

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-1200 of 2023

[Mst. Ambreena Munirv.....Muhammad Umair Siddiqui & others]

Date of Hearing : 18.01.2024
Petitioner through : M/s. Waqas Ahmed Khan and Zaib un Nisa, Advocates for the petitioner.
Respondents through : Respondent No.1 is present.

ORDER

Zulfiqar Ahmad Khan, J:- The Petitioner impugns an order dated 14.10.2023 passed by learned Respondent No.2 in Family Appeal No. 127 of 2023.

2. G & W application No. 2616 of 2019 was filed by the respondent No.1 for permanent custody of the minor which was dismissed vide order dated 28.05.2022, however, respondent father was allowed visitation rights. Present petitioner filed Family Appeal No.127/2023 before the Additional District Judge-XIII Karachi East against the said order and the same was dismissed vide order dated 14.10.2023, hence the petitioner is before this Court challenging the visitation rights of the respondent father.

3. Learned counsel was confronted with the maintainability hereof as the Apex Court disapproved of agitation of family matters in writ petition, however, the counsel remained unable to demonstrate the existence of any jurisdictional defect meriting recourse to writ jurisdiction. The crux of the argument articulated was that petitioner mother wants some modification in visitation rights granted to the respondent father.

4. Heard and perused the record. 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 judgments appear to be well-reasoned and no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

5. 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 stage of proceedings in the statutory hierarchy as the same could be construed as defeating

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

² Per *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

³ Per *Ayesha A. Malik J in M. Hamad Hassan v. Mst. Isma Bukhari & Others* reported as 2023 SCMR 1434.

manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect. Similar views were earlier expounded in Arif Fareed⁴.

6. In so far as the plea for modification of visitation rights is concerned, it would suffice to observe that respondent father applied for the permanent custody of the minor which was not granted to him, however, being a father of the minor was allowed visitation rights only which was impugned by the petitioner and depriving the father from visitation rights would be against the nature who is also entitled for company of the minor for his upbringing and that the visitation rights cannot be disturbed per dicta laid down by his lordship Mr. Justice Mushir Alam (as he then was) in *Mst. Madiha Younus vs. Imran Ahmed* (2018 SCMR 1991).

7. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 18.01.2024

JUDGE

Aadil Arab.

⁴ *Per Amin ud Din Ahmed J in Arif Fareed vs. Bibi Sara & Others reported as 2023 SCMR 413.*