

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt. Petition No. S- 131 of 2022.

Date of hearing	Order with signature of Judge
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14.07.2022.

1. For orders on office objections.
2. For hearing of main case.

Mr. Waheed Ahmed Shaikh, Advocate for petitioner.
Mr. Abdullah Kehar, Advocate for respondent No.1.
Mr. Abdul Hamid Bhurgri, Addl. A.G.

Primarily, this petition is filed by the petitioner to issue a writ of certiorari by setting aside the order dated 26.2.2022 passed by the learned Civil and Family Judge, Lakhi Ghulam Shah, District Shikarpur.

Today minor daughter of the petitioner, namely Baby Pakeeza has been brought before this Court by the respondent-father, who is the natural guardian. During the arguments, it is admitted that both the couples after the dissolution of their marriage have contracted second marriage and the matter for the permanent custody of the minor is pending before the learned Guardian and Wards Court.

Learned counsel for the respondent-father has opposed this petition on the ground that in the custody matters the only Guardian and Wards Court has jurisdiction to regulate the custody of the minor; that the purpose of filing of this petition is achieved as the minor baby Pakeeza has been produced before this Court and now it is for the learned trial Court to decide permanent custody of minor in this regard. He asserted that the petitioner has failed to show that she was/ is in such a position to take care of her minor daughter after contracting second marriage with the same zeal and affection as that of a father.

Admittedly, the minor baby Pakeeza would require constant care; indeed, the petitioner-mother has developed an emotional attachment with the minor child and the issue of welfare of the minor has to be set at naught by the learned Guardian and Wards Court. It is well-settled law that paramount consideration while deciding the

question of custody of the minor is the welfare of the minor irrespective of age, sex, and religion.

Primarily, welfare includes his/ her moral, spiritual, and material wellbeing. While considering what is the welfare of the minor, the Court shall have regard to the age, sex, religion of the minor, the character and capacity of the proposed guardian, his/ her nearness of kin to the minor, and the preference of the minor if he or she is intelligent enough to make it.

Primarily, in the cases, concerning the custody of a child, this Court is not required to go into the intricacies/ technicalities of the matter in constitutional jurisdiction and should confine its findings to the extent of the welfare of the child/ minor which is a paramount consideration and it is for the learned Guardian and Wards Court to take appropriate measures in this regard by deciding the issue of permanent custody of the minor.

In principle, in the cases, concerning the custody of a child, the learned Family Court is not required to go into the intricacies/ technicalities of the matter and confine its findings to the extent of the welfare of the child/ minor, which is a paramount consideration.

The controversy as raised by the parties needs to be looked into by the learned Guardian and Wards Court concerned for the custody of the minor, as the parties have already approached the learned Guardian and Wards Court and the decision thereof shall be made within a month time, keeping in view the welfare of minor strictly under law.

In the light of the facts and circumstances mentioned above, by consent of the parties, the instant petition stands disposed of in the above terms. Let a copy of this order be communicated to the learned trial Court through the learned Sessions Judge concerned.

Judge