Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-168 of 2025

[Shayan Zakaria Chottani vs.Mst. Ruqqayia Lehar]

Petitioner:	In person.
Respondent	Nemo
Date of Hearing:	06.03.2024
Date of Order:	06.03.2024

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ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition while challenging the judgment dated **31.01.2025**, passed by IIIrd Additional District Judge, Karachi [East] in Family Appeal No.89/2024, which was dismissed by maintaining the order dated **01.02.2024**, passed by XXIXth Family & Guardian Judge, Karachi [East] in Guardian & Ward Application No.4550/2022 under Section 25 of Guardian & Ward Act, 1890, has prayed as follows :

(a) To handover the custody of minor baby Zarwa Shayan to the petitioner being natural guardian.

(b) To enhance the meeting hours of petitioner with the minor passed by Learned trail court in judgment dated 01-02-2024 of G&W 4055/2022 under issue No. 2 point (a), (b) and (c) and grant overnight night stay of minor at petitioner house every week from Saturday till Sunday and grant 50% of both summer and winter vacations of the minor to be spent with the petitioner may kindly be increased by keeping in view the relationship of petitioner and minor and bonding between a father and daughter.

(c) To restrain the respondent to take custody of the baby Zarwa outside the jurisdiction of this Hon'ble Court.

(d) Any other/further/better relief (s) which this Hon'ble Court may deem fit and proper under the circumstances of the case.

2. Heard learned counsel for the petitioner. At the very outset, he was asked about maintainability of the present constitutional petition, however, he has not been able to satisfy the Court.

3. From perusal of the record, it reveals that the petitioner herein filed G&W Application No.4550/2022 under Section 25 of the Guardian and Wards Act, 1890, against the respondents for custody and meeting of the Baby Zarwa, which, vide order dated **01.02.2024**, was disposed of with the observations that *the appellant is not granted permanent*

custody of the minor at this time. However, visitation rights, which are the applicant's fundamental right, are provided ***[terms and conditions settled as (a) to (j)]*** *to him to establish a relationship with his daughter*. This order was appealed against in Guardian & Ward Appeal No.89/2024 before the IIIrd Additional District Judge Karachi East, which was dismissed by maintaining the order of the trail court, vide order of the appellate Court dated **31.01.2025,** which is impugned in the present constitution petition.

4. It may be observed that the constitution petition cannot be considered a substitute of second appeal against the order passed by first appellate court. Furthermore, learned counsel for the Petitioner could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant interference by this court in extra ordinary jurisdiction of High Court.

5. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

6. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice[1]. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided[2], and is

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[1] Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

[2] Shajar Islam v.Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v.Bibi Sara and others [2023 SCMR 413].

restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

7. Furthermore, the supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434] while dilatating scope of the constitutional jurisdiction of High Court has observed as under:

> 7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.

In view of the above observations and the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [supra], the present constitutional petition is dismissed in limine as being not maintainable.

JUDGE

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