

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**

C.P.No.S-1315 of 2023

<i>Date</i>	<i>Order with signature of Judge</i>
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1. For hearing of CMA 9519/2023.
2. For hearing of main case

**11.06.2024**

Petitioner Mst. Sassi Hizbullah in person.  
Mr. Mukhtiar Hussain, advocate for respondent No.1  
Mir Naeem Akhtar Talpur, Addl. A.G.  
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**MUHAMMAD IQBAL KALHORO J:** Petitioner, Ex-wife of respondent No.1

has filed this petition praying therein as under:-

- a) To call R & P of the Guardian & Ward case bearing No.450/2021 in the interest of justice to meet the end of justice;
- b) To grant temporary stay on the home meetings till final disposal of this petition.
- c) To stop the meeting at the house of the respondent and instead, continue the same in the court premises;
- d) To direct the respondent to pay all arrears pending since filing of main case;
- e) To direct the trial court to dispose of all the pending applications within one month as the same are already argued by the petitioners counsel;
- f) To direct the trial court to stop special meeting in counter of non-payment of maintenance as the same is extra favour given to the respondent.
- g) To direct the trial court to ensure proper compliance of its order regarding environment and health of minor and so also removal of pats from the meeting place or otherwise cancel the meeting.
- h) To direct the trial court to pass orders on sufficient time.
- i) Grant such further additional or alternative relief as this Honourable Court may deem fit and proper under the circumstances of the matter;

2. Record reflects that respondent No.1 had filed an application u/s 25 of Guardian & Wards Act, 1890 claiming permanent custody of his minor son namely Muhammad. This application was contested by petitioner, mother of the minor. It was finally disposed of vide order dated 24.09.2022 in the following terms:-

“The upshot of above discussions is that the welfare of minor lies with the respondent being her real mother and applicant/father is not entitled for the permanent custody of minor named above, however, he has right to meet his children being real father, therefore, this application stands disposed of in following terms:-

- 1) *The permanent custody of the minors/ward shall remain with real mother/respondent having her right to retain the custody.*
- 2) *The respondent shall not remove the minor out of jurisdiction of Karachi without permission of the court.*
- 3) *The applicant/father is entitled for the visitation rights to meet his children being real father at Meeting Hall East in court premises on 1<sup>st</sup> and 3<sup>rd</sup> Saturday of each month for two hours till the minor attains the three years of age, while the applicant shall pay a sum of Rs.1200/- to respondent as fare charges.*
- 4) *The applicant shall be entitled for special meetings at the occasion of Eid ul Fitar and Eid-ul-Azha on second day from 0100 PM to 5.00 PM and on birthdays from 01.00 PM to 05.00 PM to be celebrated at McDonald's Sindhi Muslim, Society under supervision of bailiff, in case of reluctance or divergent views, a proper application may be filed.*
- 5) *When the minor turns to three years of age, the applicant shall be entitled to the same schedule of meeting of twice a month, as mentioned supra, but venue would be his house instead of meeting hall of east under the supervision of bailiff subject to cost of Rs.2000/- per meeting.*
- 6) *The applicant shall further be entitled for special meetings at the occasion of Eid-ul-Fitar and Eid-ul-azha on second day from 0100 PM to 05:00 PM, and on birthdays from 01:00 PM to 05:00 PM, at applicant's house under the supervision of bailiff, when the minor turns to be three years age, and in case of reluctance or divergent views, a proper application may be filed.*
- 7) *Pending application on file, if any, also stand disposed of and there is no order as to costs.*

3. The aforesaid arrangement, more or less, continued between the parties. However, the problem arose when the minor turned three years old and respondent No.1 became entitled to take him to his home for meeting purpose, instead of doing it in the court premises, as stipulated in the aforesaid terms and conditions. The petitioner noted that the child after visiting his father, who was having pets in his house, was falling sick regularly on account of allergy etc.

4. As per her arguments, rendered in person, she filed an application before the same Family Court for change of terms and conditions qua meeting of the minor with his father at his house but to no avail. Hence finally, she filed this petition on 01.12.2023 after more than one year of the original order, seeking relief(s) as reproduced above. As is obvious, most of the prayers made by her are in respect of seeking directions for the trial /Family Court to decide applications filed by her seeking alteration in terms and conditions vis-à-vis visiting rights of respondent No.1 with his minor son. She has prayed that meeting of minor with his father, respondent

No.1, may be stopped meanwhile as whenever he visits him at his home, he gets sick due to allergy from pets available in latter's house. To substantiate her point, she has referred to prescriptions of the doctor advising the child to be kept away from pet animals.

5. On the other hand, respondent's advocate has countered her arguments by stating that no pets are available inside the house of respondent No.1. The pets are tethered outside in the porch, and the child was never exposed to them, whenever he visited his father's house. And that he has visited him only twice after turning 03 years. The petitioner is not complying with the orders of family court and has stopped the minor's meeting with respondent No.1 on one or the other excuse.

6. I have heard the parties and perused material available on record. The terms and conditions set out by the family court in the order dated 24.09.2022 are only in respect of fare charges to be borne by respondent No.1 whenever a meeting with his son takes place at a place where the petitioner brings him for such purpose. From the record, it is not borne out whether petitioner had filed any suit for maintenance of her child or not or whether or not any amount in this respect has been fixed by the family court. But in any case, respondent No.1 has offered to pay Rs.50,000/- including medical expenses per month as maintenance of child to the petitioner but she has refused to accept the same and states that she is bearing atleast Rs.75000/- per month on maintenance of her son. Be that as it may, since such question has genesis in the facts disputed by both the parties, this court while exercising constitutional jurisdiction cannot determine the same and fix the amount of maintenance of the minor to be paid by respondent No.1 to the petitioner, not the least when the petitioner has not made such prayer in this petition, and has referred to this point in arguments to support her case.

7. Her anxiety, apparent from her arguments, is that the child's meeting with his father as per term No.5 of the order be stopped on the ground that whenever he visits his father's house for meeting him, he gets sick and resultantly she has to bear expenses over his treatment. Even these questions, which too are rooted in controversial facts and contested by both the parties in that respondent No.1 is denying that the minor is getting any disease just because he visits him in his house, this court cannot decide the same by simply hearing arguments of the parties on this issue which in fact requires a factual inquiry i.e. evidence to determine the same and its impact on the health of child, if any. The terms and conditions set out by the family court in the aforesaid order, a result of appreciation of

evidence, neither can be altered in favour of either party nor recalled to the detriment of rights of other party by simply hearing their contentions in this regard without allowing them to lead evidence on the point to enable the court to determine it. As per prayer clause of the petition, the petitioner before approaching this court had filed application(s) before the family court seeking amendment in the terms and conditions laid down qua visiting rights of respondent No.1 with his minor son, and these applications as per her statement are still pending.

8. It goes without saying that family court is under obligation to entertain such applications as and when filed by either party seeking alteration, amendment, recalling, improving or reforming any of the terms and conditions originally set out by it in the first order. Filing of subsequent applications for such purpose is neither barred in law nor a party can be deprived of his/her right to file the same and seek a fresh mandate over the issue of his/her visiting rights, as it is a cause of action which due to change in age of minor (s) continues to occur to the party, may be in a different context, and therefore, it needs fresh indulgence of the court. Therefore, I am of the view that the petitioner instead of agitating all these points before this court in the petition should approach the family court and the family court would be obliged to entertain such application, hear the parties after due notice and decide the same in accordance with law by keeping in view the welfare of the minor. Hence, while disposing of this petition, the relevant family court is directed to decide application(s) filed by the petitioner on above issue, if it is already pending, within a period of two months after hearing both the parties, in accordance with law. If, however, no application as above is pending before the family court, the petitioner may approach the family court with a fresh application for this purpose and the family court would be obliged to decide the same in accordance with law within three months thereafter after due notice to other party.

The petition alongwith listed application stands disposed of in the above terms.

**JUDGE**

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