

IN THE HIGH COURT OF SINDH AT KARACHI

Present
Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 1309 of 2024

Manahil Imran & another Petitioners.

Versus

Muhammad Sadiq Khurshid & another Respondents.

Ms. Shazia Nazir, Advocate for the Petitioner.

Mr. Adil Channa, Advocate for Respondent No.1.

Dates of hearing : 25.04.2025 & 21.05.2025.

Date of announcement : 07.07.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has been filed impugning the consolidated judgment dated 11.10.2024 passed in three Family Appeals bearing Number 38/2024, 39/2024 and 53/2024. All the three Family Appeals emanated against the consolidated order dated 21.02.2024 passed by the learned Family Court. The details of the cases are elaborated in the table below: -

Case	Parties name	Nature of case & decision
G&W Application No.1868/2020	Manahil Sadiq v. Muhammad Sadiq Khurshid	Under Section 7 & 10 of the Guardian & Ward Act, 1890. The same was allowed.
G&W Application No.170/2021	Muhammad Sadiq Khurshid v. Manahil Sadiq	Under Section 25 of the Guardian & Ward Act, 1890. The same was dismissed. However, rights of visitation to meet with the minor were granted through a detailed schedule.
F.A. No.38/2024	Sadiq Khurshid v. Manahil Sadiq	Appeal under Section 47(a) & (c) of the Guardian & Ward Act, 1890 r/w Section 14 of the Family Courts Act, 1964. The appeal was dismissed.
F.A. No.39/2024	Sadiq Khurshid v. Manahil Sadiq	Appeal under Section 47(a) & (c) of the Guardian & Ward Act, 1890 r/w Section 14 of the Family Courts Act, 1964. The appeal was allowed and the order of the learned Family Court has been set aside in respect of the guardianship certificate granted.
F.A. No.53/2024	Manahil Imran v. Muhammad Sadiq Khurshid	Appeal under Section 47(a) & (c) of the Guardian & Ward Act, 1890 r/w Section 14 of the Family Courts Act, 1964. The appeal was dismissed.

2. The facts of the case are that Guardian & Ward Application No.1868/2020 was filed by the present Petitioner seeking appointment of herself as guardian of the minor under Section 7 and 10 of the Guardian & Ward Act, 1890 (**“the Act”**). Thereafter, the Respondent No.1 filed Guardian & Ward Application No.170/2021 under Section 25 of the Act seeking custody of the minor. Both the Guardian & Ward Applications were adjudicated through consolidated order dated 21.02.2024. Thereafter the respective parties filed the above noted Family Appeals which are reflected in the table above and are self-explanatory.

3. The Guardian & Ward Application preferred by the Petitioner under Section 7 & 10 of the Act was allowed and the Guardianship Certificate was granted to the Petitioner under the above noted provision to manage the affairs of the minor Hareem in respect of obtaining domicile, PRC, CNIC, passport and other educational documents from the concerned departments. Further, the Petitioner was directed not to remove the custody of the minor from the jurisdiction of the court without prior permission.

4. The Guardian & Ward Application preferred by Respondent No.1 was declined partially wherein the permanent custody was refused and extensive visitation rights were granted to Respondent No.1.

5. Thereafter, as noted above, the respective parties filed the above noted Family Appeals as tabulated above.

6. The learned Appellate Court in the above noted Family Appeals set aside the order of the learned Family Court in respect of the Guardianship Certificate granted in favour of the Petitioner. However, the learned Appellate Court did not alter the findings of the learned Family Court in respect of the visitation schedule coined. Consequently, Family Appeal No.39/2024 was allowed and Family Appeals No.38/2024 and 53/2024 were dismissed.

7. Learned counsel for the Petitioner has argued that through the instant petition he has impugned the order of the Appellate Court in respect of revocation of the Guardianship Certificate granted to the Petitioner. He has argued that the Guardianship Certificate is essential for the welfare of the minor and it will be

difficult to raise the minor in the absence of the said certificate. Learned counsel further argued that relationship between the parties is strained and the Petitioner does not wish to engage with Respondent No.1 for the day-to-day affairs of the minor. He has further argued that findings of the learned Family Court in respect of grant of Guardianship Certificate are legally sound and were erroneously interfered with by the learned Appellate Court. Learned counsel has further categorically stated that he is only aggrieved with the judgment of the learned Appellate Court in respect of the Guardianship Certificate being revoked and he does not impugn the visitation schedule. He has further stated that Respondent No.1 has remarried and does not have the welfare of the minor at heart. Learned counsel has relied upon the cases of **Waheeda Bashir Kiyani v. Muhammad Munsif Khan¹** and **Gul Sadeem Khan v. Mst. Halima and others²**. He has also argued that Respondent No.1 has failed to maintain the minor and is delaying the payment of the maintenance which is right of the minor.

8. Conversely, learned counsel for the Respondent has stated that the Guardianship Certificate granted by the learned Family Court was contrary to the provisions of the Act. He has argued that no evidence was led to disentitle him and exclusively entitle the Petitioner to the said Guardianship Certificate. He has thereafter relied upon the provision of Section 19 of the Act and stated that he is not “unfit” and neither has any finding on “fitness” been rendered by the learned Family Court. He in that regard, concurred that the findings of the learned Appellate Court, which according to him, are legally sound and in the welfare of the minor.

9. I have heard both the learned counsels and perused the record. Prior to adjudicating the matter on merits, it is noted that I have personally engaged with the parties along with their respective counsels to make an attempt to resolve the dispute between the parties amicably, which was, in my view in the best interest of the minor. The acrimonious relationship between the parties will only adversely

¹ 2022 YLR 2201

² Civil Petition No.421-P of 2022

affect the mental health and the wellbeing of the minor. However, despite my best efforts the respective parties failed to come up at any mutual and agreeable solution. Such efforts were also recorded by this Court vide order dated 25.04.2025. Since both the parties could not reach at any amicable solution, the instant adjudication is being made on the basis of record available and the submissions of the learned counsels.

10. It is evident, as noted above, that the visitation schedule coined by the learned Family Court is extremely thorough and for the best interest of the minor. Neither of the counsels are aggrieved with the said schedule. The only dispute remaining between the parties is the issuance of the Guardianship Certificate in favour of the Petitioner. In that regard, prior to delineating on the legality of the same it will be imperative to first highlight the scheme of the law envisioned under Sections 7 and 19 of the Act. The said provisions are reproduced below: -

“7. Power of the court to make order as to guardianship

(1) Where the court is satisfied that it is for the welfare of a minor that an order should be made-

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian, the court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

19. Guardian not to be appointed by the court in certain cases

Nothing in this Chapter shall authorize the court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards or to appoint or declare a guardian of the person-

(a) of a minor who is married female and whose husband is not, in the opinion of court, unfit to be guardian of her person; or

(b) 15[* *] 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; or*

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.”

11. It is apparent that plain reading of Section 19 of the Act indicates that Guardianship Certificate can be granted by a Family Court in favour of one parent. In this case it had to be determined whether father i.e. Respondent No.1 is “unfit” to be the guardian of the person of the minor. Bare perusal of the above-noted provisions would indicate that the learned Family Court is bound to render an opinion about the fitness of the contesting parent. It is further apparent upon perusal of the judgment by the learned Family Court that no such opinion has been rendered. It is evident that evidence regarding the unfitness of the Respondent No.1 was never led by the parties and neither the learned Family Court made any determination in that regard, as noted above. The cross examination conducted by the learned counsel for the Respondent will reveal that no specific allegation was made against the said Respondent to render him “unfit” under the above-noted provisions.

12. I concur with the view of the Islamabad High Court in the case of **Ms. Shazia Akbar Ghalzai v. Additional District Judge, Islamabad (East) and 2 others**³, wherein it has been held as under:

“16. A combined reading of Sections 7, 17, 19 and 41 leads to the following conclusions; (i) the father of a minor is his/her natural guardian and the welfare of the child is best served when he/she remains under the father's guardianship; (ii) the question of how the welfare of the child will be best served in appointing a guardian in the stead of the father will only arise when the father is either not alive or has been determined by the court to be unfit as guardian; (iii) the court is vested with no authority to appoint a guardian in place of the father when the father is alive and not unfit to be the guardian; and (iv) even where the father is found to be unfit to be the guardian and another person is appointed in his place, such other guardian's authority ceases once circumstances leading to the father being declared unfit change and he is no longer deemed unfit by the court. Thus no one can be appointed guardian in the father's place unless the father is found unfit to serve as guardian of his child, and the onus to establish that the father is unfit is on the person bringing such claim.” (Emphasis added)

³ 2021 MLD 817

13. Similar views were espoused by the High Court of Balochistan in the case of **Ganj Bibi versus Muhammad Younas and another**⁴ wherein the learned court held as under:-

“Though the main consideration while appointing a person as guardian of a minor, is the welfare of the minor, which is to be seen in relevance to noted provision of law. In present case, there is nothing on record, nor even asserted by the appellant, on basis of which the respondent can be considered unfit to be guardian of person of his minor son. Under the principles of Muhammadan Law mother is entitled only for custody of her minor son till he attain age of 7 years. But in present case the situation is quite different. As the appellant, being his mother, is already in custody of the minor, but she is now intended to be appointed herself as guardian of her minor son. For the purpose, in view of section 19(b) Guardians and Wards Act 1890, she has to establish that the father/respondent is unfit to remain as guardian of person of the minor. But she has completely failed to disclose any reason, nor she has placed on record any material due to which the father has been disqualified to remain guardian of his minor son.” (Emphasis added)

14. I concur with the finding of the learned Appellate Court that the role of the father, in this case the Respondent, is essential for the welfare of the minor and the said Respondent cannot be excluded from the process of upbringing the minor, in the absence of any finding regarding his lack of fitness. The burden of establishing the Respondent was “unfit” rests squarely upon the Petitioner and no evidence in this regard, as noted above, has been led by the said Petitioner.

15. The judgements relied upon by the learned counsel for the Petitioner are not applicable to the case at hand for the following reasons:-

- The judgement rendered in the case of **Gul Sadem Khan** (supra) pertained to a custody dispute between the contesting parents under Section 25 of the Act. As noted above, the visitation schedule coined by the learned Family Court has, at least in the instant petition, not been impugned by either party, therefore the reliance on the said judgment is misplaced.

⁴ 2011 CLC 1062

- Similarly the judgment in the case of **Waheeda Bashir Kiyani** (supra) pertained to a custody dispute between the contesting parties and no definitive deliberation was made on Section 19 of the Act.

16. In light of what has been held above, the instant Constitution Petition is dismissed with no order as to cost.

J U D G E

Nadeem Qureshi “PA”