

IN THE HIGH COURT OF SINDH AT HYDERABAD

C.P. No.S-486 of 2023 : Mst. Yasmeen Bano
For the petitioner : Mr. Muhammad Idrees Naqshbani, Advocate.
Dates of hearing : 13.11.2023.
Date of announcement : 13.11.2023.

ORDER

Agha Faisal, J. Briefly stated, Guardian and Wards Application No.11 of 2021 was filed before learned Family Judge Hyderabad for custody of minor baby Mahnoor Fatima by her father and same was denied. Guardian and Wards Appeal No.4 of 2023 was filed before learned VI Additional District Judge Hyderabad and vide judgment dated 05.10.2023 the same was allowed.

The appellate court observed that father is a natural guardian; It appears from the record that the appellant is the real father of minor and is ready/willing to look after her; has sound financial position to fulfill her material needs as well as educational requirements; and there is nothing on record to show that the father is unfit, unable or unwilling to perform his duties as a guardian of his daughter; therefore, it would be unjust and unfair to deprive the minor of the company, love and affection of her real father, particularly when father does not suffer from any legal disability, hence, custody of the minor was given to her father.

The present petition was filed by a maternal aunt of the minor and the judgment of the Appellate Court has been impugned. Upon specific query, learned counsel submits that there is no jurisdictional defect in the proceedings, however, the maternal aunt is better suited to be the guardian.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided¹, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgment is well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that it could not have been rested upon the rationale relied upon.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*³ and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the conclusiveness ascribed to the final

¹Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

²Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

³Per *Ayesha A. Malik J* in yet to be reported judgment dated 17.07.2023 delivered in *M. Hamad Hassan v. Mst. Isma Bukhari & Others (Civil Petition No.1418 of 2023)*.

stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *HamadHasan*. Therefore, in *mutatis mutandis* application of the ratio illuminated, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed *in limine* along with listed applications.

Judge

A.Rasheed/stenographer