

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

C.P.No.S-636 of 2024

Date	Order with signature of the Judge
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1. For order on MA. 9138/2024.
2. For order on office objections
3. For hearing of CMA 5394/2024.
4. For hearing of main case

10.10.2024.

Mr. Haider Waheed, Advocate for petitioner

Mr. Muhammad Jaffer Raza, Advocate for respondent No.1.

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MUHAMMAD IQBAL KALHORO J; Petitioner Ms. Sadia Aquil Ahmed, Ex-wife of respondent No.1 Sarem Mukhtar with whom she has a custody dispute over their minor daughter namely Ayesha Sarem Mukhtar has filed this petition seeking following relief(s):-

(a) Declare that the Honourable High Court of Sindh at Karachi has jurisdiction in relation to the issues relating to the custody, visitation and maintenance of the Minor, as exercised by this Honourable Court through its Order dated: 12.02.2024 passed in C.P. No. 2568 of 2017 [*Sarem Mukhtar Versus Sadia Aquil Ahmed & Others*];

(b) Permanently restrain the Respondent No. I from removing the custody of the Minor from the jurisdiction of this Honourable High Court, which in the present case would be exercising parental jurisdiction over the Minor,

(c) Direct the Respondents No.2 and 3 to provide police security during any visitation meetings that take place between the Respondent No.1 and the Minor, if allowed by this Honourable Court;

(d) Restrain the Respondent No.1 from meeting the Minor until psychological evaluation of the Respondent No. 1 is carried out or medical records pertaining to the mental health from the U.S.A. of the Respondent No.1 are brought on the record of this Honourable Court;

(e) Grant Guardianship Certificate in favour of Petitioner in respect of the Minor;

(f) Direct the Respondent No.1 to pay child support as maintenance for the Minor in the sum of \$2,000/- per month;

(g) Direct the Respondent No.1 to pay past maintenance in the sum of USD 30,000/- which has been accumulated by the Respondent No.1;

(h) Direct the Respondent No.1 to remove all missing child advertisements in relation to the Minor published by the Seattle Police Department and various other social media websites as the same are having a psychologically negative impact on the welfare and wellbeing of the Minor;

(i) Direct the Respondent No.1 to withdraw all criminal proceedings initiated against the Petitioner in the United States of America, including but not limited to, discharging arrest warrants issued against the Petitioner;

(j) Enforce the Agreement dated: 18.03.2024 recorded in Order dated: 18.03.2024 in C.P. No. 2568 of 2017 [*Sarem Mukhtar Versus Sadia Aquil Ahmed & Others*]. entered into by the Petitioner and the Respondent No.1 in a hearing before this Honourable High Court;

(k) Grant such further and/or other relief as this Honourable Court may deem just and equitable.

2. Relevant facts of the case, as averred by the petitioner, are that the petitioner Sarem Muhammad Mukhtar and the respondent Sadia Aquil Ahmed got married on 07.03.2013 in Karachi whereafter they moved to the United States of America where the petitioner was permanently residing ; during the course of their marriage, the parties were blessed with a daughter Ayesha Sarem Mukhtar, minor who was born in USA on 11.03.2016; subsequently, their marriage did not last and eventually a Divorce Deed was executed by the petitioner on 06.05.2016 and a Divorce Certificate was issued by the Arbitration Council concerned on 21.09.2016 and the 'Final Divorce Order' was passed by the Court of Washington, County of King ; the said Court also passed an 'Immediate Restraining Order' restraining the petitioner from leaving its jurisdiction, and after finalization of the divorce, the same Court restrained the petitioner from removing the minor from the State of Washington during pendency of the trial. After some litigation, the parties executed a Parenting Plan dated 09.05.2017 in USA regarding the custody of the minor and visitation, travel schedule, vacations, communication, and joint decision making regarding matters pertaining to the minor. The said parenting plan was ratified by the competent Court in USA after enquiring from the parties whether the same was in the best interest of the minor which the parties had responded under oath in the affirmative. The parties also executed a document titled Findings and Conclusions about a Marriage wherein the jurisdiction relating to the minor was determined to be the State of Washington as it was the home State of the minor. While accepting and ratifying the said document, the aforesaid Court determined that the State of Washington was also the home State for the parties in addition to the minor. The petitioner executed a Child Custody Bond in the sum of \$10,000.00; and, to ensure compliance of the Parenting Plan, the father, the respondent No.1 executed a personal guarantee in the sum of \$100,000.00 that the respondent shall not remove the minor from USA.

3. The arrangement continued between the parties for some time but then ultimately the petitioner left USA alongwith minor on the ground of illness of her father on 09.09.2017. As soon as the petitioner came in Pakistan, she filed an application under Guardian & Wards Act bearing No.1462/2017 for permanent custody of the minor. Respondent No.1 on coming to know of the same, filed an application u/o 7 rule 11 CPC claiming that family court at Pakistan had no jurisdiction to adjudicate upon the matter as minor was

permanent resident of Washington, USA. His application was dismissed and the appellate court vide judgment dated 24.11.2018 confirmed the same. Respondent No.1 then landed up before this court in C.P.No.S-2589/2018 challenging the same order, however, before it, he had already filed a C.P.No.S-2568/2017 challenging the jurisdiction of courts in Pakistan regarding custodial matter of the minor. Both the petitions were decided by a Single bench of this court vide order dated 12.02.2024. In this order, learned single judge has touched upon the issue of custody of the minor comprehensively and has concluded that since the child is a permanent resident of Washington, USA, the Family court at Pakistan has no jurisdiction to entertain application under Guardian & Wards Act. In para 15 of this order, learned single judge has held as under:-

15. In view of the admitted position discussed above, I hold that at the time when the dispute relating to the custody of the minor arose and G&W Application No.1462/2017 was filed at Karachi by the respondent, the Home State / ordinary residence of the minor was the State of Washington and not Karachi. By applying the principle laid down by the Hon'ble Supreme Court in Major Muhammad Khalid Karim (supra) to the instant case and in view of the admitted position that the minor was not illegally or improperly removed or taken away from the respondent's custody at Karachi nor were the minor or the parties residing or last resided at Karachi, it is clear that the cause of action alleged by the respondent could not be said or deemed to have arisen at Karachi, and accordingly the Guardian Judge at Karachi did not have the territorial jurisdiction to entertain her G&W Application No.1462/2017 seeking orders relating to the minor's custody. In such circumstances, the application filed by the petitioner under Order VII Rule 11 CPC read with Sections 8 and 19 of the G&W Act for rejection of the respondent's G&W Application No.1462/2017 was wrongly dismissed by the Guardian Judge, and accordingly the order of its dismissal impugned by the petitioner in C.P. No.S-2589/2018 is liable to be set aside.

5. While winding up the entire discussion incorporating the entire controversy, learned single judge has concluded and held in para 22 and 23 as under:-

22. The position that has emerged is that at present the minor is living in her maternal home with the respondent / mother in Karachi and is presumably seeking early education in Karachi ; the petitioner / father is settled in USA and cannot live permanently in Karachi, however, he frequently visits his parents / family in Karachi ; because she was born in USA, the minor is a USA national ; the respondent had initially prayed for recovery of the minor from the alleged illegal custody of the respondent, but has now stated that he does not wish to separate the minor at a tender age from the respondent and he feels that it would be in the interest and welfare of the minor if she remains with her mother and is not dislodged from her present setup ; he has prayed that the respondent be directed to allow him to meet with the minor and to spend time with her during his visits to Karachi, and also to allow the minor to travel with him at his expense to USA temporarily on short visits during her vacations ; he has offered to bear all air travel and other allied expenses of the respondent in case she decides to accompany the minor on such visits ; in view of the apprehension of her arrest in USA expressed by the respondent, the petitioner has undertaken that in case an order is made in terms of his request, he shall immediately make an application to the Court in Washington for the discharge of the respondent's arrest warrant and for her satisfaction shall provide copies of his said application and the order of discharge passed thereon to her learned counsel ; the above requests made by the petitioner have been opposed by the respondent and his undertaking has been

rejected by her ; and, the minor has not been allowed by the respondent to see or meet the petitioner and her paternal grandparents and other family members and/or to visit her paternal home since last many years.

23. Keeping in view the paramount consideration of the welfare of the minor, I am of the view that she cannot / should not be deprived of the love, affection, care, presence and company of her father under any circumstances ; and, the respondent cannot be the sole judge to decide when the minor should see or meet her father and grandparents and for how long or how frequently. Under the Shariah and the prevailing law in Pakistan, such right of the father and the minor cannot be denied or even curtailed. Accordingly, it is hereby ordered as under :

A. During his visits to Karachi, the petitioner shall have the temporary custody of the minor every Sunday from 10:00 am to 05:00 pm ;

B. The petitioner shall intimate the schedule / dates of his visits in writing to the respondent and her learned counsel at least fifteen (15) days prior to his visits, and the respondent shall ensure that the minor is available in Karachi on every Sunday during his visits ;

C. The petitioner shall be responsible to pick the minor from the house of the respondent and also to drop her back at her house ;

D. The minor shall not be removed by the petitioner from the territorial limits of Karachi ;

E. During his visits to Karachi and before picking up the minor for the first time in each such visit, the petitioner shall deposit his original passport with the Nazir of this Court which shall be returned to him by the Nazir, without any further orders of this Court, after the last Sunday of each such visit ;

F. The petitioner may at his expense take the minor with him to USA temporarily on short visits of not more than fifteen (15) days only during her vacations, but not earlier than six (06) months from the date of this order, and in such an event, shall inform the respondent and her learned counsel in writing at least sixty (60) days prior to the travel date ;

G. In case the respondent decides to accompany the minor on such temporary visits to USA or she voluntarily decides to take the minor to USA independently on her own (without the petitioner) for such temporary visits, the petitioner shall bear all her air travel and other allied expenses ; and,

H. At least three (03) months before the first visit of the respondent to USA, copies of the application made by the petitioner to the Court in Washington for the discharge of the respondent's arrest warrant and the order of discharge passed thereon shall be provided by him to the petitioner and her learned counsel.

6. The entire pros and cons regarding custodial dispute between the parties have been discussed and settled by leaned single bench already in the above order. The said order has been challenged by both the parties before the Supreme Court in CPLAs No.873/2024, 874/2024 and 1595/2024, which are pending and meanwhile no stay order has been granted.

7. The petitioner by means of prayer clause "a" is seeking reversal of the findings recorded by this court in the aforesaid order which admittedly another bench of this court (comprising me) has no authority to do so. The remaining prayers reproduced above are regarding custodial dispute between the parties and maintenance of the child.

8. Learned counsel for petitioner in his arguments has reiterated all the prayers and has stated that if this court permits him, he is ready to file an application under Guardian & Wards Act before the relevant family court at Karachi for permanent custody of the minor. Learned counsel representing respondent No.1 on the other hand has contended that this court has already held in the order dated 12.02.2024 that the family court at Pakistan in view of permanent residence of the minor at Washington, USA, has no jurisdiction and that very findings have been challenged by the petitioner before the Supreme court. In presence of such issue already pending before the Supreme Court, this court cannot proceed and make any observation, more so, when it amounts to reversing the findings recorded by this very court in earlier petition.

9. Apart from seeking directions for regulating custody of the minor, petitioner has claimed maintenance of the child in the petition. Irrespective of the offer of the counsel for respondent, who drew my attention to page 559 of the file which is a letter dated 02.05.2024 by the advocate of respondent No.1 offering to pay maintenance of the child to petitioner, provided she shares necessary and requisite details of her bank accounts at Karachi; I am of the view that this being the controversy involving facts cannot be determined in constitutional jurisdiction. Therefore, palpably asking for a relief of maintenance of the child in the constitutional jurisdiction is not maintainable.

10. Insofar as prayer clause "h" is concerned, i.e. to remove all missing child advertisements in relation to the minor published by the Seattle police department, USA, learned counsel for respondent No.1 has stated that these publications were made in the year 2018 and before at the time when petitioner had left USA without permission and consent of respondent No.1 and he had reported the matter to the police department, which got such advertisements published in various newspapers, therefore, he has got nothing to do with it and has no domain to get them removed from the record of police department, USA.

11. As for as prayer clause "j" is concerned, which is to enforce the agreement recorded in the order dated 18.03.2024 in C.P.No.S-2568/2017 entered into between the petitioner and respondent No.1, I am of the view that petitioner should file a proper application in the same petition seeking enforcement of the arrangement agreed by the parties at the time of hearing of aforesaid petition. To file a fresh petition over the same subject matter already dealt with in a previous petition is not maintainable.

12. This being the position, I do not find any merit in the instant petition and accordingly dismiss it alongwith pending applications.

JUDGE

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