

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-221 of 2020

Date: Order with signature(s) of the Judge(s)

Hg/Case

1. For Orders on Office Objection
2. For Hearing of Main Case

01st December, 2022.

Mr. Ameer Kumar advocate for the Petitioners.
Mr. Muhammad Ramzan Awan advocate for Respondent No.1.
Mr. Zahid Farooq Mazari, AAG.
Mr. Fayyaz Ali Shah Masoomi, Manager Legal PIACL.

Case of the Petitioner [mother] is that Petitioner No.1 due to her second marriage was not willing to keep the custody of Petitioner No.2 [minor aged about 11 years, hence, she intended to hand over the custody of the minor to the Respondent No.1 [father]. Father is working in United Kingdom being PIA employee and he is also refused to take custody due to his second marriage and that petition filed by mother was dismissed by the guardian court as well as appellate court maintained that order. Guardian Petition was filed in 2016 and at that time minor was 11 years old and both father and mother contracted second marriage. According to learned counsel for the Petitioner second marriage of Petitioner is dissolved due to certain reasons including because of minor. According to learned counsel for Petitioners at present minor is studying in Public School Sukkur as boarder pupil. Pursuant to earlier order, Manager Legal PIACL present submits net salary of Respondent No.1 [father] which is 3281.90 in pounds.

2. Learned counsel for Respondent No.1 with the instructions of attorney contends that Respondent No.1 [father] is ready to maintain his daughter and will pay Rs.50,000/- per month in the account of minor and that account shall be opened by the Nazir of this court through her guardian mother with further arrangement that ATM Card is issued in favour of minor Maryam Fatima and she shall receive the same through online and Family Judge shall ensure that amount is received by the

minor and father will also bear expenses of marriage ceremony of minor as decided by the family court.

3. Respondent No.1 [father] would be competent to move application if salary is decreased on his arrival / transfer in Pakistan. Family Judge shall ensure to coordinate father and daughter for meeting through WhatsApp or any other suitable internet application. Needless to mention that convenient time of father shall be considered as he is residing in U.K with the coordination of school management. Learned Guardian Court would be competent to decide any application, if moved, under changed circumstances. It may be mentioned here to this regard that an order passed by the Guardian Court in respect of the custody of the minor (consent order or otherwise) may be an order in the best interest and welfare of the minor at that point of time but due to certain future eventuality and subsequent developments the same may not serve as such. It is for this reason that the Guardian Court has been empowered to modify, set aside or alter an earlier order and pass an appropriate order at any subsequent stage to safeguard the interest and welfare of the minor and that the order passed earlier in that context will not operate as a bar of jurisdiction for the Guardian Court for all future time to come. A consent order, a compromise or an agreement between the parties will not absolve the Guardian Court from its basic responsibility to safeguard and protect the interest and welfare of the minor. More-so as in the litigation before a Guardian Court the two parties participating in such proceedings are not adversaries in the strict sense but they plead their own view-point before the Court to enable the Guardian Court to arrive at a just and proper conclusion on the question of welfare of the minor. Reference may be made to the Judgment of this Court in Case of *Saadia Zahir v. Province of Sindh and others, C.P. No.S-512/2020* (authored by me).

4. In case of failure of payment by the respondent [father], Family Judge would be competent to issue directions to the PIA authorities to the extent that such amount shall be deducted directly from the salary of Respondent No.1. At this juncture, learned counsel for Respondent No.1 contends that the amount if exceed with the quantum decided by this court i.e. Rs.50,000/- extra amount will also be deposited by the Respondent No.1 [father], if same is justified. However, the Family Court is competent to entertain the application, if any, filed by the parties for increase, decrease or alteration in the rate of maintenance allowance of

the minor and matters connected therewith. Reliance may be placed on the Case of Lt. Col. Nasir Malik v. Additional District Judge, Lahore and others(2016 SCMR 1821), wherein it has been observed by the apex Court as under:-

“As far as the contention of the learned counsel for the petitioner that enhancement in maintenance allowance cannot be sought through an application under section 151, C.P.C. but through a separate suit is concerned, suffice it to say that the provisions of C.P.C. are not strictosensu applicable to the proceedings under West Pakistan Family Courts Act, 1964, as such the Family Court was competent to adopt its own procedure, therefore, the objection raised by the learned counsel is misconceived. The legislature has established the Family Courts for expeditious settlement and disposal of the disputes relating to marriage and family affairs and the matters connected therewith. Under the provision of section 5 of the Family Courts Act, the Family Court is vested with the exclusive jurisdiction to entertain and adjudicate upon the matter specified in the schedule. The matter of maintenance is at serial No.3 in the schedule. Thus, the Family Court has exclusive jurisdiction relating to maintenance allowance and the matters connected therewith. Once a decree by the Family Court in a suit for maintenance is granted thereafter, if the granted rate for per month allowance is insufficient and inadequate, in that case, according to scheme of law, institution of fresh suit is not necessary rather the Family Court may entertain any such application and if necessary make alteration in the rate of maintenance allowance”.

5. Accordingly, both orders are set aside; Family Court shall ensure compliance of the order.

6. While parting with the above order, it would be pertinent to mention here that in order to protect destitute/orphan child following order was passed by this Court in C.P.No.S-2116 of 2018 (authored by me), which reads as under:

13. At this juncture, it would be conducive to refer para-9 of order dated 26.06.2018 passed by a Divisional Bench of this Court at Sukkur in CP No.D1262 of 2017 and other connected petitions, whereby all District & Sessions Judges were directed to visit all orphanage Shelter Homes in private or public sectors. Needless to mention that Sindh Children Act 1955 provides a complete mechanism with regard to destitute child whereby the concerned police officer is bound to produce the destitute/vulnerable child before the magistrate and State is required to establish reformatory schools. Though the Child Protection Authority Act 2011 is also in field however despite effective legislation implementation is lacking and not a single center is established except three Darul Atfaals in Karachi, Hyderabad and Sukkur and one is under construction since 2010 in District Korangi. Such position is very alarming and even, prima facie, speaks that how state is handling the orphans and destitute child issues who, otherwise, have no fault on their part. D.G. Child Protection Authority, at this juncture, contends that this is a function of Child Protection Authority and he also contends that there shall be proper implementations of both laws, including formation of centers in this behalf as well there shall be separate directorate with independent building. He further contends that there are child protection units in every district and liaison committees are also working. He assures that

he will submit detailed comments with better progress. Such commitment is taken on record with appreciation, however, since the rights and privileges ensured by Sindh Child Protection Authority Act, 2011 in its preamble as:-

*“Whereas it is expedient to provide for the establishment of an Authority known as the Sindh Child Protection Authority **and to ensure the rights of the children in need of special protection measures and to provide for matters ancillary thereto;**”*

7. In another C.P.No.D- 1703 of 2019, (authored by me) vide order dated 06.12.2019, it was required that a list of Child Protection Institutes operating in the districts of Hyderabad with a list of facilities, personnel and security measures existing thereat to cater to the welfare of the minors. It was further ordered that a list of cases registered against nikahkhwans for the offence of conducting/facilitating child marriages was also required to be filed. Additional Secretary of the Women Development Department of Sindh was directed to inform the Court in writing the details of rehabilitation centers for women established as committed before the Court. The relevant paragraph is reproduced as under:

8. In view of the discussion above, the Child Protection Authority, the Additional Secretary of the Women Development Department of Sindh (as Secretary of the Provincial Monitoring Committee on Child Marriage), and the Deputy Commissioner Hyderabad District (as Chairperson of District Monitoring Committee) are added as respondents to this petition. The office to issue notice to them for the next date alongwith a copy of this order. The petitioners' counsel to file an amended title accordingly. On the next date, the said respondents shall submit a list of Child Protection Institutes operating in the districts of Hyderabad with a list of facilities, personnel and security measures existing thereat to cater to the welfare of the minors. They shall also place on record a list of cases registered against nikahkhwans for the offence of conducting/facilitating child marriages. Additional Secretary of the Women Development Department of Sindh shall also inform the Court in writing the details of rehabilitation centers for women established as committed before the Court on 30-06-2017 in the case of Nagina (C.P. No.S-501, 654 and 779 of 2017).

8. It is the responsibility of the state to provide protection to the destitute/orphan child under the law, hence, judicial propriety needs assistance of AAG, regarding establishment of Borstal Schools in view of The Sindh Children Act 1995 and Juvenile Justice System Ordinance and in compliance of Benish Liaquat case [CP.No.S-2116 of 2018]. Both laws speak that State is responsible to nestle the destitute minors in Borstal Schools. To further deliberation, this Court appoint Mr. Abadul Hasnain and Mr. Zia Ahmed Awan, advocates as amicus to this court. Office shall

intimate and provide all relevant documents as required by them. To come up on 20th December 2022.

JUDGE

M.Zeeshan