

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.S-146 of 2025 along with
C.P.No.S-147 of 2025

Date	Order with Signature of Judge
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Awais ul Haq *Petitioner*

Versus

Rabia Akhter and others..... *Respondents*

Date of hearing :15.04.2025

Date of announcement of judgment :25.04.2025

Mr. Muhammad Usman, Advocate for the Petitioner.
Respondent No.1 Rabia Akhter, present in person.

JUDGEMENT

MUHAMMAD JAFFER RAZA,J; - Instant petitions have been filed by the learned counsel for the Petitioner being aggrieved and dissatisfied with Impugned Order dated 07.01.2025 passed in G & W Appeal Nos.86 & 87 of 2024.

2. Succinctly stated, Guardian & Wards Application No.1272 of 2022 was filed by the Respondent No.1 under Section 7 & 10 of ‘The Guardian & Wards Act, 1890’ (“**Act**”). Thereafter, Guardian & Wards Application No.1731 of 2022 was preferred by the Petitioner under Section 25 of the Act. Both the applications were adjudicated communally and consolidated judgment was passed by the learned Family Judge dated 15.04.2024 in the terms reproduced below: -

- a) *The Respondent shall be entitled for the custody of minor on the occasion of his own and minor birthday.*
- b) *The Respondent shall be entitled for the custody of minor for one day on both Eid occasions, first, second or third day shall be decided with mutual consent of parties.*
- c) *The Respondent shall be entitled for the custody of minor on the occasion of marriages and funeral ceremonies of paternal uncles, aunts and grand-parent.*

- d) *The Respondent shall be entitled for the custody of minor half of the summer and winter vacation with the mutual consent of both the parties either to avail first or second half of such vacations.*
- e) *The Respondent is entitled for the custody of minor on 1st Saturday of each month from 10.00 A.M. to 02.00 P.M. in court premises subject to conveyance charges Rs.1000/-*

Issue No.3.

In view of discussion in issue No.1 & 2. Since permanent custody of minor has been decided to remain with applicant, therefore, applicant/mother is appointed as guardian of minor's person namely Mirba Fatima. She authorized to get issue educational and other documents from authorities for the purpose of welfare of minor. Hence I answered this point as affirmative. Let the guardianship certificate be issued for the person of minor. However the applicant is strictly follow the conditions mentioned as under:-

- a) *The applicant shall produce the minor after every three years or when required by the Court in order to show that the welfare and upbringing of the minor is being carried on.*
- b) *The applicant shall provide the current address of her residence as well as contact number wherever she lives along with minor.*
- Let such guardianship certificate be issued in favor of the applicant subject to executing PR bond in the sum of Rs.20,00,000/-."*

3. Thereafter, learned counsel for the Petitioner filed Family Appeal No.86/2024 and 87/2024 respectively, impugning the consolidated judgment mentioned above. The said appeals were dismissed vide consolidated Impugned Order dated 07.01.2025. It is pertinent at this juncture to note that the Respondent did not prefer any appeal against the consolidated judgment passed by the learned Family Judge dated 15.04.2024.

4. Learned counsel for the Petitioner has argued that the learned Family Court and Appellate Court have erred in their findings while his case for permanent custody under Section 25 of the Act has been dismissed and only visitation has been granted to the Petitioner. He has stated that albeit the fact that the minor is under six (06) years old, he has the ability to take care of the minor and welfare of the minor vests with him. He has further argued that the visitation schedule made by the Court in the consolidated Impugned order is not appropriate or sufficient to develop a relationship with the minor. He has further stated that for every meeting he comes from Lahore where he permanently resides.

5. In respect of the Respondent's application under Section 7 & 10 of the Act, learned counsel has stated that the said order granting guardianship of the minor has been granted without appreciating the evidence, which has been led by the respective parties. Learned counsel has stated that the said certificate could not have been granted to the Respondent to his exclusion, as the Petitioner being father of the minor is a fit and proper guardian within the meaning of the Act. Learned counsel has further argued that affidavit of certain witnesses were submitted by the Respondent, however such witnesses were never produced by the Respondent for cross-examination. Learned counsel states that he desires to cross-examine the said witnesses, which according to him, would be detrimental to the case of the Respondent vis-a-vis granting of guardianship certificate in her favour. Lastly, the learned counsel argued that he is not aggrieved with the grant of such certificate. However, he fears that the said certificate may be used by the Respondent to remove the child from the jurisdiction of this court, an application for which has already been preferred by the Respondent and is pending adjudication. Learned counsel for the Petitioner has placed reliance on the following judgments: -

- **Ms. Shazia Akbar Ghalzai and another vs. Additional District Judge, Islamabad (East) and two others¹**
- **Ganj Bibi vs. Muhammad Younas and another²**
- **Bushra Asghar vs. Dr. Rehmat Ali and 3 others³**
- **Mst. Samreen Mannan Qureshi vs. Shahid Azhar Siddiqui and 2 others⁴**
- **Muhammad Sadiq Butt vs. Mst. Khalida Parveen⁵**
- **Mst. Sultana Begum-Appellant vs. Muhammad Shafi⁶**

6. Conversely, the Respondent who appeared in person, has argued that the impugned consolidated orders from the courts below are sound and in the best

¹ 2021 MLD 817

² 2011 CLC 1062

³ 2012 MLD 1755

⁴ C.P.No.S-33/2006 (High Court of Sindh, Karachi)

⁵ PLD 1967 Karachi 645

⁶ PLD 1965 (W.P) Karachi 416

interest of the minor. She has very categorically stated that she is not aggrieved with the visitation schedule permitted by the Family Court. She has also categorically stated that she desires the minor to have a fruitful relationship with the Petitioner/father as the same is important for her mental and emotional well-being. She has further stated that she is the biological mother of the minor and therefore, it is in the best of the minor to be looked after by her. She has further argued that the certificate has only been granted for educational purposes and for obtaining day-to-day documents from relevant authorities, which are essential for the welfare of the minor. She has stated that in the absence of such certificate she will be beholden and entirely dependent on the whims and wishes of the Petitioner, who may withhold consent at crucial junctures and the same may prove to be detrimental for the minor. She has stated that the relationship between the Respondent and Petitioner is acrimonious to say the least and she does not wish to engage and squabble with the Petitioner pertaining to the day-to-day affairs of the minor. She has further stated that the G & W Certificate has been granted by the learned Family Judge keeping in mind the practical implications of its denial. Lastly, she has argued that personal grudges between the parties should not affect the minor and the fact that the Petitioner has contracted second marriage and paid nominal maintenance does not bode well with her. She further submits in this regard that she is a working woman, who supports the minor almost entirely to the exclusion of the Petitioner.

7. I have heard the learned counsel for the Petitioner as well as Respondent No.1, who as noted above appears in person and have also perused the record. The limited scope of writ petitions in family matters has already been discussed and expounded in the following judgments: -

- *M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others*⁷
- *Mst. Tayyeba Ambareen and another vs. Shafqat Ali Kiyani and another*⁸
- *Muhammad Shamim Ali Versus Mst. Asma Begum and others*⁹

⁷ 2023 SCMR 1434

⁸ 2023 SCMR 246

8. It was held in the case of **M. Hamad Hasan** (supra) as under: -

“6. The objective of Article 199 of the Constitution is to foster justice, protect rights and correct any wrongs, for which, it empowers the High Court to rectify wrongful or excessive exercise of jurisdiction by lower courts and address procedural illegality or irregularity that may have prejudiced a case. However, it is emphasized that the High Court, in its capacity under Article 199, lacks the jurisdiction to re-examine or reconsider the facts of a case already decided by lower courts. Its role is limited to correcting jurisdictional errors and procedural improprieties, ensuring the proper administration of justice. In the present case, the Petitioner pursued his case through the family court and its appeal in the district court and then also invoked the High Court's constitutional jurisdiction to reargue his case amounting to a wrongful exercise of jurisdiction whereby the High Court upheld the factual findings of appellate court after making its own assessments on the same. Allowing a re-argument of the case constituted to arguing a second appeal which should not have been entertained regardless of the outcome of the case.”

9. The proposition delineated above in the case of **M. Hamad Hasan** (supra) was further expounded in the case of **Muhammad Shamim Ali** (supra) in the following words: -

9. Since the legislature has conferred exclusive jurisdiction upon the Family Courts, by virtue of section 5 of the Family Act, to expedite family cases and tried to cordon off family litigation to the extent of a single family appeal, it would not reflect well on a Constitutional Court to interfere with the exclusive jurisdiction of the Family Courts under the Writ Jurisdiction as provided under Article 199 of the Constitution, unless the jurisdiction exercised by the Family Courts was contrary to law and/or findings reached in exercise of said jurisdiction are perverse and without proper appreciation of evidence that non-interference would lead to a grave miscarriage of justice or for that matter injustice.

10. It is a settled proposition of law, that the right of appeal under the Family Courts Act 1964 (**“Act”**) is a statutory creation and does not provide for two opportunities of appeal. The entire scheme of the law in family matters hints towards an expeditious disposal of cases. If the scope of Article 199 of the constitution is expanded to reevaluating facts, then the same will open floodgates to never ending litigation, potentially to the detriment of the minors. Therefore,

⁹ 2024 SCMR 1642

the scope of Article 199 is restricted to rectification of wrongful and excessive exercise of jurisdiction.

11. The primary consideration before this Court exercising parental jurisdiction is the welfare of the minor. The same is an all-encompassing concept, which includes but is not restricted to the physical, mental and emotional well-being of the minor.

12. It is evident that the minor is residing with the Respondent ever since the parties separated from the matrimonial bond. I do not consider permanent custody of the minor, to be handed over to the Petitioner, to be in the best interest of the minor. This is especially considering that the female minor is under the age of six (06) and the Petitioner is a permanent resident of Lahore. The visitation schedule arrived by the courts below is sufficient for the minor to develop a lasting bond with the Petitioner. Moreover, the Respondent has candidly stated that she is willing to extend the frequency and duration of the said visitation schedule, subject to the Petitioner making meaningful attempts to develop a bond with the minor. No evidence has been led by the Petitioner as to disentitle the Respondent from the permanent custody of the minor or the guardianship certificate granted by the learned Family judge.

13. It is held that the grant of such certificate is not specifically to the exclusion of the Petitioner as the said certificate is granted for the purposes listed in the Impugned Orders and is necessary for conducting the day-to-day affairs of the minor. In that respect the judgements relied upon by the counsel for the Petitioner are not relevant to the case at hand. The absence or deprivation of the said certificate would only entail the parties continuing in an acrimonious and hostile communication, which would only lead to a situation in which the environment around the minor will be toxic. It has already been noted above that the counsel for the Petitioner during the course of arguments conceded that he has no cavil if the Respondent is granted the said certificate, however his fears were augmented after the Respondent filed an application for removal of the minor from jurisdiction. In that regard it is observed that the application referred to above, is

not the subject matter of the instant petition and the same may be adjudicated by the learned Family judge in accordance with law, keeping in mind the welfare of the minor.

In the light of what has been held above, the instant petitions are devoid of merit. No case for interference has been made out. The listed petitions are dismissed with no order as to cost.

Judge

Nadeem