

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-584 of 2021

Date	Order with signature of Judge
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For hearing of main case

23.01.2024

M/s. Shafqat Zaman & Nazia Siddiqui, Advocates for the petitioner.

Petitioner is aggrieved with the Judgment dated 31.05.2021 (“Impugned Judgment”) passed by learned respondent No.2 whereby custody of the minor Ahsan Raza was handed out to the respondent No.1 (maternal grandmother).

Concise facts are that the petitioner entered into a marriage contract with Mst. Kosar Bano and out of said wedlock two issues were born. The stance of the petitioner is that his wife died a natural death on 25.06.2019 and as the time went by one child namely Owais Raza was living with him whereas another child namely Ahsan Raza was living with respondent No.1. He filed a G&W application under the provisions of Section 25 of Guardian & Wards Act, 1890 which application was allowed by the learned trial Court vide order dated 01.02.2021 and permanent custody of minor Ahsan Raza was ordered to be handed out to the petitioner. The respondent No.1 being maternal grandmother impugned the said order by filing Family Appeal No.31/2021 which was allowed, hence this petition.

The main thrust of arguments of learned counsel for the petitioner is that the petitioner neither contracted second marriage nor involved in any activities owing to which the welfare of the minor suffers. He next contended that the petitioner father being natural guardian of the minor, therefore, permanent custody with paternal family is illegal.

None present for the respondent No. I have heard learned counsel and perused the record. There is no denial of the fact that the father is the natural guardian of the children. On account of their respective ages, the right of Hizanat of the minors no longer vests in their maternal grandmother. The petitioner, who is real father of the children, is ready and willing to look after the children and has the financial resources to fulfill their material needs and educational requirements. He has neither contracted second marriage keeping in view the welfare and best interest of his children nor his involvement in mischief activities has been unearthed. Therefore, prima facie, the best interest and welfare of the minors lies in handing over their custody to the petitioner, the real father. There is nothing on record to suggest and it has not even been alleged that he is unfit, unable or unwilling to perform his duties as a guardian of his children. In my opinion, it would be unjust and unfair to deprive the children of the company, love and affection of their real father. Specially so, where the father does not suffer from any legal disability that may deprive him from his legal right to have custody of his children.

In these circumstances, I am unable to agree with and subscribe to the reasoning and conclusions recorded by the learned respondent No.2 in the impugned Judgment which is hereby set

aside and the conclusion rendered by the learned trial Court dated 01.02.2021 is maintained. The custody of minor Ahsan Raza shall be handed over to the petitioner within one week from today.

I am also mindful of the fact that the minor Ahsan Raza has spent sufficient amount of time with his maternal grandmother Farida Bano (respondent No.1) and has developed emotional attachment to her. It would therefore neither be appropriate nor advisable to sever such bond. I, therefore, direct that the petitioner shall ensure that the minors Ashan Raza as well as Owais Raza spend sufficient time with Respondent No.1 Farida Bano, the, grandmother. They shall be allowed to spend weekends with their maternal grandmother. They shall be dropped at her house on every Saturday at 2:00 p.m. and picked up the next day i.e. Sunday at 4:00 p.m. The parties may, however, seek modification of this arrangement to cater for their mutual convenience by moving joint applications before the concerned Guardian Court.

JUDGE

Aadil Arab