

THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No. S - 550 of 2022

[Mst. Kiran Yazdani versus Learned XXth Civil Judge & J.M. and another]

Petitioner : Mst. Kiran Yazdani Daughter of Syed Ather Yazdani through M/s. Hassaan Sabir, Salman Sabir and Sana Abid, Advocates.

Respondents 1-2 : Nemo.

Date of hearing : 22-06-2022

Date of order : 22-06-2022

ORDER

Adnan Iqbal Chaudhry J. - 1] Urgency granted. 2-4] Learned counsel for the Petitioner is posed with the question whether the impugned order dated 26.05.2022, which is for temporary custody of the minor under section 12 of the Guardians and Wards Act, 1890, is appealable under section 14(1) of the Family Courts Act, 1964. He submits that section 14(3) of the Family Courts Act stipulates that: **“No appeal or revision shall lie against an interim order passed by a Family Court”**; and since an order under section 12 of the Guardians and Wards Act is an interim order, an appeal there against is barred by section 14(3) of the Family Courts Act; hence this constitution petition. Though such submission does not consider that a statutory bar to an appeal does not automatically make available the remedy of a writ petition, I do not discuss that aspect for the present.

The appeal provided under section 14(1) of the Family Courts Act, 1964 is against **“a decision given or a decree passed by a Family Court”**. The question is whether an order for temporary custody passed under section 12 of the Guardians and Wards Act, 1890 can be equated with **“a decision given”** within the meaning of section 14(1) of the Family Courts Act, or whether such an order is **“an interim order”** within the meaning of section 14(3) of the Family Courts Act.

In my view, the words “temporary custody” in section 12 of the Guardians and Wards Act do not *ipso facto* translate to “an interim order”. The terms of the order itself will determine whether that is “an interim order” within the meaning of section 14(3) of the Family Courts Act, or “a decision” within the meaning of section 14(1) thereof. In my view, where the order granting temporary custody is final in itself and there remains nothing else to be ordered for the purposes of that temporary custody, such an order will be “a decision” within the meaning of section 14(1) of the Family Courts Act, and hence appealable thereunder. A similar view was taken in the cases of *Eram Raza versus Mutaqi Muhammad Ali* (2018 MLD 727), *Tassadaq Nawaz versus Masood Iqbal Usmani* (PLD 2018 Lahore 830), and *Yasmin Zafar versus Muhammad Anwar Khan* (PLD 1989 Lahore 38).

The order impugned by way of this petition has allowed temporary custody of the minor to the father from 01.07.2022 to 25.07.2022 during the summer vacation of the minor. The order is final in itself as nothing remains to be ordered for the purposes of affirming that temporary custody. Therefore, the impugned order is not an interim order but “a decision” within the meaning of section 14(1) of the Family Courts Act, 1964 and appealable thereunder. Since the remedy of an appeal is available, a writ petition is not maintainable. Same is dismissed.

JUDGE