

THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C.P No. S-224 of 2025

[Nadeem Khan Vs. Mst. Amna Jessar and others]

Petitioner : Through Mr. Ishrat Ali Abro, Advocate

Respondent No.1 : Nemo

Respondents No.2 & 3 : Through Mr. Amjad Hussain Balhro,
Assistant Advocate General, Sindh

Date of Hearing : **26-10-2026**

Date of Order : **26-10-2026**

O R D E R

ARBAB ALI HAKRO, J:- Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, who is the father of four minors, challenges the order dated 19.09.2024 passed by the learned Civil/Family Judge-I, K.N. Shah (hereinafter referred to as '**the trial court**') in Guardianship Application No.10 of 2024, and the judgment dated 21.05.2025 (**the impugned judgment**) passed by the learned Additional District Judge-IV, Dadu (hereinafter referred to as '**the appellate court**') in Family Appeal No.14 of 2024. By these decisions, his application under Sections 7, 10 and 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as '**the Act of 1890**') for the custody of the minors Sagheer Hussain, Mehrul Nisa, Ume Hadibya and Ume Rida (**the minors**) was dismissed, and the dismissal was maintained in appeal.

2. The petitioner and respondent No.1 were married in 2007, and the four minors were born of that wedlock. The marriage was later dissolved at the instance of respondent No.1 through the Family Court, and since the separation, the minors have lived with her. In his application, the petitioner pleaded that he is the natural guardian; that respondent No.1, being a divorced woman, could not maintain the minors; that the eldest, Sagheer Hussain, suffers from "*jhatka*" and was not being looked after; that

respondent No.1 and her mother were residing with one Zafar Ali Seelro, and that she was not allowing him to meet the minors.¹

3. Respondent No. 1 resisted the application. She contended that it was filed only after she sued for maintenance and to pressurize her; that the petitioner provides no maintenance; that she lives with her parent, not with Zafar Ali; and that she has not remarried and has devoted herself to the minors.²

4. Issues were framed, evidence was recorded, and the application was dismissed. The appeal under section 47 of the Act of 1890 met the same fate. Hence this petition.

5. Notice was issued to the respondents. Respondent No.1 engaged counsel, who filed his Vakalatnama on 19.09.2025, but no one has appeared on her behalf today. The matter concerns the welfare of minors and has been pending since July 2025; it has therefore been heard and is being decided on the record available.

6. Learned counsel for the petitioner contended that the petitioner, being the father, is the natural guardian and entitled to the custody of the minors; that Sagheer Hussain is mentally and physically unwell and requires care that respondent No.1 cannot provide; that respondent No.1 remains out of the house due to a private job and has no adequate source of income; that she resides with a person who is a stranger to the minors; and that both the courts below failed to appreciate the evidence and the welfare of the minors.

7. Learned A.A.G. supported the impugned decisions.

8. The only question is whether the concurrent decision of the courts below, that the welfare of the minors lies in their remaining with their mother, suffers from any jurisdictional defect, misapplication of law, or misreading or non-reading of evidence that would justify interference under Article 199 of the Constitution.

¹ Annexure 'A' at pages 17 to 21 of the paper book.

² Annexure 'B' at pages 23 to 25 of the paper book.

9. Against the judgment of the appellate court no further appeal or revision lies and the scope of this Court's jurisdiction is supervisory, not appellate. The Supreme Court has held that "*In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear.*"³ The principle has since been reaffirmed.⁴ In custody matters in particular, it has been held as follows:

*"As a general rule the guardian and family court is the final arbiter for determining the question of custody, except when it has made a determination in an arbitrary, capricious or fanciful manner i.e. when the fundamental principle of welfare of the child has not been considered or determined in the light of the variables which are relevant in the given circumstances."*⁵

10. The inquiry here is therefore confined to whether the courts below decided the question of custody on the touchstone of welfare and in accordance with the correct principles of law, rather than whether this Court would have taken a different view of the evidence.

11. Section 17(1) of the Act of 1890 requires the Court to be "guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor." Sub-section (2) directs regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian, nearness of kin and the existing relations of the proposed guardian with the minor, while sub-section (3) provides that "If the minor is old enough to form an intelligent preference, the Court may consider that preference." Section 25 likewise permits an order for the return of a ward to the guardian only where the Court is of the opinion that it will be for the welfare of the ward. Under the personal law of the parties, the mother is entitled to the custody (*hizanat*) of a boy until he completes seven years and of a girl until she attains puberty and the father is the natural guardian with a preferential right of custody thereafter. That preferential right is not absolute. The Supreme Court has held that "*Although it is an*

³ *M. Hamad Hassan v. Mst. Isma Bukhari and others* 2023 SCMR 1434

⁴ *Shafqat Ali v. Mst. Zaib un Nisa and others* 2026 SCMR 494

⁵ *Shaista Habib v. Muhammad Arif Habib and others* PLD 2024 SC 629

*established law that father is a natural guardian of his minor child/ children, but indeed the court has to be satisfied while appointing the father as a guardian that the welfare of minor lies in the fact that he be appointed as a guardian and the custody of minor be delivered accordingly."*⁶

12. It may also be noted that the petitioner prayed to be appointed guardian of the minors. Section 19(b) of the Act of 1890 does not authorize the Court to appoint a guardian of the person of a minor "whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor". The petitioner's natural guardianship has never been in question, nor has it been disturbed by the impugned decisions. What is and was in issue is only the physical custody of the minors.

13. Three of the minors are girls. Their mother's *hizanat* continues until puberty; she has not remarried, and nothing has been shown to disqualify her. As regards them, the petitioner's claim has no footing in law. Sagheer Hussain had crossed the age of seven, and the petitioner's preferential claim to his custody therefore had to be weighed against his welfare and, as he was of an age to form an intelligent preference, against his own wish.

14. This is precisely what the appellate court did. Its judgment records that the minors were present at the hearing, were offered the option of going with their father and declined; that they stated they were receiving education; that they appeared well maintained and content with their mother, and that compelling them to live with the petitioner against their wishes would disturb their lives.⁷ That is the very inquiry Section 17(3) of the Act of 1890 contemplates, and the Supreme Court has now made obligatory in every custody matter, observing that "*Listening to a child does not mean obeying them, but rather understanding their perspective deeply enough to act in their best interests.*"⁸ The appellate court did not treat the minors' preference as conclusive; it weighed it against their schooling, upkeep and attachment. No fault in law can be found with that approach.

15. The plea that Sagheer Hussain is unwell and requires constant care does not advance the petitioner's case. No medical records have been placed

⁶ *Gul Sadeem Khan v. Mst. Halima and others* PLD 2025 SC 47

⁷ Paragraphs 5 to 8 of the impugned judgment, Annexure 'E' at pages 37 to 39 of the paper book.

⁸ *Dr. Muhammad Asif v. Dr. Sana Sattar and others* PLD 2026 SC 238

before this Court, nor has the petitioner shown, on his own showing, who in his household would provide the care the minor needs at all times. The Supreme Court has kept a child with special needs in the custody of the mother, being the primary caregiver.⁹ On the record as it stands, the finding of the courts below on this aspect cannot be termed perverse.

16. Nor can the mother's means or employment tilt the balance. It has been held that "*It is to be noted for all concerned that poverty on the part of a lady is no ground to disentitle her from the custody of the minor.*"¹⁰

Similarly, "*In determining the welfare of the child and his custody neither the mother's physical condition nor her income were determinative factors.*"¹¹

The obligation to maintain the minors rests with the petitioner, and the fact that respondent No.1 works "*does not detract from her suitability as a custodial parent.*"¹² Significantly, the petition nowhere asserts that the petitioner has been maintaining the minors. While non-maintenance does not by itself disentitle a father, "*this would be one of the circumstances for determining the welfare of the minor.*"¹³

17. The allegation that respondent No.1 resides with Zafar Ali Seelro was specifically denied by her on oath and was not found to be proved by the courts below. It raised a pure question of fact, which cannot be re-examined in this jurisdiction.¹⁴

18. The courts below thus decided the matter on the correct legal test. The welfare of the minors was considered, and the minors were heard. Concurrent findings of this nature have consistently been left undisturbed by the Supreme Court in comparable circumstances.¹⁵ No jurisdictional defect, illegality or perversity has been pointed out.

19. At the same time, orders of custody are never final. The arrangement continues only so long as it serves the welfare of the minors and may be

⁹ (n.8 above)

¹⁰ *Mst. Razia Bibi v. Riaz Ahmad and another* 2004 SCMR 821

¹¹ *Mst. Beena v. Raja Muhammad and others* PLD 2020 SC 508

¹² (n.8 above)

¹³ (n.10 above)

¹⁴ (n.3 above)

¹⁵ (n.6 above); *Asjad Ullah v. Mst. Asia Bano and others* PLD 2025 SC 541; *Rashid Hussain v. Additional District Judge, Islamabad (East) and others* PLD 2022 SC 32

revisited upon a material change of circumstances.¹⁶ The petitioner's grievance that he is not allowed to meet his children is also legitimate, and the Guardian Court, competent under Section 12 of the Act of 1890 to regulate visitation, is the appropriate forum for redress. The Supreme Court, while declining custody to fathers, has preserved that remedy.¹⁷

20. For the foregoing reasons, this petition is devoid of merit and is accordingly **dismissed**. The order dated 19.09.2024 and the impugned judgment dated 21.05.2025 are maintained. There shall be no order as to costs.

JUDGE

Zulfiqar

¹⁶ (n.6 and n.8 above)

¹⁷ (n.15 above)