

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.S-567 of 2025
(Mst Maria Zakir v.s Khawaja Nabeel Ahmed & another)

| | |
|------|-------------------------------|
| Date | Order with signature of Judge |
|------|-------------------------------|

Date of hearing and order:- 02.02.2026

Ms. Nosheen Khan Tajjammul, advocate for the petitioner
Mr. Ashfaque Ahmed, advocate for respondent No.1
Mr. Ali Safdar Depar AAG

ORDER

Adnan-ul-Karim Memon, J. – The petitioner has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer:-

- a. *“Modify the schedule of the meeting as per the order dated 14.09.2024, allow the minor to move with his mother (Petitioner) abroad.*
- b. *Pass order and modify the order dated 14.09.2025 to the extent of stay of minor with his stepmother at the residence of the respondent No.1 during visitation/meeting, i.e., 1st and 3rd Friday to Sunday evening of every month, Summer Vacation from first Sunday to fourth Sunday of June, on occasion of Eid-ul-Fitar and Eid-ul-Adha.*
- c. *Suspend the impugned order dated 14.09.2024 to the extent of stay of the minor with his stepmother at resident of the respondent during visitation/meeting till disposal of this petition.”*

2. Learned counsel for the petitioner submits that the petitioner is the real mother of minor Khwaja Moiz Ahmed Siddiqui and has been solely looking after his upbringing, education, health, and welfare since the divorce in 2021. It is contended that the respondent-father failed to properly maintain the minor and created repeated hurdles in the issuance of the minor’s passport and other documentation. However, the petitioner proceeded abroad only to secure better employment opportunities for the welfare and future of the minor and not with any mala fide intention to deprive the respondent of visitation rights. It is argued that the impugned order dated 14.09.2024, though dismissing the respondent’s application for permanent custody, unjustly restrained the minor from traveling with his mother and allowed overnight stays at the respondent’s residence, where the minor is exposed to the respondent’s second wife, who is apathetic. Learned counsel submits that such overnight stays are against the welfare of the minor, who is being emotionally manipulated and subjected to adverse influence against his mother. Learned counsel further contends that the learned Family Court failed to consider the paramount consideration of the welfare of the minor, hurriedly

passed the impugned order, and later dismissed the petitioner's application for modification without affording a proper hearing. It is prayed that the impugned order be modified to permit the minor to travel abroad with the petitioner and to restrict overnight visitation at the respondent's residence, while ensuring reasonable visitation rights for the respondent-father. She prayed to allow the petition.

3. Conversely, learned counsel for the respondent submits that the constitutional petition is not maintainable as the petitioner failed to avail the statutory remedy of appeal under Section 47 of the Guardian & Wards Act, 1890. It is argued that the petitioner approached this Court by concealing material facts, including her permanent relocation to the United Kingdom and repeated non-compliance with orders of the Guardian Court. Learned counsel contends that the petitioner has effectively abandoned physical custody of the minor by leaving him with maternal relatives, thereby disentitling herself to the benefit of *hizanat*. It is further submitted that due to the conduct of the petitioner and her family, the respondent has been unlawfully deprived of meeting his son for several months, causing emotional and psychological harm to the minor. The respondent's counsel asserts that he is the natural guardian, has regularly deposited maintenance before the trial court, and is fully capable of caring for the minor in a stable environment. It is argued that the respondent's second marriage is lawful and, in the absence of any concrete evidence of harm to the minor, cannot be a ground to restrict visitation or overnight custody. Learned counsel submits that permitting the minor to travel abroad would permanently alienate him from his father and defeat existing court orders. It is therefore prayed that the constitutional petition be dismissed, the impugned order dated 14.09.2024 be upheld, and appropriate directions be issued to ensure strict compliance with visitation and custody arrangements in the best interest of the minor.

4. I have heard the learned counsel for the parties at length and have carefully examined the pleadings, impugned order dated 14.09.2024, and the relevant law governing custody and visitation of minors.

5. At the outset, it is well settled that although an alternate statutory remedy under Section 47 of the Guardian & Wards Act, 1890 is available, the constitutional jurisdiction under Article 199 of the Constitution is not absolutely barred where the impugned order is said to be passed in disregard of the paramount consideration of the welfare of the minor or where the order suffers from jurisdictional error or material irregularity. It is settled that technical objections cannot override the welfare of a child. The consistent and settled principle governing custody matters is that the welfare of the minor is the paramount consideration, superseding the legal rights of either parent. This

principle of law is that welfare includes not only physical comfort but also emotional, psychological, educational, and moral well-being of the minor.

6. In the present case, it is not disputed that the petitioner is the real mother of the minor and that the respondent's application for permanent custody was dismissed by the learned Guardian Court. The impugned order, however, while maintaining custody with the petitioner, restrained the minor from traveling with his mother and allowed overnight visitation at the respondent's residence. Such directions were passed without recording any clear finding that traveling abroad with the mother would be detrimental to the welfare of the minor. The law is settled that a mother cannot be restrained from taking the minor abroad merely on apprehensions, unless there is cogent material showing a real risk of permanent alienation or harm to the child. However, at the same time, the respondent-father, being the natural guardian, cannot be deprived of reasonable access and meaningful contact with the minor. The right of visitation is valuable, and denial thereof adversely affects the emotional development of the child. The Court must, therefore, strike a balance between facilitating the mother in providing better opportunities to the minor and safeguarding the father's right to maintain a bond with his child.

7. Regarding the respondent's second marriage, it is settled law that remarriage per se is not a disqualification for visitation or custody, unless it is shown through tangible evidence that the environment is harmful to the minor. However, overnight visitation arrangements, particularly where serious apprehensions regarding the mental and emotional well-being of the minor are raised, require careful judicial scrutiny by the trial Court and cannot be treated as routine. In such circumstances, the trial Court can issue certain stringent conditions if the mother intends to take the child abroad, including obtaining security bonds of two respectable citizens / or relatives of the mother.

8. In view of the above discussion, this Court is of the considered opinion that while the impugned order does not warrant outright interference in the exercise of constitutional jurisdiction, it does require modification to ensure that the welfare of the minor remains fully protected and that neither parent is unjustly prejudiced. Accordingly, the Constitutional Petition is disposed of with the following directions:

- 1. The petitioner shall be permitted to travel abroad with the minor, subject to furnishing an undertaking to strictly comply with the visitation schedule and to facilitate meaningful contact between the minor and the respondent-father through physical meetings during vacations and regular virtual interaction and other conditions so fixed by the trial Court.***

2. *The overnight visitation arrangement at the respondent's residence shall be revisited and regulated by the learned Guardian Court, keeping in view the age, comfort, and emotional well-being of the minor.*
3. *The respondent-father shall continue to enjoy reasonable visitation rights, which shall not be obstructed by the petitioner, subject to all just exceptions as provided under the law.*
4. *The learned Guardian Court shall remain at liberty to modify the visitation schedule in the future, if circumstances so require, strictly in accordance with the welfare of the minor.*

JUDGE