THE HIGH COURT OF SINDH KARACHI

Before:
Mr. Justice Zulfiqar Ali Sangi

C.P. No. S – 700 of 2025
[Muhammad Anwar Ahmed Siddiqui v. Mst. Izza Fakhri & others]

Petitioner	:	Muhammad Anwar Ahmed Siddiqui son of Afzal Ahmed Siddiqui through Mr. Zahid Abbas, Advocate.
Respondents 1-2	:	Mst. Izza Fakhri daughter of Syed Sana Uddin Fakhri and another through Ms. Saira Shaikh, Advocate.
Respondents 3-4	:	Nemo.
Date of hearing	:	02-11-2026
Date of decision	:	02-11-2026

O R D E R

Zulfiqar Ali Sangi J.– Through the instant constitutional petition, the petitioner has called into question the judgment dated 15.04.2025 passed by the learned VIth Additional District Judge, Karachi East, in Family Appeal No.339 of 2024, arising out of the judgment and decree dated 10.09.2024 passed by the learned Family Judge, Karachi East, in consolidated Family Suit No.3671 of 2022 and Guardian & Wards Application No.3493 of 2022, as well as the subsequent order dated 29.05.2025 passed by the learned Family Court, primarily to the extent of maintenance allowance fixed for the minor and the arrangements relating to his visitation rights. The petitioner has also sought setting aside of the impugned judgments and orders and remand of the matter to the learned Family Court for fresh adjudication after recording evidence of the parties.

2. Briefly stated, the petitioner and respondent No.1 contracted marriage, out of which one minor son, namely Muhammad Shuraim Ahmed Siddiqui, was born. Owing to matrimonial differences, respondent No.1 instituted Family Suit No.3671 of 2022 seeking dissolution of marriage by way of Khula, recovery of dowry articles and maintenance for herself and the minor, whereas the petitioner instituted Guardian & Wards Application No.3493 of 2022 under Section 25 of the Guardians and Wards Act, 1890, seeking permanent custody of the minor. Both proceedings were consolidated by the

learned Family Court. During the pendency of the proceedings, the learned Family Court, vide order dated 08.02.2023, determined interim maintenance of the minor at the rate of Rs.10,000/- per month and also regulated the petitioner's visitation rights. Subsequently, vide order dated 11.03.2024, the learned Family Court allowed the application of respondent No.1 for production of additional evidence and further modified the visitation schedule of the petitioner. Ultimately, through judgment and decree dated 10.09.2024, the learned Family Court dismissed the petitioner's Guardian & Wards Application, decreed the family suit to the extent of the reliefs granted therein, enhanced the maintenance of the minor to Rs.25,000/- per month with an annual increase of 5%, and appointed respondent No.1 as the sole guardian of the minor.

3. Feeling aggrieved, the petitioner preferred Family Appeal No.339 of 2024 before the learned appellate Court. The appeal was partly allowed vide judgment dated 15.04.2025, whereby the findings of the learned trial Court regarding appointment of respondent No.1 as guardian of the minor and issuance of a guardianship certificate in her favour were set aside on account of non-compliance with the mandatory requirements of the Guardians and Wards Act, 1890. However, the remaining findings of the learned trial Court, including those concerning custody of the minor and maintenance, were maintained. The appellate Court also observed that the petitioner was at liberty to approach the learned Guardian Court for appropriate arrangements regarding visitation on special occasions and meetings of the minor with his paternal grandparents. Thereafter, the learned Family Court passed the subsequent order dated 29.05.2025, which has also been assailed through the instant petition.

4. Learned counsel for the petitioner contends that both the Courts below have failed to appreciate the material available on record and have passed the impugned judgments and orders without affording the petitioner a fair and reasonable opportunity to defend himself and lead evidence. He submits that the learned Family Court erroneously permitted respondent No.1 to produce additional documents without examining their genuineness and authenticity, despite the petitioner's objections. He further contends that the evidence of the petitioner was not properly recorded and his application for custody of the minor was dismissed without proper

adjudication on merits. According to him, the enhancement of maintenance from Rs.10,000/- to Rs.25,000/- per month, along with an annual increase of 5%, was made without any reliable assessment of the financial capacity of the petitioner or the actual requirements of the minor. He further submits that the visitation arrangements have not been settled in a manner conducive to the welfare of the minor and that the petitioner, being his natural father, cannot be deprived of meaningful interaction with his son. He also questions the subsequent order dated 29.05.2025, contending that the same was passed without properly considering the directions and observations recorded by the appellate Court. He, therefore, prays that the impugned judgments and orders be set aside and the matter be remanded to the learned Family Court for fresh adjudication after providing an opportunity to both parties to lead evidence. Learned counsel for the petitioner, in support of his submissions, has placed reliance upon the cases reported as ***2019 MLD 820 (Khalid Mahmood v. Naseem Akhtar and others), 2011 CLC 820 (Shahzad Hussain v. Judge Family Court, Lahore), PLD 2022 Lahore 840 (Marriam Bibi and others v. Azhar Iqbal and others) and 1992 CLC 1241 (Wahid Bakhsh v. Judge Family Court, Multan).***

5. Conversely, learned counsel for respondents No.1 and 2 supports the impugned judgments and orders and submits that the petitioner was afforded sufficient opportunities to participate in the proceedings, including opportunities to cross-examine respondent No.1 and lead his own evidence, but he failed to avail himself of such opportunities. She contends that the learned Family Court proceeded in accordance with law after considering the material available on record and that the appellate Court has already examined the objections raised by the petitioner in detail and granted appropriate relief to the extent warranted by law by setting aside the appointment of respondent No.1 as guardian and the issuance of a guardianship certificate. She further submits that the welfare of the minor is the paramount consideration in matters relating to custody and visitation, and that the petitioner has failed to demonstrate any circumstance warranting disturbance of the existing arrangement. She accordingly prays for dismissal of the instant petition. learned counsel for respondents No.1 and 2 has relied upon the cases

reported as ***2025 PLC (C.S.) 1117 (Salman Ahmed v. Province of Sindh), 2023 SCMR 1434 (M. Hamid Hassan v. Mst. Isma Bukhari and others), 2025 CLC 1315 (Syed Maqbool Ahmed v. Bibi Memoona and others), PLD 2025 SC 847 (Khalid Pervaiz ul Haq v. Mst. Minha Asif and another), 2001 MLD 1603 Lahore (Ghulam Haider v. Mst. Rasoolan and another) and 1993 MLD 1695 (Naseem Ahmed v. Haji Usman and another).***

6. I have heard the learned counsel for the parties at considerable length and have examined the available record with their assistance.

7. The controversy requiring determination in the present proceedings primarily relates to the legality and propriety of the concurrent findings recorded by the Courts below concerning the custody of the minor, maintenance allowance and visitation arrangements, besides the subsequent order dated 29.05.2025. At the outset, it may be observed that the constitutional jurisdiction of this Court under Article 199 of the Constitution is extraordinary in nature and is not intended to substitute the jurisdiction of an appellate Court or to undertake a fresh appraisal of the evidence merely because another view may be possible. Interference is warranted where the impugned order suffers from a patent illegality, jurisdictional defect, material irregularity or such perversity as may result in failure of justice.

8. So far as the question of custody of the minor is concerned, it is an established principle that in all matters relating to the custody and guardianship of a minor, the paramount consideration is the welfare of the minor and not the legal rights or claims of either parent in isolation. The natural guardianship of the father, by itself, does not confer an absolute or indefeasible right to obtain custody of the minor, nor does it automatically displace the preferential right of hizanat available to the mother under the applicable personal law. The Court is required to examine the circumstances of each case, keeping in view the physical, emotional, psychological, moral and educational welfare of the minor. In the present case, the record reflects that the minor has been residing with respondent No.1 since his infancy and was approximately two years of age when the learned Family Court decided the matter. The learned appellate Court, after examining the relevant circumstances, found no material

demonstrating that the welfare of the minor was in any manner endangered while residing with his mother. The petitioner, on the other hand, failed to establish any cogent circumstance which could justify disturbing the existing arrangement of custody. No material has been brought before this Court to demonstrate that the concurrent findings of the Courts below, to the extent of custody, are perverse or have been recorded in disregard of the paramount consideration of the welfare of the minor. Consequently, no interference is called for on this aspect.

9. The contention of learned counsel for the petitioner that he was not afforded an adequate opportunity to lead evidence and that the proceedings were concluded in violation of the principles of fair trial has also been examined. The record of the appellate judgment indicates that the petitioner was afforded several opportunities to lead evidence in his Guardian and Wards Application. The proceedings were initially dismissed for non-prosecution, but subsequently restored. Even thereafter, sufficient opportunities were provided to the petitioner to proceed with his case. Similarly, the record reflects that respondent No.1 was produced for cross-examination on various dates, but the petitioner failed to avail himself of the opportunity despite repeated indulgence by the learned trial Court. It is settled that the right of hearing and fair trial guaranteed under Article 10-A of the Constitution is fundamental; however, such right cannot be construed to mean that a litigant may indefinitely delay proceedings or disregard repeated opportunities granted by the Court. A party who, despite having been afforded reasonable opportunities, fails to avail himself of the same cannot subsequently attribute the consequences of his own default to the Court. The provisions of Order XVII Rule 3 CPC, to the extent applicable, also empower the Court to proceed with the matter where a party fails to perform an act necessary for the progress of the proceedings despite having been granted time for that purpose. In these circumstances, the petitioner cannot successfully contend that the proceedings were concluded without affording him an opportunity of hearing, particularly when the record demonstrates repeated opportunities having been extended to him.

10. The objection regarding production of additional evidence by respondent No.1 also does not furnish any independent ground for

interference in the constitutional jurisdiction. The record indicates that respondent No.1 moved an application for permission to produce additional documents, which was allowed by the learned Family Court vide order dated 11.03.2024. The petitioner was supplied with the relevant material and was afforded an opportunity to controvert the same and subsequently cross-examine respondent No.1. The said order was not challenged before any competent forum at the relevant time. Furthermore, the appellate Court specifically examined this objection and recorded its findings after considering the proceedings before the learned trial Court. It is important to observe that mere production or exhibition of a document does not, by itself, establish its truth or genuineness. Equally, an allegation that documents have been manipulated or generated through computer software or artificial intelligence cannot be accepted merely on the basis of an assertion unsupported by legally admissible material. If the petitioner intended to challenge the authenticity, admissibility or evidentiary value of the documents, he was required to avail himself of the remedies available during the trial proceedings. Having failed to establish any patent illegality in the manner in which the Courts below dealt with this controversy, no ground for constitutional interference is made out.

11. Coming to the question of maintenance allowance, it is an admitted legal obligation of the father to maintain his minor child according to his means and the reasonable requirements of the child. The quantum of maintenance is not determined exclusively by the financial convenience or personal assessment of the father; rather, the Court is required to consider the necessities of the minor, the prevailing economic conditions, the financial capacity of the father and the standard of living to which the minor is entitled. In the present case, the learned Family Court enhanced the maintenance allowance of the minor from Rs.10,000/- to Rs.25,000/- per month, with an annual increase of 5%, keeping in view the rising cost of living and the requirements of the minor. Significantly, the appellate Court, while deciding Family Appeal No.339 of 2024, specifically observed that the petitioner had not challenged the quantum of maintenance before it. The petitioner cannot, therefore, seek to reopen the entire controversy in constitutional proceedings merely by reiterating objections which were either not properly pursued before the

appellate forum or require appreciation of factual material. The petitioner has not been able to demonstrate that the quantum determined by the learned Family Court is so arbitrary, excessive or unsupported by the available record as to constitute a jurisdictional defect warranting interference under Article 199 of the Constitution. Accordingly, no case for interference with the maintenance allowance is made out.

12. As regards the visitation rights of the petitioner, there can be no cavil with the proposition that a minor child ordinarily requires the love, affection and guidance of both parents. The dissolution of marriage between the parents does not extinguish the child's emotional relationship with either of them. The right of a parent to meet his or her minor child must, however, be regulated in a manner that serves the welfare and best interests of the minor. The appellate Court, while examining this aspect, took note of the existing visitation arrangements and the record of the meeting hall, which reflected that the petitioner had not fully availed himself of the visitation time already granted to him. It also observed that the petitioner had liberty to approach the learned Guardian Court for appropriate orders regarding meetings on special occasions and visitation by paternal grandparents. Such liberty was expressly preserved so that the matter could be considered on its own merits, having regard to the welfare of the minor. Therefore, the petitioner cannot claim an unrestricted right to remove the minor from the custody of the mother or insist upon a particular visitation arrangement merely on the basis of his status as the natural father. At the same time, the visitation arrangements should not be rendered illusory or unnecessarily restrictive. The paramount consideration must remain the emotional well-being and healthy development of the minor. Any genuine grievance concerning non-compliance with the visitation schedule or a request for additional visitation, including meetings with paternal grandparents, may appropriately be brought before the competent Guardian Court, which shall consider the same independently in accordance with law.

13. Another important aspect of the matter is that the learned appellate Court, through its judgment dated 15.04.2025, had already examined the legality of the appointment of respondent No.1 as guardian and issuance of the guardianship certificate. Upon finding

that the mandatory legal formalities contemplated under Sections 7 and 10 of the Guardians and Wards Act, 1890, had not been fulfilled, the appellate Court set aside that part of the judgment of the learned trial Court. Thus, the grievance of the petitioner, to that extent, already stands redressed by the appellate forum. The remaining findings were maintained after independent consideration of the relevant material and circumstances. The petitioner has not pointed out any subsequent development or legal infirmity in the order dated 29.05.2025 which would demonstrate that the learned Family Court acted beyond its jurisdiction or in disregard of the directions issued by the appellate Court. Mere dissatisfaction with the manner in which the learned Family Court regulated the visitation arrangements or dealt with the maintenance controversy is not, by itself, sufficient to invoke the constitutional jurisdiction of this Court.

14. For the foregoing reasons, I am of the considered view that the petitioner has failed to demonstrate any illegality, jurisdictional defect, material irregularity or perversity in the impugned judgments and orders warranting interference by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The learned appellate Court has examined the material controversies, granted relief to the petitioner to the extent legally justified and maintained the remaining findings after considering the welfare of the minor. Consequently, no case for setting aside the impugned judgments or remanding the proceedings for a fresh trial is made out.

15. Accordingly, the instant constitutional petition, being devoid of merit, is dismissed, along with the pending miscellaneous applications, if any. However, it is clarified that the petitioner shall remain at liberty to approach the competent Guardian Court for appropriate modification or enlargement of the visitation schedule, including meetings of the minor with his paternal grandparents and visitation on special occasions, which application, if so filed, shall be decided strictly in accordance with law, independently and keeping in view the paramount welfare and best interests of the minor. The competent Court shall also ensure that the visitation arrangements already in force are implemented in their true letter and spirit.

16. Petition dismissed in the above terms.

JUDGE