 failed to fulfill her obligations towards him; as such, certain differences arose between the spouses; therefore, on 03.07.2019, he sent divorce deed to her. He prayed for dismissal of the application filed by the respondent No. 1 and for permanent custody of minor seeking declaration that the welfare of the minor was in her living with him; so also, he sought direction to the respondent No. 1 not to remove the minor/ward to anywhere without his permission or intimation as well as the trial Court.

3. During the course of trial both the above captioned applications were consolidated vide order, dated 25.01.2020 passed by the learned trial Court, treating G & W Application No.2131/2019, filed by the respondent No. 1, as leading application; thereafter, the learned trial Court after framing issues, recording pro and contra evidence and hearing both the parties allowed G & W Application No. 2131 of 2019 vide consolidated Judgment, dated 07.04.2021, and appointed respondent No.1 as legal guardian of the person of minor till she ceases her respective age of minority or she retires or further order if any made in future, while G & W Application No. 3392/2019 filed by the petitioner was declined; however, visiting rights were extended to him. The petitioner preferred Guardian and Ward Appeal No. 119 of 2021 before the learned District Judge, Karachi-East, which was heard and dismissed by the learned Additional District Judge-X, Karachi-East vide judgment, dated 29.03.2022, by upholding the judgment of the learned trial Court. It is against these concurrent findings of the Courts below the instant Constitutional Petition has been preferred by the petitioner.

4. The learned counsel for the petitioner has contended that the impugned judgments have been passed by the Courts below without applying judicious mind; that the learned courts below, while passing the impugned judgments have failed to consider that the most important ingredient relating to welfare of

the minor is the possibility of mental brought up and availabilities of educational atmosphere for the minor; that the respondent No. 1 is mentally ill, therefore, she has no locus-standi to have the custody of the minor; that in case, the respondent No. 1, is allowed to keep the minor with her, ignoring educational atmosphere and her mental illness, the future of minor will be destroyed; that the respondent No. 1 has lost her right of "HIZANAT" due to fact that the petitioner is the natural guardian of the minor baby; therefore, her custody with the respondent No. 1 is illegal and unlawful; that upbringing, welfare and betterment of the minor baby would be immensely deteriorated at the hands of the respondent No. 1; that the Courts below, while passing the impugned judgments acted arbitrarily and capriciously and the conclusion arrived at is unsustainable in law as well as on facts; that the Courts below while passing the impugned judgments have also ignored the verdict passed by the Apex Court: hence, the same are misconceived, contrary to law and even not sustainable in the eyes of law, therefore the same are liable to be set aside. In support of her contentions, learned counsel has relied upon the case-law reported as 2013 YLR 583, 2014 MLD 1333, 1998 P. Cr. L J., 2018 MLD 1592, PLD 2018 Sindh 377, PLD 2018 Quetta 44, PLD 2008 Lahore 527 and 2014 CLC 1168.

5. Heard the learned counsel for the petitioner and perused the material available on record.

6. It appears from the perusal of the material available on record that the alleged minor baby being born on 27.01.2017 is having age of about 5 years and 4 months and she is presently residing with her mother, the respondent No.1, while the petitioner is residing in Florida, U.S.A. and he contested the G & W Application No. 2131 of 2019, filed by the respondent No.1 and maintained his G & W Application No. 3392 of 2019 through his attorney, Shujaat Ullah. The record shows that the petitioner pronounced three divorces to the respondent

No.1, residing in Karachi, on 03.07.2019, on non-judicial stamp-paper duly attested by the attaché, Consulate General of Pakistan, Houston, U.S.A. and admittedly he never came to Pakistan to see his minor daughter. It is matter of record that the petitioner is not maintaining her minor daughter and it is the respondent No.1 who is looking after daily life affairs of her minor daughter through the means of her parents and admittedly she has not lost her right by remarrying. Under such state of affairs there could not be a second thought that the welfare of the minor baby lies with her mother, the respondent No.1, who being a natural guardian, is also entitled to the custody of minor baby under right of *Hizanat* of her female minor, which right of the respondent No.1 cannot be substituted or equated with any other right. In a case of the female minor another paramount factor is "guidance" which every girl is required on her attaining age of majority.

7. For the forgoing facts and reasons, I am satisfied that the issues regarding appointment of respondent No.1 as guardian of the person of the minor baby has been correctly decided by the Courts below. There does not appear any defect or legal infirmity with regard to conclusions drawn in the impugned judgments. The case-law relied upon by the learned counsel for the petitioner being on distinguishable facts does not advance the case of the petitioner. Accordingly, the petition having no merit is dismissed.

8. Above are the reasons of my short order dated 09.05.2022, whereby the instant petition was dismissed.

JUDGE

Athar Zai