

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-2179 of 2021

Ekramuddin Khan
Versus
DG FIA and others

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| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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Present:
Mr. Justice Muhammad Shafi Siddiqui, CJ
Mr. Justice Jawad Akbar Sarwana.

For orders as to maintainability of petition.

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Dated 19.08.2024

Mr. Muhammad Nizar Tanoli, Advocate for the petitioner.

Mr. Khaleeq Ahmed, Deputy Attorney General.

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Muhammad Shafi Siddiqui, CJ.- This case has some history. During pendency of application under Section-25 of the Guardian & Ward Act, 1890 [G&W Act] before the Court of Family Judge, Malir, Karachi in Guardian & Wards No.236/2019, the first application under Section-12 of the G&W Act filed by the attorney was dismissed vide order dated 01.09.2020. Second application under Section-12 of the G&W Act was then followed by the respondent No.2 whereon the interim custody was granted. The petitioner has attempted to show that attempts were made to remove the Wards from the jurisdiction of the trial Court and consequently an order was passed on 03.04.2021 whereby a warning was issued to the respondent No.2; the interim custody however remained with the mother that is respondent No.2. In the meantime, the petitioner also preferred an appeal against the order passed under Section-12 of the G&W Act before the Addl. District Judge-II Malir in Appeal No.08/2020, which was dismissed vide impugned order dated 09.12.2020. As against it, this petition was filed which is pending for quite some time. During pendency of this petition, the main application under Section-25 of the G&W Act was also disposed of whereby the petitioner's application under Section-25 was dismissed. The petitioner preferred Appeal No.14/2023 which is still pending.

2. It is petitioner's case that the trial court ought to have considered the matter of interim custody which was entrusted to the respondent No.2 as an interim measure. While the main application was dismissed, it is petitioner's case that the interim custody, which was handed over, was not decided. They preferred an appeal against the final judgment under Section-25 of the G&W Act which is still pending (Appeal No.14/2023).

3. The petitioner has argued the case at length describing the facts of the attempts made to take away the Wards from the jurisdiction of this Court but that is immaterial. We are not sitting as an appellate court against such order whereby attempts were made. We are neither appellate court nor the trial court. As far as the impugned order is concerned, counsel has not shown any part of the order dated 09.12.2020 in Appeal No.08/2020 whereby the jurisdiction was not exercised properly, hence on this count we are unable to intervene. The moot point however is that while deciding the application under Section-25 of the G&W Act, the matter of interim custody was not decided. Since the matter is subjudice before the appellate court in Appeal No.14/2023, which is a continuation of the main application, such question be agitated before the appellate Court which may consider it and pass appropriate orders with regard to interim custody as well while disposing of the main appeal.

4. The petition stands disposed of in the above terms along with pending application(s).

CHIEF JUSTICE

JUDGE

Ayaz Gul