

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.S-122 of 2023

Order with signature of Judge(s)

1. For orders on CMA No.949/2023 (Urgent Application)
2. For orders on CMA No.950/2023 (Exemption Application)
3. For orders on CMA No.951/2023 (Stay Application)
4. For hearing of main case

10.02.2023

Mr. Abdul Qayyum Khan Abbasi, Advocate for the petitioner
alongwith Mr. Rab Nawaz, Advocate

1. Urgency granted.
 2. Exemption granted subject to all just exceptions.
- 3&4. Learned counsel for the petitioner submits that the minor baby Sabica Ahmed Burney was born on 21.08.2009 out the wedlock between the petitioner and the Respondent No.1 whose marriage was dissolved by way of Khulla in the year 2016, when an application was moved by the respondent (father) under Section 25 of the Guardian and Wards Act, 1890 for custody of the minor. Counsel states that the said applicant who already had children from the other wives moved this application, perusal of which reflects that before the Court there was admission of the fact that the said applicant never ever tried to have any meeting with the minor since 2011 and that he had already contracted 3rd marriage and has two sons from that wedlock, in such background the GW application was dismissed, however certain rights were given and with regard to summer vacations it was observed that any application in this regard would be decided on merits while considering the (then) circumstances prevailing at that time.

Counsel states that even after passing the said order in the year 2018, the said applicant (father) never attempted to meet the minor

notwithstanding therewith all of a sudden he moved an application (available at page 43) only on 05.12.2022 claiming custody of the minor for winter holidays. Counsel states that on the said application having been moved on that time the notices were not even served upon the mother nor the counsel of the petitioner however through order dated 19.12.2022 the said application was granted and the custody of the minor was directed to be handed out for three days to the applicant father. Counsel states that after passing of the said order while the petitioner went to the Court for weekly meeting in the Court, when the Presiding Officer was on leave the Court was also closed for winter holidays and the meeting could not be convened , for which an appropriate application was made, but on the other hand the respondent moved an application under Section 100 Cr.P.C alleging contempt of the orders which was allowed by the order dated 04.02.2023, where the learned Civil Judge-II, Karachi Central took an abrupt decision of handing over custody of the minor to the applicant and that too through the SHO concerned. Counsel states that this change of heart seemingly has emanated from the change of the circumstances, where the Court recently imposed a maintenance of Rs.40,000/- per month payable with effect of 2017 and the respondent seemingly is retaliating against such a financial claim. Counsel states while referring to the visitation rights, first of all the Court had already passed appropriate directions that the matter would be decided which considering the circumstances of the case and this order is ill-conceived since it directs that the custody be handed out for three days between 11.02.2023 to 13.02.2023, when there are no winter holidays. Learned counsel next states that this probably would be the very first time when the custody would be handed out overnight to the respondent (father) and the mother naturally is reluctant to give such an opportunity to the father, who already has two sons from the other marriages in living the same house.

Serious mis-application of judicial mind and failure to understand the facts and circumstances of the case is alleged. Counsel states that serious prejudice to the petitioner is caused through these orders, and the petitioner is threatened by force of local police, hence she has approached this Court.

Contentions raised merit consideration. In the circumstances at hand, with regard to the custody of the minor on the alleged notion of winter holidays between 11.02.2023 to 13.02.2023 when there are no such holidays and this being the first time the respondent is taking custody of the minor for overnight, who will face two brothers and stepmother(s) at the house of the said respondent, is a matter of concerns to the Court.

Issue notice to the respondents for **16.03.2023**. In the meanwhile, both these orders dated 19.12.2022 and 04.02.2023 (available at pages 27 and 29) passed by the IInd Civil & Family Judge Karachi (Central) to remain suspended till the next date of hearing. Court has been informed that a letter (page 29) has been issued to the concerned SHO in the zeal of giving effect to the aforesaid orders by the said Court on the same day. Operation of the said letter is also suspended in the meanwhile.

Let a copy of this order be sent to the SSP Central as well as SHO Aziz Abad, Karachi by e-notice also.

JUDGE