

ORDER SHEET
 IN THE HIGH COURT OF SINDH AT KARACHI
 C.P-S No.958 of 2024
 [Fatima Sohail v. Haseeb Shafqat Abbasi]

Date	Order With Signature Of Judge
------	-------------------------------

1.For hg of CMA No.7146/24
 2.For hg of main case
 30.09.2024.

Mr. Zaheeruddin, advocate for petitioner.
 Mr. Altamash Arab, advocate for respondent.

MUHAMMAD IQBAL KALHORO, J:- Respondent has filed an application under section 25 of the Guardian and Wards Act, 1890 in the Court of XIX Family Judge, Karachi-South seeking custody of minor son, namely, Eesa Haseeb Abbasi. The contents of the application show that the relations between the parties got strained somehow and respondent pronounced two divorces to the petitioner and she started residing in her parents' house.

2. In any case, with permission of respondent, she went to Saudi Arabia along with minor to perform Umrah in October, 2022. From Saudi Arabia, she along with the minor travelled to USA without consent of the respondent. Thereafter, respondent made efforts to ensure that petitioner should come back and allow him to see his minor son but in vain. He also tried to bring about reconciliation between him and his wife through her family but all efforts were defeated. Finally, he filed the application as above under Section 25 of the *ibid* law.

3. During arguments it has transpired that petitioner is still living in USA with the minor and she has applied for asylum there on the ground that she has apprehension to the lives of her and her minor son. With the main application, petitioner filed an application under section 12 of the Guardian and Wards Act seeking interim custody and visitation rights with the minor. This application has been decided by the Family Court vide order dated 04.05.2024 in the terms whereby petitioner has been found

entitled for meeting with minor on 2nd and 4th Saturday of every month from 11:00 am to 02:00 pm, subject to payment of fare charges Rs.3000/- per meeting within the premises of the Court with direction to FIA and Ministry of Foreign Affairs to take necessary steps to ensure return of the minor. This order was challenged by the petitioner in Family Appeal No.93 of 2024, which has been dismissed vide order dated 02.08.2024, hence this petition.

4. I have heard both the parties.

5. In support of his contentions, learned counsel for the petitioner has relied upon the cases **F.S. Jamil-ud-din Bukhari v. Mst. Aamira Bukhari and others (1994 CLC 309)**, **Scherazade Jamali v. Hisham Gillani and others (PLD 2018 Sindh 377)** and **Muhammad Hassan Arif v. Additional District Judge and others (2022 MLD 323)**.

6. Whereas, learned counsel for the respondent has relied upon the cases **Mst. Marium Tariq and others v. SHO of Police Station Defence and others (PLD 2015 Sindh 382)** and **Suo Motu Case for Recovery of minor kids of Mist. Tahira Jabeen (2010 SCMR 1804)**, in support of his contentions. He has further contended that respondent is real father of minor, has got rights of visitation with the minor. The petitioner had left for Saudi Arabia and from there she surreptitiously without consent and information to the respondent left for USA with the minor and is living there illegally as her application for asylum has been dismissed.

7. I have considered submissions of the parties and perused the material available on record. As per terms of order dated 04.05.2024 by the Family Court, the minor has to be produced in Court on 2nd and 4th Saturday of every month by petitioner from 11:00 am to 02:00 pm for meeting with the respondent against payment of fare charges of Rs.3000/-. This direction has been passed despite the fact that the minor is not in Pakistan and is currently living in USA with the petitioner.

His living in USA with his mother and the manner behind the mother's shifting to USA may be questionable and amenable to a proper jurisdiction but is not an issue before me to dilate upon. What I have to see is whether the order passed by the Family Court is implementable or not in the given situation. As the things stand, it is not practically possible for petitioner to produce minor from USA on 2nd and 4th Saturday of every month for meeting with respondent. The order which is not implementable and cannot be enforced for the reasons beyond capacity is as bad as no order. In this case, until the child is brought back from USA and start living in Pakistan, the order passed by the Family Court cannot be implemented. Section 12 of Guardian and Wards Act, speaks of only interim custody and visiting rights of a party during pendency of the main application under section 25 of the said law. Until and unless the right of the parties for custody of the minor is finally adjudicated under section 25 and father is held to be entitled to have custody of his minor son, no order to bring back the minor forcibly from USA at least can be passed.

8. Both the Courts below while passing the impugned orders have squarely overlooked this fact. I have been informed that in the main application, evidence of the parties has commenced, therefore, I am of the view that it would be in the interest of justice to order the Family Court to expedite the trial and decide the same within a period of two months by determining the issue of permanent custody of the minor and the visiting right of the other party. If the permanent custody is given to the respondent; or he is found entitled to visit his minor son in the terms as deemed fit by the Family Court, it shall pass on the direction to the relevant authority for bringing back the minor from USA for such purpose.

The petition is disposed of along with pending application.