

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.

Present:-
MR. Justice Muhammad Iqbal Kalhoro J.

C.P No.S-704 of 2024
(Syed Jaffar Ali Rizvi **vs.** Zainab Abbas & others)

07.08.2024

Mr. Ashfaq Hussain, Advocate for Petitioner
Syed Rashid Rizvi, Advocate for respondents
Mr. Miran Muhammad Shah, Addl: AG Sindh

ORDER

MUHAMMAD IQBAL KALHORO J: Petitioner, in an application under Section 25 Guardian & Ward Act, 1890 before the Family Court No.IX, Malir Karachi seeking permanent custody of his minor son (Syed Aliyan Ali Rizvi) from respondent No.1 (Zainab Abbas), her ex-wife, filed an application under Section 12 of *ibid* law praying for temporary custody of the minor plus visiting rights with him. This application was disposed of on 09.08.2023 in the terms whereby it was ordered that petitioner being a real father has a right to spend some time with minor/ward. 2nd and 4th Saturday of each calendar, month was fixed for the petitioner to see his minor son in the Court's premises from 10:00 a.m. to 11:30 a.m. against the cost of Rs.2000/- per meeting.

2. Applicant again filed a miscellaneous application seeking custody of his minor on the occasion of Eids. This application was allowed through an order on 19.04.2023, to the effect that on the 1st day of Eid-ul-Fitar from 12:00 midday 05:00 p.m., subject to surety of Rs.50,000/-, the custody of minor would be handed over to the petitioner through Nazir of the Court.

3. Then, petitioner went a step further and challenged the order dated 09.08.2023 before the learned District & Sessions Judge, Malir, Karachi allowing his meeting with the minor on every 2nd and 4th Saturday from 10:00 a.m. to 11:30 a.m. Appellate Court maintained that order, however, enhanced the meeting timing from 10:00 a.m. to 01:30 p.m. against the same cost of Rs.2000/-.

4. Through this petition, the petitioner has requested that temporary custody of minor may be handed over to him on every Sunday from 10:00 a.m. to 06:00 p.m. through the Court's Bailiff. Besides, on special occasions, like Eids, Birthdays, Aqiqa Ceremony, etc. he may be handed over to the petitioner. In addition, he has asked for custody of minor during vacations from 15.06.2024 to 30.06.2024 and from 15.07.2024 to

30.07.2024. Insofar as, the last prayer i.e. handing over the custody of the minor during vacations is concerned, it has already become infructuous on account of expiry of vacation.

5. The application for determining right of the petitioner to the permanent custody of the minor is pending before the Court for more than one year. It was informed during the arguments that not much progress has been made there and the parties are embroiled in moving miscellaneous applications only. All the applications filed by the petitioner before the Family Court seeking relief of temporary custody of the minor have ended in the orders mostly in his favour. The petitioner has not only been given a right to see his minor on 2nd and 04th Saturday of each month for a certain period but as a special arrangement, the custody of minor was ordered to be handed to him from 12:00 midday to 05:00 p.m. on Eid occasion. Again when, he filed appeal against the interim order u/s 12 of the Act, 1890, the appellate Court enhanced his visiting time from 11:30 a.m. to 01:30 p.m.

6. Now he has filed this application seeking custody of the minor to be handed over to him on each Sunday from 12:00 noon to 05:00 p.m. There is nothing on the record to show that before filing this petition directly here with such a request, the petitioner filed any application before Family Judge, where the case is pending, making the same request. In absence of any order rejecting such application by the Family Court, this petition does not seem to be maintainable for such a relief. Furthermore, against the interim order, being impugned here, it is settled that constitution petition would not be maintainable. The arrangement approved by the Family Court regarding visiting rights of the petitioner with his minor son is interim in nature and is likely to be merged with the final order of the Court determining rights of the parties to the permanent custody of the minor.

7. I also find that even on merit when the case is pending before the Family Court, the order, sought here, will militate against concept of interim custody and therefore cannot be passed. In my view, instead of passing such directions, it would be in the interest of justice to direct the Family Court to expedite the process of trial and conclude it within a period of three (03) months. With such observations, this petition is dismissed along with pending application(s).

J U D G E

Rafiq/P.A.