

THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S- 438 & 439 of 2022

Present: Mr. Justice Salahuddin Panhwar

Petitioner : Muhammad Salman Niazi through Mr. Saadi Sardar advocate

Respondent No.1 : Kiran Sana-ul-Haq and Muhammad Salaar Niazi through Mr. Salman Javed Mirza advocate

Date of hearing : 16.08.2023

Date of judgment : 14.09.2023

J U D G M E N T

SALAHUDDIN PANHWAR, J.- Through these petitions, the petitioner has **assailed** the common order dated **28.01.2022** passed by **VIIth** Additional District Judge/MCAC, Karachi South in the Family Appeals No.153 and 172 of 2021.

2. **Succinctly**, the relevant facts for the disposal of the instant petitions are that the **marriage** between petitioner and respondent **No.1** was solemnized on **27.12.2012** and out of the said wedlock the respondent **No.2** was born on **27.03.2014**. However, due to strain relations, between the spouses, the respondent No.1 joined with her parents at Islamabad along with minor. The petitioner tried to visit minor and his wife respondent No.1 respectively, but he was not **allowed**. Therefore, the petitioner filed an application under Section 7 and 25 of G&W Act 1890, before Family Court at Islamabad along with an application for *interlocutory* relief. Whereas, Family Court Islamabad restrained respondent No.1 through ad-interim order dated 12.08.2014 regarding removing the minor from the jurisdiction of the Court till next date of hearing. It is further stated that the respondent No.1 filed an application for return of the plaint as she moved from Islamabad to Karachi, therefore the same application was allowed and the plaint was returned to the petitioner, which order was assailed by preferring an appeal which was allowed and the matter was remanded back to the Family court at Islamabad for decision afresh. Nonetheless later on the petitioner withdrew his said applications. Yet the petitioner was neither allowed to

meet with the respondent **No.2**, nor his *whereabouts* were informed to him, hence he filed a habeas corpus petition under **Article 199** of the Constitution before the Islamabad High Court Islamabad, wherein, it was ordered that the minor shall not be removed from Pakistan. However, during proceedings, it was informed to the Islamabad High Court that the **minor** has been *removed* from Pakistan and was taken to **Dubai** without *permission* either from the Court or from the petitioner. On **05.10.2015**, it came to the knowledge of the petitioner that respondent **No.2** has been brought at Karachi, as such, he withdrew his petition from Islamabad High Court and filed **C.P.No.6633** of **2015** before this Court, wherein the respondent No.1 was ordered to produce the respondent **No.2** before the Court and he would not be removed from Pakistan. The Ministry of Interior was also *directed* to place name of the respondent **No.2** on **ECL**. The respondent No.1 submitted before this Court On **28.10.2015**, that the petitioner may be allowed to meet with the respondent **No.2** twice a week i.e. **Friday** and **Saturday** in the office of the **Nazir** of this Court during office hours. This Court directed to arrange such meetings between the petitioner and the respondent **No.2**. However, this Court disposed of the petition vide order dated **11.01.2016**, with the observation that *aggrieved* party may approach to the Guardian Court, however, the respondent was directed to comply with the order dated **28.10.2015** and the Nazir was directed to maintain record of such meetings. Whereas, such order was challenged by the respondent **No.1** by preferring **C.P.No.185-K** of **2016** before the Supreme Court, wherein a joint application was submitted on **14.06.2016** by the counsel for the petitioner and the respondent **No.1** before Apex Court, which according to the petitioner was submitted without his consent and his signatures. Be, that as it may, on such application, the petition was disposed of vide order dated **14.06.2016**, in the following terms:

“A joint application signed by the petitioner, petitioner’s counsel so also by counsel for respondent No.1 for disposal of this petition has been filed. The contents of the application are as follows:

- 1. Father shall be entitled to meet the child Salaar every alternative Saturday for 11:00 a.m to 1:00 p.m. in the Court of concerned Family Judge, Karachi South who shall monitor and keep record of such meetings.*
- 2. If a Saturday happens to be a public holiday, the meeting shall take place on following Saturday and thereafter on alternative Saturday.*

3. *The child shall remain in the Court room for entire two hours and father shall not be allowed to take him out of Court room.*

So far, the issue with regard to travelling of the minor abroad, it is clarified that whenever the petitioner desires to take the minor abroad, she will give a proper intimation and undertaking to the Family Judge, Karachi South who will keep the same on record."

3. However, the petitioner preferred a **Review** petition against the above order of the Apex Court, but the same was **dismissed** on **02.08.2016**. Thereafter, the petitioner filed an application bearing No. **504/2020** under Section **25** read with Section **12** of **G&W Act 1890** on **11.03.2020** before the Family Judge Karachi South for the custody of the minor which was *finally* adjudicated upon through judgment dated **31.08.20121**. Being *dissatisfied* with the said judgment, the respondent No.1 filed Family **Appeal** Nos. 153 and 172 of 2021, which were disposed of vide **impugned orders** dated 28.01.2022, hence these petitions are filed by the petitioner. In both the petitions, mainly it is prayed that the place and mode of visitation may be **modified** as well as to grant *comprehensive*/reasonable visitation schedule for meetings.

4. Heard and perused the record.

5. Both the parties to the *lis* had agreed to the **visitation** schedule before the hearing of the instant petitions on 09.05.2023 as follows:-

*"Partly heard learned counsel for the petitioner. The petitioner for the time being is not seeking custody of the minor. However, the petitioner is insisting for visitation rights. Admittedly, the minor is currently living with the mother in **Dubai**. Learned counsel for the respondent has agreed that the father may visit his minor son in Dubai during vacations for a period of one week during the day time from **12:00** noon to **8:00** p.m. at a mutually agreed location which is Dubai Mall. The mother will bring the minor to **Dubai** Mall at **12:30** and in similar way, the father (petitioner) will return custody at **8:00** p.m. to **9:00** p.m. At this juncture, learned counsel for the respondent contends that the maid who usually stays with the minor may be allowed to join for first four days visitation along with minor enabling minor for his comfort. It is pertinent to mention that both the mother and father are expected to cooperate and be the best judge for the well-being of the minor and ensure that he shall receive the love of both parents."*

6. **Admittedly**, both the parties consented to the arrangement of meeting of the minor with the petitioner in the above-referred order neither further assailed the same. Besides, the learned counsel for the petitioner has admitted that the petitioner, being father, has not paid a single penny for the

maintenance of his kid since birth, and the respondent (mother) is maintaining her kid. Furthermore, at present, the minor is *studying* in one of the best schools in Dubai (UAE). When learned counsel for the petitioner was confronted about whether the petitioner is ready to pay maintenance with arrears, including school fees, he disagreed, on the plea that the captioned petitions pertain to the visitation rights only. However, subject matter is not for recovery of maintenance; therefore, this court is not going to touch upon that controversy that whether, in such situation, the father would be *disentitled* to get custody of the minor. Whereas, the father himself is not asking for custody, he is solely asking for visitation rights.

7. The framers of the law relating to Guardians and Wards Act, 1890 legislated it as a special enactment with an intent to secure the interest and welfare of the minors living within the jurisdiction while highlighting the degree of preference to establish guardianship. The sole criterion which depicts the intent of the legislature is nothing except welfare of the minors as grundnorm of the enactment. As a general principle the degree of preference is confined to relationship depending upon the order of preference due to closeness of blood relationship and other aspects which are essential in upbringing of the minors within four corners of law. Any deviation from the general principle, where the blood relationship has to be departed, there should be very strong and compelling reasons to have a contrary view which includes upbringing, education, healthcare, congenial domestic atmosphere, physical and psychological advantages, sect, religion, character and capacity of the claimant to whom if it is assigned to take care of the minors. In short words, while ignoring/ bypassing the general principle there must be very strong and exceptional circumstances which could be brought forth with reference to the intent of the legislature regarding the sole purpose of "welfare of minors". Reference may be made to the Case of *Rashid Hussain v. Additional District Judge, Islamabad (East) and others* (PLD 2022 Supreme Court 32). The other considerations which would have a material bearing would be the necessity of the child being provided loving and understanding care, guidance and a warm and compassionate relationship in a pleasant home, which are essential for the development to the child's character and personality. It is matter of record that the Respondent is taking care of the minor and everything is being provided to the minor. The interest of the Respondent is not

adverse to the minor. Accordingly, instant the petitions, being bereft of merits, are **dismissed**; judgments of both courts below are modified in terms of above referred order dated 09.05.2023, whereby the petitioner would be at liberty to visit his minor son at Dubai Mall/Dubai at his own costs accordingly. Needless to mention that meeting shall be under the supervision of minor's mother Ms. Kiran Sana-ul-Haq, keeping in view of the age and well-being of the minor child and it is admitted fact that mother is the sole parent who is maintaining the minor from her own sources since nine years.

J U D G E