

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-374 of 2024

[Saniya Saleem v. Yahya Manzoor]

Petitioner: Through Zubaida K. Jamali and M/s. Ghulam Murtaza & Rab Nawaz Sargana, advocates.
Respondent Mr. Muhammad Ali Lakhani, Advocate.
Date of Hearing & order: 18.09.2025

ARSHAD HUSSAIN KHAN, J. Through the present petition, the petitioner/mother has called in question the order dated **19.02.2024** passed by the learned VIIth Additional District Judge (Model Civil Appellate Court), Karachi-South in Family Appeal No.14 of 2024, whereby the said appeal was disposed of with modification only to the extent of changing the venue of visitation from the residence of respondent No.1 to the family room within the court premises, as earlier directed by the learned Family Judge, Karachi-South in the order dated 16.01.2024, passed in G&W Case No.1456 of 2022. The present petition has been filed with the following prayers:

- a. *Wherefore, it is humbly prayed that this Honourable Court may be pleased to kindly modify the Order dated 19.02.2024 passed by the VIIth ADJ (Model Civil Appellate Court), Karachi (South).*
- b. *That the order dated 16.01.2024, passed by the family Judge (South) in G&W Application No.1456/2022 may be suspended.*
- c. *That the Petitioner is further praying that the meetings be suspended up till all the expenses to be paid by the Respondent No,1 which were already borne by the Petitioner, in the interest of minors' welfare.*
- d. *That the Respondent No.1 and his persons/men acting on behest may be restrained from harassment, through illegal orders obtained from family court by concealment of facts and misrepresentation.*
Cost of the proceedings may kindly be awarded.
Any other relief(s) found due to the petitioner may also kindly be granted.

2. Concisely, the relevant facts of the case are that respondent No.1, Yahya Manzoor, filed an application under Section 12 of the Guardian and Wards Act, 1890, seeking directions for the petitioner to allow him to meet the minors once a week within the court premises or

at some suitable place. The said application was disposed of by permitting respondent No.1 to meet the minors at his residence on a fixed schedule, subject to specific conditions. The petitioner challenged that order before the learned VIIth Additional District Judge (Model Civil Appellate Court), Karachi-South in Family Appeal No.14 of 2024. The learned appellate court disposed of the appeal with modification only to the extent of altering the venue of visitation from the house of respondent No.1 to the family room within the court premises, while maintaining the rest of the directions contained in the order passed by the learned Family Judge in G&W Case No.1456 of 2022. The petitioner, being aggrieved, has filed the instant constitutional petition.

3. It is, inter alia, contended by learned counsel for the petitioner that the impugned orders are erroneous, illegal, ultra vires, contrary to law, and suffer from serious irregularities. It is urged that the learned courts below have deprived the petitioner of her vested and absolute rights guaranteed under Article 4 of the Constitution of the Islamic Republic of Pakistan, 1973. It is further submitted that respondent No.1 is not paying proper maintenance for the minors and is only interested in causing mental agony to the petitioner. According to the learned counsel, respondent No.1 is a person of unstable mind, whose behavior is distressing and stressful, and such conduct is detrimental to the welfare of the minors. Lastly, he has prayed that the petition be allowed and the impugned orders passed by the courts below be set aside.

4. On the other hand, learned counsel for respondent No.1 has opposed the instant petition, submitting that both the courts below committed no illegality in granting visitation rights to him, and that the present petition has been filed by the petitioner only with the intention to deprive respondent No.1 of his lawful right to meet his minors daughters. He contends that respondent No.1, being the real father and natural guardian, has a legal and fundamental right to meet his minors daughters so that they may recognize him and develop love, affection, and emotional bonding with him. He further submits that Article 199 of the Constitution is not a substitute for an appeal, and the Supreme Court of Pakistan has repeatedly deprecated the tendency of litigants to invoke Article 199 in such matters. It is urged that nothing on record

demonstrates that the welfare of the minors has been disregarded by the courts below. Learned counsel also points out that respondent No.1 has deposited maintenance for the minors up to the month of August 2025, and, therefore, cannot be deprived of his right of visitation on this ground. He accordingly prays for dismissal of the petition.

5. I have heard learned counsel for the parties and perused the material available on the record with their assistance.

A perusal of the record shows that the respondent contracted marriage with the petitioner on 24.10.2021, and from the said wedlock, twin daughters were born on 22.07.2022. Due to irreconcilable differences, the respondent filed Guardian & Wards Case No.1456 of 2022, seeking visitation rights. Initially, visitation was allowed twice a month within the court premises, vide order dated 31.08.2022, and the meetings were conducted regularly, including on special occasions such as Eid.

Subsequently, in November 2023, the respondent filed an application seeking enhancement of visitation, citing the growing age of the minors. The petitioner opposed the application, raising concerns about the safety and environment at the respondent's residence. After hearing both parties, the learned Family Court, through order dated 16.01.2024, allowed enhanced visitation at the respondent's residence on specified dates and times, but imposed strict conditions to ensure the welfare of the minors, including the presence of a court bailiff, limitations on interaction with the respondent's second wife, and procedural safeguards such as submission of identity documents and payment of bailiff fees by the respondent.

6. The petitioner, feeling aggrieved by the aforesaid order of the learned Family Judge, preferred Family Appeal No.14 of 2024 before the learned VIIth Additional District Judge (Model Civil Appellate Court), Karachi-South. The learned appellate court, while keeping in view the reservations expressed by the petitioner regarding meetings at the residence of respondent No.1, modified the order only to the extent that the venue of visitation be shifted from the residence of respondent No.1 to the court premises while maintaining the enhanced visitation schedule, vide order dated **19.02.2024**.

7. The petitioner has challenged the aforesaid orders through the present petition, mainly contending that since the respondent has failed to provide maintenance for the minor, he is not entitled to exercise visitation rights.

8. It may be observed that the father's right of visitation and his obligation to pay maintenance are two distinct legal concepts. While the duty to provide maintenance is mandatory and enforceable under law, the right of visitation emanates from the natural bond of parenthood, and is always subject to the paramount consideration of the welfare of the minor children. Therefore, mere non-payment of maintenance alone does not, by itself, disentitle a father from exercising visitation rights, unless it is affirmatively shown that such contact would be detrimental to the welfare and best interests of the minors. However, persistent non-payment of maintenance can lead to negative consequences in custody proceedings.

9. Insofar as the question of maintenance is concerned, it appears that a family suit for recovery of maintenance and medical expenses was instituted by the petitioner. According to learned counsel for respondent No.1, the said suit was dismissed for non-prosecution on 04.12.2024 and had not been restored up to 05.05.2025. Notwithstanding this fact, respondent No.1 continued to make payments of maintenance before the Family Court/Nazir of the District Court. He has also placed on record certified copies of payment receipts along with a statement dated 04.09.2025 filed in Family Suit No.365 of 2024, which is available on the record of this Court. Such conduct on the part of respondent No.1/father towards discharging his obligation of monthly maintenance demonstrates his affection and concern for the welfare of his minor daughters.

10. Besides above, it may also be observed that the minors/daughters would not only need love, affection, care and attention of their mother but also the company and guiding hand of father. Therefore, negating father of his right to meet his daughters would lead to emotional deprivation. Furthermore, the father has constructive custody over the child and if the mother who has physical custody precluded the father from accessing the child, it would be deemed as removing the child from the constructive custody of the

father and a ground for reconsidering custody given to the mother. Admittedly, splitting up of parents is a source of severe anguish for a child and it is in the best interest of the child to grow up in a manner that both parents are involved in his/her upbringing and he/she has the opportunity to develop a normal healthy relationship with both parents, whether it is a case of shared custody or where one parent has custody over the child and the other has visitation rights¹. Hence, both the courts below have rightly chalked out reasonable visitations/meetings schedule of the minors with the father, which does not require any interference by this Court.

11. Moreover, 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 injustice². 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 provided³, and is 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.

12. In view of the above discussion, the findings recorded by both the courts below are well-reasoned and based on cogent grounds. No material irregularity and illegality has been pointed out. Consequently, this petition stands dismissed along with all pending applications.

JUDGE

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¹ Chiragh Bibi v. Khadim Hussain [PLD 1967 Lahore 382]

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

³ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].