HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-106 of 2025

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Abdul Hakeem s/o Abdul Kareem Through Mr.Rafiq Ahmed, Advocate
Respondent No.1	:	Mst.Zahira d/o Ghulam Rasool. Nemo.
Respondent No.2	:	Abdul Faheem s/o Abdul Hakeem. Nemo.
Respondent No.3	:	Learned District Judge, Tando Allahyar. Nemo
Respondent No.4	:	Learned Family Judge-I, Chamber. Nemo.

Date of hearing & Short Order : **27.10.2025**
Date of reasons : **10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J:. Petitioner/father, Abdul Hakeem s/o Abdul Kareem, is aggrieved by the order dated 24.12.2024 passed by the District Judge, Tando Allahyar, in G&W Appeal No.05 of 2024 (*re-Abdul Hakeem v. Mst.Zahira*),[1] dismissing his appeal against the order dated 30.10.2024 passed by the Guardian Judge-1, Chamber, in G&W Application No.09/2024 (re-*Abdul Hakeem v. Mst. Zahira*),[2] decreeing that the petitioner/father is not entitled to the custody of the minor/ward and allowing visitation rights only.

2. Counsel for the petitioner/father contends that the Judgment, Decree, and Order are "without lawful authority" and "are of no legal effect", as the two lower forums have failed to appreciate that the respondent/mother has remarried and the minor/ward is living with a stranger because of his mother. In the circumstances, the welfare of the minor/ward lies in the custody of the petitioner/father. Hence, this challenge is brought under the writ jurisdiction of the 1973 Constitution before the Regular Bench of the High Court.

2. Heard Counsel and perused the record available in the petition. At the outset, the petitioner has invoked writ jurisdiction, and the challenge under the Constitution differs from a challenge in appeal. The petitioner/appellant has already had his opportunity to avail himself of the remedy of appeal. He has arrived at the doorstep of the proverbial

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[1] Available on pages 15-21 of the petition
[2] Available on pages 23-31 of the petition

constitutional court, having exhausted that remedy. The right of appeal is a statutory creation, and the legislature has not provided for a second appeal. Thus, the appellate court's findings of fact must ordinarily attain finality. The G&W Appellate Court's scrutiny of the Guardian & Ward (trial) Court's order in the G&W appeal is much broader than this bench's scrutiny of the appellate Court's judgment, which is limited to whether it "is without lawful authority" or "is of no legal effect". Thus, the High Court's scrutiny is much narrower than the G&W Appellate Court's examination of the G&W order passed by the G&W (trial) Court.

3. In *M. Hammad Hassan v. Mst. Isma Bukhari and 2 Others*, 2023 SCMR 1434, and *Arif Fareed v. Bibi Sara and Others*, 2023 SCMR 413, the Supreme Court has observed that the High Court's jurisdiction under Article 199 of the 1973 Constitution is confined to correcting jurisdictional errors and procedural illegalities or irregularities, and does not extend to reappraisal of evidence or reconsideration of factual findings recorded by subordinate courts. Entertaining a constitutional petition merely to reassess such findings would amount to exercising jurisdiction akin to a second appeal, which is impermissible. To this end, the order of the Additional District Judge, Tando Allahyar, re-appraising the G&W (trial) Court's order notes that the petitioner/father has not produced any evidence on record to demonstrate that the respondent/mother is incompetent to look after the welfare of their minor/ward and/or the mother's interest is adverse to the interest of the minor/ward. The two forums below rely on the 2000 SCMR 838, 2020 CLC 1900, 2019 MLD 236, 2016 CLC 1460, PLD 2015 Karachi 382, SBLR 2014 Sindh 1635, and 2003 YLR 3054, all of which are on point. The minor/ward's welfare squarely lies with his mother. The G&W Appellate Court's conclusion is neither perverse nor arbitrary and did not call for any reason to interfere and/or to set aside the impugned order of the appellate court.

4. For the foregoing reasons, the impugned order dated 30.12.2024 passed in Family Appeal No. 05/2024 does not call for interference. Consequently, I dismissed the aforesaid petition by my Short Order dated 27.10.2025, and the above are the reasons for dismissal.

J U D G E

AHSAN K. ABRO