HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No.S-311 of 2024

Present: Justice Jawad Akbar Sarwana

Petitioner	:	Aadil Ahmed s/o Gulzar Ahmed Through Mr.Khalid Mustafa Shoro, Advocate
Respondent No.1	:	Mst.Marvi d/o Ali Bux Through M/s Barrister Jawad Ahmed Qureshi & Mr.Osama Yousuf Parhyar, Advocates
Date of hearing & & Short Order	:	**06.11.2025**
Date of Reasons	:	**10.11.2026**

O R D E R

JAWAD AKBAR SARWANA, J.: Petitioner/father, Aadil Ahmed s/o Gulzar Ahmed, is aggrieved by the Judgment dated 08.05.2024 passed by the IInd Additional District Judge, Jamshoro @ Kotri, in G&W Appeal No.01 of 2024 (*re-Aadil Ahmed v. Mst. Marvi*),[1] dismissing his appeal against the order dated 06.12.2023 passed by the Guardian Judge, Jamshoro, in G&W Application No.14/2020 (*re-Aadil Ahmed v. Mst. Marvi*),[2] decreeing that the petitioner/father is not entitled to the custody of the minor/ward (baby girl) Taqwa Aadil, 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 failed to take into consideration that the minor/ward (baby girl) is living in a joint family with her mother, surrounded by strangers, which also includes na-mehrams; the overall atmosphere at the respondent/mother's residence is against Shariah and the Injunctions of Islam; being a working woman, she has no time to care for the welfare of the minor; her father (the minor/ward's maternal grandfather/naana) is facing allegations of corruption; and as and when the petitioner/father and respondent/mother, were living together in China, a doctor at the Fifth People's Hospital, Shanghai, had allegedly suggested that the respondent/mother should undergo treatment for schizophrenia. Therefore, in the circumstances, the welfare of the

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[1] Available on pages 155-161 of the petition
[2] Available on pages 115-131 of the petition

minor/ward (baby girl) 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 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 IInd Additional District Judge, Jamshoro @ Kotri, 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 and/or that so far the minor/ward's custody residing with the respondent/mother, during the period when the petitioner/father was studying abroad in People's Republic of China, is concerned, has in any way so far, prejudiced and/or caused harm to the welfare of the minor/ward (baby girl), and that if such custody continues to remain with the respondent/mother there is likely to be, in the future, a serious risk of an

adverse impact on the welfare of the minor/ward (baby girl). To the contrary, the preponderance of evidence brought on record demonstrates that the petitioner/father has failed to prove his entitlement and disentitlement of the respondent/mother, as otherwise, based on the welfare of the minor (ward) baby girl. Without prejudice to the foregoing, even otherwise, the respondent/mother has not lost the right of hizanat, as no evidence has come on the record to disqualify the mother from keeping the custody of the minor (ward) baby girl.

4. It is a trite principle that a minor/ward's welfare, at the outset, squarely lies with the mother. A few reported judgments in 2000 SCMR 838, 2020 CLC 1900, 2019 MLD 236, 2016 CLC 1460, and 2003 YLR 3054 are on point on this proposition. The G&W Appellate Court's conclusion that the minor (ward) baby girl should remain in the custody of the respondent/mother is neither perverse nor arbitrary and did not call for any reason to interfere and/or set aside the impugned order of the appellate court.

5. I now turn to the visitation schedule set out by the Guardian Judge, Jamshoro, in the order dated 06.12.2023, and upheld by the IInd Additional District Judge, Jamshoro @ Kotri, in his Judgment dated 08.05.2024. Once again, it is a well-understood principle that the petitioner/father cannot be denied the right to meet and visit his biological child, and the same is critical for the welfare of the minor (ward) baby girl. I have examined the schedule keeping in view the framework discussed in PLD 2015 Karachi 382, and SBLR 2014 Sindh 1635, and do not find any prejudice to the welfare of the minor in the backdrop of the Guardian Judge Jamshoro's schedule as per order dated 06.12.2023, either. Therefore, I find no need to modify such visitation schedule.

6. For the foregoing reasons, the impugned order dated 08.05.2024 passed in the G&W Appeal No. 01/2024 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