

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. 3- 776 of 2021

[Mujahid Mehdi v. Additional District Judge Hyderabad & Ors]

Mr. Masood Illahi Sehto advocate a/w petitioner

Mr. Allah Bachayo Soomro, Additional A.G Sindh a/w ASI
Muhammad Rashid PS Market

Minors are produced by her grandmother as maternal aunt
Nageer and Zubia

Date of hearing and order : **23.09.2022**

ORDER

ADNAN-UL-KARIM MEMON, J-. Through this petition, the petitioner has challenged the order dated 21.10.2021 passed by learned IXth Additional Sessions Judge, Hyderabad in Guardian & Wards Appeal No. 12 of 2021 whereby the learned Judge while dismissing the appeal maintained the order dated 15.7.2021 passed by learned Vth Civil Judge & Family Judge, Hyderabad in Guardian & Wards Application No. 22 of 2021.

2. Brief facts of the case are that petitioner filed a Guardian Application under Section 25 of the Guardian & Wards Act against the Respondent contending therein that the petitioner was married to the Respondent on 29.11.2013. Out of wedlock two minors namely Taha Ali (7 years) and Massoma (6 years) were born who are in the custody of Respondent; that respondent left his house along with minors in his absence and further, she is involved in immoral activities; therefore, he being a real father and natural guardian is entitled to the custody of minors for their well-being, upbringing, welfare, and best education and further the welfare of minors lies with him.

3. On issuance of summons against the respondent she did not appear hence the matter proceeded against her ex-parte; the petitioner filed an affidavit in ex-parte proof and his statement was recorded.

4. Learned trial court heard the counsel for the petitioner and after perusing the record dismissed the Guardian Application vide order dated 15.7.2021. The petitioner challenged the said order in C.A. No. 12 of 2021 and learned 9th Additional District Judge / MCAC-I, Hyderabad also dismissed the appeal, hence the instant petition.

5. Learned counsel argued that the findings of both the courts below are against the law and justice as the respondent is involved in immoral activities and she not only herself goes in Mujra Night Functions but also involves the minors in same activities and she does not send the minors to school; that because of the

above facts and circumstances the welfare of minors does not lie with the respondent but both the courts below committed illegality in dismissing the guardian application of petitioner; that petitioner belongs to a reputable family and can easily provide respectable life and education and other necessities of life; therefore, the custody of minors lies with the petitioner. Learned counsel further submits that the minors are of tender age who need proper care and look after and attention which can only be provided by a mother but in the instant case the petitioner herself is involved in immoral activities; therefore, the future of children especially of baby Massoma is at stake. He further stated that at present the respondent who is the mother of the children is in Dubai for doing illegal and immoral activities and the children are residing with her grandmother and maternal aunt who are also involved in similar activities; hence the custody of minors may be given to the petitioner. To show the character of the respondent, the petitioner has filed photographs showing the respondent dancing at a private party. He lastly prayed for allowing the instant petition.

6. I have heard learned counsel for the parties and perused the record.

7. Petitioner has admitted to having contracted second marriage and has three children from his second wife whereas minor's mother has left the minor with the grandmother, however, grandmother present in court has admitted that they are professional dancers.

8. Prime consideration is the welfare of minors admittedly minors are not attending the School, let grandmother approach the concerned school for admission for the minors forthwith and petitioner father is directed to pay the requisite admission fee of the School till they attained the age of majority.

9. The mother has the preferential right till the minor attains the age of seven in the case of male and the age of puberty in the case of female minors. It is also not denied that the minors have not reached the said age. It is well-settled law that paramount consideration while deciding the question of custody of the minor is the welfare of the minor irrespective of age, sex, and religion. Primarily, welfare includes his/her moral, spiritual, and material well-being. While considering what is the welfare of minor, the Court shall have regard to the age, sex, religion of the minor, the character and capacity of the proposed guardian, his / her nearness of kin to the minor, and the preference of minor if he or she is intelligent enough to make it. On the aforesaid proposition, I am fortified by the decision rendered by the Honorable Supreme Court of Pakistan in the case of Humayun Hassan v. Arslan Humayun and another, **PLD 2013 SC 557**.

10. In principle, in the cases concerning the custody of a child, learned Family Court is not required to go into the intricacies/technicalities of the

matter and confine its findings to the extent of welfare of the child/minor, which is a paramount consideration.

11. After hearing the contentions of both the parties at some length, the following arrangement is made:

minors namely Taha Ali (7 years) and Massoma (6 years) shall remain with the father /petitioner every Sunday from 11:00 AM to 0300 PM. The petitioner shall collect minors Taha Ali and Massoma from the house of the respondent-mother at 11:00 PM and Shall return them to the mother at 0400 PM at the mother's house.

While handing over minors Taha Ali and Massoma to the petitioner-father and receiving them back from him, the respondent and/ or her family members shall not create any hindrance. Similarly, the petitioner shall not create any scene at the time of collecting and returning minors.

The petitioner shall not remove minors from the city limits of the area, and in this regard shall furnish a solvent surety in the sum of Rs. 200,000.00 (Rupees two hundred thousand only) with P.R bond in the like amount to the satisfaction of Additional Registrar of this Court.

Petitioner-father shall ensure schooling of the minors forthwith and shall ensure payment of maintenance in terms of order of learned trial court without fail.

12. The petition stands disposed of in the above terms.

JUDGE