

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S-71 of 2025

Muhammad Nadeem Taj... v/s... Mst.Tehmina Latif & others

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

1.For hearing of CMA No.1678/2025

2.For hearing of main case.

Petitioner:

Muhammad Nadeem Taj

Through Mr.Shams-ul-Hadi and Mr.Abdul
Jalil, Advocates a/w Petitioner.

Respondent No 1:

Tehmina Latif

Through Mr.Abdul Khaliq, Advocate
a/w Respondent No.1

Date of Hearing &

Order:

09-09-2026

ORDER

NISAR AHMED BHANBHRO, J: This petition is directed against the concurrent finds tendered by learned XIIth Additional District Judge, Karachi South (**Appellate Court**) vide judgment dated 17.01.2025 in Guardian and Ward (G&W) Appeal No. 214 of 2024 (Re-Muhammad Nadeem Taj V. Mst.Tehmina Latif) and learned XIXth Family Judge Karachi South (**Trial Court**) vide order dated 25.11.2024 in G&W Application No.2174/2023 (Re Tehmina Latif V. Muhammad Nadeem Taj). Learned Trial Court allowed the G&W application and handed over the permanent custody of minors namely,

Muhammad Saad and Fabeeha Nadeem to mother Tehmina Latif with visitation rights to the father. Learned Appellate Court dismissed the appeal filed by Petitioner.

2. Counsel for the petitioner contended that petitioner concurrent findings rendered by Court below suffered from jurisdictional defect, were bad under the law and not sustainable. He contended that it was second G& W Application and was barred under the law. He contended that Petitioner (father) had filed G&W application No.16/2022 before the Family Court Malir for the permanent custody of minors which was disposed of vide order dated 06.12.2022 by the Court of learned Civil & Family Judge, Malir Karachi in terms of compromise effected between the parties and minors were handed over to father, therefore, the fresh application for regulation of custody of minors was not maintainable. He further contended that petitioner (father) is teacher by profession and earns handsome package under private arrangement too, whereas Respondent No 1 (mother) had no source of earning, she was a house wife. He contended that respondent No.1 is residing in the house of her parents, therefore, she cannot properly look after the minors. He next contended that the jurisdiction to entertain the G&W application was vested with the Court at Malir as the earlier application was decided by the said Court. He placed reliance on the cases reported as *2013 P.Cr.L.J 200 (Mst.Samreen Fatima.....v/s.....Station House Officer & others)*, *2010 YLR 1309 (Mst.Bisma Safdar....v/s....Additional District Judge & others)* and *1996 CLC 1603 (Mst.Rubia Julani....v/s....Raja Zahoor Akhtar & others)* . He lastly prayed to allow this petition.

3. On the contrary, learned counsel for the respondent No.1 argued that the custody of minors was decided by way of compromise in earlier G&W application No.16/2022 but thereafter, petitioner failed to act upon the terms

and conditions of compromise, and failed to maintain the minors properly besides did not arrange meeting of minors with respondent No.1. He further argued that per terms and conditions of compromise, petitioner was required to handover the custody of minors to Respondent No 1 on Eid occasions and meeting was scheduled to hold at public place, parties were precluded from interference into the matrimonial affairs of each other, however, petitioner did not fulfill the said conditions of compromise, therefore, Respondent No.1 instituted a fresh G&W Application, which was maintainable. He submitted that learned Courts below decided the custody of minors on merits and no illegality or infirmity has been pointed out in the concurrent findings of fact rendered therein. He prays for dismissal of the petition.

4. **Heard arguments** and perused the material available on record.

5. Counsel for the petitioner has assailed the impugned judgment on the ground that earlier application was decided on the basis of compromise, therefore, no fresh application can be maintained. Perusal of the compromise deed reached between the parties in earlier G&W case (available at page 61 of Court file) revealed that it was settled through condition No 9 of the compromise deed that in case of violation by any of the parties, the aggrieved party was at liberty to settle such grievance through Court of law. It was averred in the pleadings by Respondent No 1 with huge stress, that petitioner had failed to fulfill the condition number 2 and 6 of compromise deed, which burdened the Petitioner to arrange meetings of minors with mother at public place and handover the custody of minors to mother on Eid Holidays. Since through compromise deed, it was settled that in case any party violated the terms and conditions of the compromise deed, the recourse available to the aggrieved party was to knock at the doors of court for redressal of the grievance. Petitioner's failure to comply with compromise decree created a

fresh cause of action maintain fresh application for the permanent custody of minors and the principle of stopple shall not apply in such a situation, as compromise decree was conditional in its nature.

6. Adverting to the issue of jurisdiction of Court to entertain G&W application firstly at District Malir and then at District South of Karachi. Contention of the Learned Counsel for petitioner that earlier G&W application was filed and decided before a Court at Malir District, therefore, fresh application ought to have been filed before the said same Court. Admittedly, Petitioner is residing at Clifton within the jurisdiction of district South and Respondent No.1 is residing within the jurisdiction of District Malir. Earlier application was filed by Petitioner before G&W Court at Malir for the reason that minors at the relevant time were residing at the address falling within the jurisdiction of District Malir. After the Compromise Decree in earlier G&W case, the minors shifted their ordinary residence from the jurisdiction of District Malir and started residing in District South. Section 9 of the G&W Act, 1890 regulates the jurisdiction of the G&W Court which reads as under:-

“9. Court having jurisdiction to entertain application. (1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides. ”

7. From the perusal of above provisions of law, it is crystal clear that jurisdiction to entertain G&W application lies with the Court where minors ordinarily resided. At the time of institution of earlier application by petitioners minors were residing with mother at Malir District and as a result of compromise decree minors shifted from District Malir to District South, therefore, the Court at District South had the jurisdiction to entertain and

decide the G&W Application. It is, therefore, held that G&W Court at District South rightly entertained application, as the same fell within its jurisdiction.

8. As to the entitlement of parties to retain permanent custody of minors. From the perusal of record it transpired that out of the pleadings of parties learned trial Court framed following three issues for determination of custody of minors;-

ISSUE NO: 01.

Whether the applicant is entitled to permanent custody of minors?

ISSUE NO: 02.

Where the welfare of minors lies?

ISSUE NO: 03.

What should the order be?

9. The parties led evidence on the said issues. On appraisal of evidence, it was observed that Petitioner was teacher and remained busy throughout the day and minors were maintained by his father with a questionable character, therefore, the custody of minors with father was not fit and did not conform to the standards forming basis for welfare and interest of minors. Section 25 of the G&W Act, is governing provision of law to regulate custody of minors, which reads as under :-

“25. Title of guardian to custody of ward. (1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the First Class by Section 100 of the Code of Criminal Procedure, 1898 (Act V of 1908).

(3) The resident of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship."

10. From a bare reading of the law, it is evident that the legislation in its own wisdom and intents has placed "welfare of minors" as the paramount consideration for regulating permanent custody of minors. It was for the petitioner to prove that welfare of minors lies with him when it was established beyond doubt that petitioner was absent from house throughout the day and he was unable to take care of minors. It was further established that minors were retained in the custody of grandfather who was a man of loose character. It was also case of parties that after divorce, Respondent No 1 has not contacted second marriage for a sole reason to up-bring the minors. The minors are eight and six years old respectively, at this tender age they need the lap of their mother to become a useful citizen in future and if they are left in the custody of father it will not serve the cause of welfare of minors. Moreover the compromise was effected between the parties on certain terms and conditions and violation thereof constituted a sufficient ground to disentitle either party accused of such violation. On record it has been established that father violated terms and conditions of compromise and did not allow visitation of minors with mother. This conduct on part of the Petitioner sufficiently demonstrated that he wanted to deprive minors from love and affection of mother and was not a responsible father to retain custody. Mere assertion that mother was a house wife and lacked resources to earn livelihood was no ground to deprive her of the custody. It is the father responsible to maintain the children until their legal entitlement.

11. Learned Counsel for Respondent No.1 has placed on record the academic performance of minors, which shows that minors were getting education in Smart School Gulshan e Hadeed and they have achieved best performance certificates in their study, therefore, shifting of custody of minors at this stage may also bring adverse effects on their education.

12. Further, learned Trial Court while deciding custody of minors had granted certain rights in favour of father in the following manner:-

“a) The respondent/father shall be entitled for the custody of minors on the occasion of his own and minors' birthday.

b) The respondent/father shall be entitled for the custody of minors for one day on both Eid occasions; first, second or third day shall be decided with mutual consent of parties.

c) The respondent/father shall be entitled for the custody of minors on the occasion of marriages and funeral ceremonies of paternal uncles, aunts and grand-parent.

d) The respondent/father shall be entitled for the custody of minors half of the summer and winter vacation with the mutual consent of both the parties either to avail first or second half of such vacations.

e) The respondent/father is entitled for the custody of minor on 01 and 03rd Saturday of each month from 11:00 A.M to 13:00 P.M in court premises subject to conveyance charges Rs.1000/- same shall be paid by respondent/father.”

13. The arrangement so made protected the rights of Petitioner in unequivocal terms as he was granted visitation rights and entitled to retain custody of minors for half of the summer and winter vacations. Petitioner was also entitled for the custody of minors on Eid occasions,

on birthdays of minors as well as Petitioner's own birthday. The universal charter on the child rights under the United Nations Convention on rights of Child 1989 articulated that the child has right to be cared by the parents. It is the child who has rights against the parents but not the parents. The parents share a responsibility to take care of child to up-bring him as a responsible citizen in future. Considering this aspect both the Courts below rightly resolved that the welfare of minors lies with mother and no exception can be taken of such findings.

14. This Court, in exercise of its writ jurisdiction, does not ordinarily interfere with concurrent findings of fact unless such findings are found to be perverse, contrary to the record, or suffering from any jurisdictional defect. Since none of these circumstances existed in the instant matter, therefore, no case for indulgence is made out to exercise of the powers of judicial review conferred under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

15. The case laws relied upon by Learned Counsel for the Petitioner were on different footings and with huge reverence were distinguishable from the facts and circumstances of the present case.

16. Consequently, this petition fails and is, accordingly, dismissed with no order as to the costs.

Judge

Approved for reporting

nasir