

IN THE HIGH COURT OF SINDH KARACHI

CP No.S-1276 of 2025

(Fateh Muhammad v. Presiding Officer XXIst and 02 others)

Date of hearing and Order: 19.11.2025

Petitioner, Fateh Muhammad, present in person

Respondent No.2, Ms. Mehawish Hanif, present in person

ORDER

Nisar Ahmed Bhanbhro, J. The petitioner, through instant petition has assailed Order dated 31st July, 2025 passed by the Court of learned VIIth Additional District Judge (Model Civil Appellate Court) in Family Appeal No 24 of 2025 (Fateh Muhammad Vs. Mahwish Hanif) and order dated 22.01.2025 passed by Learned Family Court XXI Karachi South (Trial Court) in G&W application No 1579 of 2021 (Fateh Muhammad Vs. Mahwish Hanif), whereby the application filed by Respondent No 2 (Mahwish) for individual meeting with minors and medical checkup to assess change in behavior towards mother was granted.

2. It is the case of the Petitioner Fateh Muhammed that he was married to Respondent Mahwish Hanif on 20.08.2009 out of the free will. Out of the wedlock parties parented two children namely Rayyan Fateh aged 13 years and Raahim Fateh aged 08 years. The marriage contract between the parties was dissolved on 02.09.2021 pursuant to a decree passed by Family Court in Suit No 1299 of 2021. It is also the case of Parties that Petitioner contracted marriage with Sehrish Hanif real sister of Respondent Mahwish on 24.09.2021 just after 22 days of the dissolution of marriage and Respondent Mahwish has also contracted second marriage with one Mahmood Ali.

3. To regulate the custody of minors G&W application No 1579 of 2021 was filed before the Court of Learned Family Judge XXI Karachi south which was decided by way of compromise between the parties through order dated 31.05.2023, wherein the permanent custody of minors was handed over to Father Fateh Mohammad subject to meetings with mother once in a week,

on eid holidays, during summer and winter vacation to the facilitation of parties.

4. Petitioner filed suit No 892 of 2021 seeking declaration and possession of immoveable property which was decreed vide judgment dated 15.12.2023. Things further worsened when Respondent recorded FIR No 452 of 2023 against Petitioner for challenging her modesty for an offence punishable under section 354 PPC, response thereof Petitioner also recorded FIR No 455 of 2023 against Respondent at police station Tipu Sultan under an allegation of fracturing his figure. Petitioner again filed G&W application with Family Court which too was granted in his favor vide order dated 31.08.2024 and in appeal preferred by Respondent Mahwish the order passed by Family Court was maintained.

5. Respondent Mahwish since was facing difficulty in meeting with minors in hygienic conditions, thus she filed three applications before Family Court XVIth seeking recall of order dated 03.08.2024, for medical check up of the minors through Agha Khan Medical Hospital about their well being and assessment of changing behavioral patterns towards mothers coupled with a request for meeting of minors individually. Learned Family Court granted applications vide order dated 22.01.2025 with directions for medical check-up of minors from a psychiatric specialist in Agha Khan at mother's expenses and individual access of mother to minors for one hour in court premises. Petitioner challenged order passed by Family Judge in G&W Appeal No 24 of 2025 which was declined vide orders dated 31st day of July 2025. Record further transpires that order passed by Family Judge provoked Petitioner, hence, besides filing G&W Appeal he filed application against the presiding officer of Family Court before Learned District Judge South leveling personal allegations of bias.

6. Petitioner has made multiple prayers in the instant petition including but not limited to recall the impugned orders dated 31.07.2025 and 22.01.2025 but seeks restraint orders that courts seized with the cases of parties may not entertain any application filed by Respondent Mahwish. Since the core issue involved in the instant petition relates to impugned orders referred above, therefore, it would be conducive to reproduce operative part of the order

passed by the appellate court confirming the order of trial court, that reads as under:

“4. I have heard both sides and perused material as available on record. The first question to address is whether the appeal as preferred is maintainable or otherwise. The argument of the respondent side in this behalf is that like nature orders are neither mentioned in section 47 of GW Act 1890 nor fall within domain of section 14(1) of Family Courts Act 1964 thus is not maintainable in terms of 14(3) of Family Courts Act 1964 primarily being passed against order of interlocutory nature. Conversely the appellant has contended that appeal is maintainable as it is an order passed in a disposed-off case and would remain in field unless recalled thus appeal is fully maintainable. Indeed like nature order are not presented in 47 of GW Act 1890. However, being family Court in terms of schedule, a guardian court's order can be assailed in appeal under Family Court Act 1964. The dispute as between the parties (appellant & respondent) is in relation to minors. Any provision of law or personal right of parents everything is subservient to welfare of minor. So also whenever any application is decided by Court it considers certain elements judicially along with the fact that matter is disposed off and till then any order passed is not recalled would stay in field thus appeal in my humble opinion is maintainable though appears interlocutory. It surfaces that meetings were ordained by trial court with respondent mother of the minors. The meetings are being called out and reluctance of minors surfaced. This element is not disputed qua the rift of agitation of minor in meeting with their mother. The perusal of the application as was preferred before trial court and counter thereto as filed by the appellant on its perusal, copies whereof appended with the appeal show that primarily while objecting the appellant has not objected to such determination or assessment rather per own version had become ready to such evaluation/assessment at costs of the respondent as well as rendered for evaluation of both parents. Further, primarily trial court did allow the application which as stated is subjected in appeal but order reflects that the same is done in relation to observation qua the rift and hostility that the minors have towards their mother. Needless to say that minors are with the appellant as he is the custodial parent while respondent being mother has visitation rights is the welfare of minor indeed that both parents irrespective of fact as to who has the custody, the law mandates both parents are required

in the life of the minor and absence of any creates a vacuum which effects the child in longer run the contention that such order is against the welfare of minors is not correct. The assessment or evaluation is not meant that any mental disorder is suffered by the minors rather the same is to see as to what hinders then in greeting mother with love and affection. So that any negativity if perpetuating in minds of minors, is negated through such sessions. The appellant in appeal or to say in grounds of appeal has agitated all those elements in previous times between patties which are not a consideration of present appeal. Further with regards the meeting of mother with minor individually, the same is also an element which is done in mariner to bring affinity between minors and mother rather to get attention span of minor individually and get them more open and confident. However, all these elements are before trial court if the contention of the appellant side is that Court is not a place then collectively venue can be changed through trial court who is the best Court to alter and modify meeting schedules. Therefore, I don't see any illegality or irregularity in the impugned order warranting interference from this Court as such the impugned orders are hereby maintained as a result, the in hand, appeal stands dismissed being devoid of credence. Misc application, pending if any, stand dismissed as infructuous for having served the cause Family Appeal stands disposed off accordingly."

7. From perusal of the above order, it transpired that parties were advised to settle amicably the meeting venue with children and to produce minors before a psychiatric in Agha Khan Hospital to ascertain their growing awkward behavioral tendency towards mother. Looking at the peculiar circumstances that behavior of the minors with mother was not up to the mark, the individual meeting was ordered with mother. When confronted how the impugned orders offended his fundamental rights, Petitioner failed to explain.

8. Respondent Mahwish present in person stated that after dissolution of marriage, Petitioner was not allowing her a respectable life. Since she had contracted second marriage, Petitioner by hook or crook intends to get the second marriage dissolved, therefore, he dragged her before Courts time and again.

9. From record of the court file, it evidenced that Respondent Mahwish handed over the permanent custody of minors through compromise decree before G&W Court. Per terms and conditions of compromise decree Petitioner was allowed meeting with minors once in a week. During meeting when mother found minors behavior arrogant in presence of father, she asked trial court for an individual meeting and medical checkup of minors to assess the sharp changes in behavior. The applications were granted on the cost of mother to avail medical checkup of minors. This order not only irritated the Petitioner so that he complained against presiding officer leveling personal allegations but also prompted him to file appeal. The conduct of Petitioner supported the assertion of Respondent Mahwish that he was not man of good conduct and was bypassing the normal ethical values to tarnish her life.

10. The Courts below directed for an individual meeting of minors with mother which did not offend the rights of Petitioner. The rights of the children require that they should meet with their mother regularly without any hindrance. The petitioner being father has got objection on such rights; such an objection was not tenable for the reason that minors cannot be deprived of maternal care and the vice versa. The conduct of the petitioner reflects that he litigates to the umbrage of Respondent particularly for the reason that after dissolution of marriage between parties, respondent Mahwish has contracted another marriage and frequent litigation would bring adverse effects to the marital ties which cannot be allowed in any circumstances.

11. It further transpires from the record that Respondent eloped with petitioner to contract marriage without the consent of her parents. To the agony of fate of Respondent Mahwish during subsistence of marriage, Petitioner was keeping eye on her other sister Sehrish and just after 20 days of dissolution of marriage, Petitioner solemnized third marriage with said Sehrish.

12. Marriage is a sacred contract, human heredity depends on it, this contract nurtures and flourishes through behaviors of mutual respect. If at the wish of any party the marriage contract breaks, it never tantamount to

tarnish the image of either of the parties to contract. In the present case, Petitioner taking advantage of his male hood was victimizing the Respondent for no reasons solely that she was woman and can be a soft prey to allegations.

13. Petitioner, during hearing of Petition, was apprised of the legal status of his Case in open court and advised to avoid unnecessary litigation against his ex-wife that might result in bringing more damage to her life, but he still insisted for reversing the findings of Courts below on the score that he was a decree holder, and applications filed by the respondent were not sustainable. In Court's candid consideration, the Petitioner had no case at all to file appeal against the order dated 22.01.2025 passed by learned Family Court, which required the medical checkup of minors and individual meeting with mother. The arrogance of petitioner demonstrated that he was tutoring the minors to demonstrate awkward behavior with mother. Petitioner fully understanding the consequences of order dated 22.01.2025, that his conduct would be exposed in dealing with minors if allowed for a medical checkup, which may result in depriving him the permanent custody, thus resorted to the instant proceedings with explicit intention to halt the due process of law. Record sufficiently demonstrated that Petitioner applied uncalled for pressure tactics against Presiding Officer of Learned Family Court by moving complaints (available at page number 351 of court file) language of which suggests that Petitioner by hook or crook wanted to seek orders in his favor only.

14. Court is of the view that this petition was a classic case of frivolous and vexatious litigation, a sheer abuse of the process of law. Petitioner being aware of the consequences of Orders dated 22.01.2025 that the same did not affect his rights filed appeal and on failure to get order of his choice, with mala fide intentions aiming to drag Respondent Mahwish filed instant Constitution Petition, thus, unnecessarily burdened the Court with an incompetent litigation, wasted precious time and divulged the Court from dealing with genuine litigation. Such frivolous litigation handicapped the judicial system, hamper the Courts to provide inexpensive and expeditious justice to the genuine litigants as enshrined under Article 37(d) of the

Constitution of Islamic Republic of Pakistan of 1973 (the constitution) being the Principles of Policy for promotion of Social Justice.

15. It is about time, that there should be an end to such frivolous litigation, which can only be achieved by imposing costs. Had the Petitioner been burdened with a cost by the Appellate Court dealing with the G&W Appeal, Petitioner would have thought multiple times before bringing instant petition. Under constitutional command, the state is obligated under article 35 of the constitution to promote and protect the family as a unit. All the organs of state are required to act in adherence and compliance to the constitution. Petitioner on inquiry told that he was engaged in business and a well-educated person should have accepted the second marriage of Respondent when Petitioner's marriage with sister of Respondent was accepted.

16. In the case of Tanvir Sarfaraz Khan Versus Federation of Pakistan through Director Legal Islamabad reported as 2025 SCMR 98, Bakhat Biland Khan Versus Zahid Khan reported as PLD 2024 Supreme Court 1273 and Capital Development Authority CDA through Chairman CDA Islamabad Versus Ahmed Murtaza reported as 2023 SCMR 61, the Honorable Supreme Court of Pakistan was pleased to decline relief to the litigant petitioners by imposing heavy cost, when found that the abuse of process of law was committed by filing frivolous litigation.

17. Sequel to the above discussion, the court has reached to an irresistible conclusion that Petitioner adopted dishonest tactics to carry on a frivolous and vexatious litigation, dragged Respondent through abuse of the process of law with malice and ulterior motives to jab the new marital relations of his ex-wife. This Petition therefore warrants dismissal with heavy cost, but taking lenient view and considering the strained relations of the parties a lenient view is taken. Consequently, this petition being meritless is dismissed with costs of Rs. 100,000/- which should be paid to the respondent Mahwish within 30 days' time through trial court with further warning to the petitioner to mend his ways and stop agonizing Respondent. The impugned order dated 22.01.2025 and 31.07.2025 passed by the Courts below are maintained. Learned Trial Court is directed to ensure that during meeting of

mother with her children, petitioner shall not be in present in the meeting room.

Petition stands disposed of. A copy of this order be sent to the concerned trial Court for information if the petitioner fails to pay the costs within stipulated period, his CNIC and passport shall be blocked by the Trial Court.

Sd/-

JUDGE

Nadir*

Approved for reporting

Karachi / 19.11.2025