

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

**[C.P. No.S-695 of 2025**  
**(Mst. Zahida Mumtaz v. Mst. Hina Shah)**

Petitioner: Mst. Zahida Mumtaz through Mr. Aqeel Ahmed Siddiqui, Advocate.

Respondent: Mst. Hina Shah through Mr. Khuwaja Azizullah, Advocate.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh.

Date hearing: 18.02.2026.

Date of Judgment: 18.02.2026.

**JUDGMENT**

**RIAZAT ALI SAHAR, J:** - The petitioner, being aggrieved by the judgment dated 27.05.2025 passed by the learned Guardian/Family Judge-II, Hyderabad and the appellate order dated 28.08.2025 passed by the learned VI-Additional Sessions Judge, Hyderabad, has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Through the impugned judgment, the Guardian Court dismissed the application filed by the petitioner seeking declaration of guardianship and custody of minor Azlan Waleed, whereas the subsequent guardian appeal preferred by the petitioner was dismissed on the ground of limitation. The petitioner prays as under:-

- a) That That, this Honourable court may be pleased to declare the order dated 28.08.2025 passed by learned VI-Additional Sessions Judge Hyderabad on Guardian Appeal No.20 of 2025 (Re: Mst. Zahida Mumtaz Vs. Mst. Hina Shah) whereby appeal of the petitioner was dismissed being time barred and the Judgment dated 27.05.2025 passed by the learned Guardian/family Judge, Hyderabad in Guardian & Wards Application No.97 of 2025 (Re-Mst. Zahida Mumtaz V/s Mst. Hina Shah), whereby dismissing the Guardian & Wards application of petitioner/appellant without reading of the evidence, and documentary evidence produce by the petitioner/Appellant as null, void, abinitio, unlawful, without justification and same may set aside.

- b)** Any other relief which this Honourable court deems fit and proper may be awarded to the petitioner.

**2.** Briefly, the case of the petitioner before the trial Court was that the respondent, being the biological mother of the minor, had executed an adoption deed dated 21.08.2020 prior to the birth of the child and allegedly handed over custody of the minor to the petitioner soon after birth on 27.08.2020. It was further asserted that the petitioner had incurred medical and other expenses relating to the birth of the child and had maintained custody of the minor for approximately eight months, during which period the minor developed emotional attachment with her. It was also the case of the petitioner that the respondent subsequently retrieved custody of the minor through proceedings under section 491 Cr.P.C. and thereafter refused to return the minor despite the earlier arrangement. The petitioner claimed that the respondent lacked financial capacity and proper conduct to raise the child, whereas the petitioner was financially stable and capable of providing better upbringing.

**3.** Upon remand by the appellate Court in earlier proceedings, the trial Court re-examined the matter and, after considering the record, dismissed the application holding that the welfare of the minor lies with the biological mother. The Court further held that the alleged adoption deed, executed prior to birth, had no legal sanctity under Muslim Personal Law and could not confer any enforceable right of custody or guardianship. The petitioner thereafter preferred a guardian appeal, which was dismissed as time-barred by the appellate Court, observing that no sufficient cause was shown for condonation of delay and that valuable rights had accrued to the respondent.

**4.** Learned counsel for the petitioner contended that both the Courts below have failed to properly appreciate the material evidence available on record, particularly the adoption deed dated 21.08.2020, which, according to him, clearly established that the custody of the minor was voluntarily handed over to the petitioner. He contended that the minor remained in the custody of the petitioner since birth for a substantial period, during which a strong emotional bond was developed and such factor has been ignored in a mechanical manner. He further contended that the respondent is not in a position to

properly maintain and nurture the minor, as she lacks financial stability and has failed to provide adequate care in the past. He further contended that the petitioner, on the other hand, has been providing all necessities of life including medical care, clothing and overall upbringing and thus the welfare of the minor squarely lies with the petitioner. Learned counsel also contended that the impugned judgments suffer from misreading and non-reading of evidence, as the trial Court failed to consider the conduct of the respondent, including the alleged demand of money and subsequent retrieval of custody through legal proceedings. He contended that such conduct disentitles the respondent from retaining custody of the minor. He further contended that the appellate Court erred in dismissing the appeal on technical grounds of limitation without examining the merits of the case, thereby causing grave miscarriage of justice. According to him, the delay was neither intentional nor deliberate and deserved to be condoned in the interest of justice, particularly in a matter involving welfare of a minor.

**5.** Conversely, learned counsel for the respondent supported the impugned judgments and contended that the petitioner has no legal right whatsoever to claim custody or guardianship of the minor, who is admittedly the biological child of the respondent. He contended that under Muslim Personal Law, adoption does not create any legal relationship affecting parentage and therefore the so-called adoption deed is void and ineffective. He further contended that the paramount consideration in custody matters is the welfare of the minor and the Courts below have rightly concluded that such welfare lies with the biological mother, who is the natural guardian and entitled to Hizanat. He contended that the minor has been residing with the respondent and any disturbance in such custody would adversely affect the emotional and psychological well-being of the child. Learned counsel also contended that the petitioner has failed to produce any cogent or convincing evidence to establish that the minor is being neglected or that his safety is at risk in the custody of the respondent and mere allegations regarding financial incapacity or conduct are not sufficient to displace the legal and natural right of the mother. Regarding the dismissal of appeal, learned counsel contended that the appellate Court has rightly applied settled principles of law requiring strict explanation of each day's delay and in absence of sufficient cause, the appeal was

rightly dismissed. He further contended that the petitioner cannot seek indulgence of this Court after having failed to avail the statutory remedy within prescribed time; hence, he prayed for dismissal of instant petition.

**6.** Learned A.A.G. Sindh supported the impugned orders and submitted that no jurisdictional defect or illegality has been pointed out warranting interference in constitutional jurisdiction.

**7.** After hearing the learned counsel for the parties and perusing the available record, it is evident that the controversy revolves around the custody and guardianship of a minor, wherein the paramount consideration, as consistently held by superior Courts, is the welfare and best interest of the child. The learned trial Court has addressed this core principle in detail and has recorded a categorical finding that the welfare of the minor lies with the biological mother. The reasoning of the trial Court is firmly grounded in settled principles of law. It has rightly observed that the alleged adoption deed, having been executed even prior to the birth of the minor, is devoid of legal sanctity and cannot confer any enforceable right upon the petitioner. Under Muslim Personal Law, adoption does not create legal parentage, nor does it displace the natural rights of the biological parents. Therefore, the petitioner's claim, being primarily based on such document, was rightly discarded. Furthermore, the trial Court has specifically held that there is no evidence on record to suggest that the minor is being neglected, ill-treated, or exposed to any danger in the custody of the respondent. In absence of such evidence, the Court was justified in not disturbing the custody of the biological mother. The findings recorded are neither arbitrary nor perverse but are based on proper appreciation of evidence.

**8.** As per the doctrine of Hizanat, the mother is recognized as the most suitable guardian of a minor child, especially at a tender age. It is settled position that the welfare of the minor overrides all other considerations and even technicalities of law. The observation that the mother's right of custody cannot be defeated merely on the basis of an agreement, being void ab initio, further strengthens the conclusion reached by the trial Court. As regards the appellate order, it is an admitted position that the appeal was filed with delay of about two

months. The appellate Court has correctly applied the settled principle that each day of delay must be satisfactorily explained. No plausible cause has been demonstrated by the petitioner, and therefore, dismissal of the appeal on the ground of limitation does not suffer from any legal infirmity.

**9.** It is also a settled proposition of law that constitutional jurisdiction under Article 199 is limited in scope and cannot be invoked as a substitute for appeal or revision. Interference is warranted only where there is patent illegality, jurisdictional defect, or violation of law resulting in miscarriage of justice. In the present case, no such illegality or perversity has been pointed out. The findings of both Courts below are concurrent, well-reasoned and based on proper appreciation of law and facts. The petitioner has essentially sought re-appraisal of evidence, which is not permissible in writ jurisdiction. This Court cannot substitute its own findings in place of those recorded by the competent Courts, particularly when such findings are neither arbitrary nor unsupported by record.

**10.** For what has been discussed above, it is held that the petitioner has failed to make out any case for interference in the constitutional jurisdiction of this Court. The impugned judgment dated 27.05.2025 and the order dated 28.08.2025 are found to be legal, proper and in accordance with settled principles governing custody of minors. Consequently, the instant constitutional petition, being devoid of merit, is hereby **dismissed** along with pending application, with no order as to costs.

**11.** These are the reasons for my **short order dated 18.02.2026.**

JUDGE