

## HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**C.P No.S-647 of 2025**

[Waseem Akram vs. Mst. Asma]

Petitioner by : Mr. Akhtar Ali Abro, Advocate

Respondent by : Nemo

Date of Hearing : **19.01.2026**

Date of Decision : **19.01.2026**

### **ORDER**

**ARBAB ALI HAKRO, J:-** Through this constitutional petition, the petitioner has challenged the Judgment dated 04.10.2025<sup>1</sup> and the order dated 24.01.2025<sup>2</sup> passed by the Courts below, whereby the application filed by the petitioner under the Guardian and Wards Act, 1890, seeking custody of the minor, was dismissed.

2. The petitioner and the respondent contracted marriage on 13.04.2017, and from the said wedlock, a male child, namely Baba Hasnain, was born, who is presently aged about seven years. The marital relationship, however, could not be sustained, and the respondent obtained dissolution of marriage by way of khula. Subsequent thereto, the respondent instituted a suit for maintenance of the minor, which, according to the petitioner, was disposed of through a compromise, pursuant to which he claims to have been regularly paying maintenance. The petitioner asserts that the respondent has since contracted a second marriage and is residing with her new husband in a rural locality lacking adequate educational and health facilities. On this premise, the petitioner filed an application under Section 25 of the Guardian and Wards Act, 1890, seeking permanent custody of the minor on the grounds that: (a) the respondent, being remarried, has forfeited her right of 'hizanat'; (b) she allegedly lacks the financial means to secure the minor's welfare and

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<sup>1</sup> passed by Additional District Judge-IV, Dadu in Family Appeal No.05/2025 (Available on Page-21)

<sup>2</sup> Passed by Family/Guardian Judge, Dadu, in G & W Appl. No.96/2024 (Available on Page-63)

(c) the petitioner, being the natural father, is better placed to provide a stable environment, quality education and a secure future.

3. Learned Family/Guardian Judge, Dadu, vide order dated 24.01.2025, dismissed the petitioner's application, holding *inter alia* that the petitioner failed to establish any instance of improper maintenance or neglect on the part of the respondent; the respondent's second marriage was with her blood relative and therefore did not, *per se*, disentitle her from custody under the principles of Muhammadan Law; the minor, being of tender age, required the care, affection and emotional security of his mother; the minor was enrolled in Iqra Public School, Bhan Saeedabad and appeared to be well-maintained and comfortable in the respondent's custody and the petitioner had neither demonstrated superior welfare prospects nor shown consistent involvement in the minor's upbringing.

4. The petitioner's appeal was dismissed by the learned Additional District Judge-IV, Dadu, through a Judgment dated 04.10.2025, affirming the findings of the trial Court. The appellate Court observed that the minor, when produced before the Court, expressed no willingness to accompany the petitioner and appeared emotionally attached to the respondent. The appellate Court further held that the petitioner had failed to point out any illegality, misreading, or non-reading of evidence in the impugned order.

5. Aggrieved by the concurrent findings of the Courts below, the petitioner has invoked the constitutional jurisdiction of this Court, seeking reversal of the impugned Judgment and order and restoration of his application for permanent custody of the minor.

6. Learned counsel for the petitioner contends that the impugned Judgment and order suffer from legal infirmities warranting interference; that the minor having attained the age of seven years, has crossed the age of *hizanat*, thereby entitling the petitioner to custody of the minor; that the

respondent's second marriage disentitles her from retaining custody; that she lacks independent means to provide for the minor's welfare and that the petitioner, being financially stable and emotionally attached to the minor, is better suited to ensure his proper upbringing. He prayed that both the orders of the Courts below be set aside and that the custody of the minor be handed over to the petitioner for his better future.

7. Arguments heard, and record perused. The controversy brought before this Court, though presented as a challenge to concurrent findings, in essence revolves around the perennial and delicate question of custody of a minor, a jurisdiction in which the Court does not act as an arbiter of adversarial rights but as a guardian of the child's welfare. The petitioner has assailed the impugned Judgment and order primarily on the grounds that the minor has crossed the age of seven years, that the respondent-mother has contracted a second marriage and that the petitioner, being financially stable, is better suited to assume permanent custody.

8. At the outset, it is imperative to reiterate that Section 17 of the Guardian and Wards Act, 1890, casts upon the Court a solemn duty to determine custody strictly on the touchstone of the welfare of the minor. This concept has consistently been interpreted by the superior Courts as wide, flexible, and incapable of being confined within rigid doctrinal boundaries. The welfare principle is not a mechanical formula; it is a holistic inquiry encompassing the minor's physical well-being, emotional security, educational continuity, psychological comfort and the stability of the environment in which the child is being raised.

9. The petitioner's principal contention rests upon the proposition that the minor, having attained the age of seven years, has crossed the age of *hizanat*, thereby entitling the father to custody as of right. This argument, though rooted in classical principles of Muhammadan Law, no longer holds the rigidity it once did. The Supreme Court, most recently, in the case of Raja

**Muhammad Owais**<sup>3</sup> has unequivocally held that the age of the minor or the remarriage of the mother does not, by itself, divest her of custody. These factors may be relevant, but they are never conclusive; they merely form part of the matrix to be evaluated when determining where the minor's welfare lies.

10. The petitioner has also placed considerable emphasis on the respondent's second marriage. However, the record reveals that the respondent's remarriage is to a person related to her within the prohibited degrees, and even otherwise, the superior Courts have consistently held that a mother's remarriage is not a standalone ground for disqualifying her from custody. The Supreme Court in the case of **Raja Muhammad Owais** (supra) has categorically reaffirmed that the welfare of the minor remains the paramount consideration, and that remarriage, whether with a relative or otherwise, cannot eclipse the mother's custodial claim unless it demonstrably jeopardises the minor's well-being. No such evidence has been brought on record by the petitioner.

11. The factual record further reveals that the minor has been residing with the respondent since birth. The Courts below have concurrently observed that the minor appears well-maintained, emotionally secure, and academically settled. The minor is enrolled in a reputable school, and the respondent has provided documentary evidence of the minor's educational progress. The petitioner, on the other hand, has not demonstrated any instance of neglect, maltreatment, or an adverse environment in the respondent's household. Nor has he shown that uprooting the minor from his present surroundings would serve any beneficial purpose. The petitioner's assertion that he is financially better placed, even if accepted, does not automatically translate into superior welfare. Financial capacity is merely one factor; it cannot outweigh the emotional anchorage and maternal care that a child of tender years naturally receives from the mother.

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<sup>3</sup> *Raja Muhammad Owais v. Mst. Nazia Jabeen\** (2022 SCMR 2123)

12. The Courts below have also noted that when the minor was produced before the appellate Court, he did not express any willingness to accompany the petitioner. While the preference of a child of such age is not decisive, it is nevertheless a relevant indicator of comfort and attachment. The minor's reluctance to leave the respondent reinforces the conclusion that he feels secure in her custody.

13. It is equally significant that the petitioner has not demonstrated consistent involvement in the minor's upbringing. The respondent has alleged, and the petitioner has not convincingly rebutted, that he has remained largely absent from the minor's life and has not regularly contributed to maintenance despite the compromise decree. The petitioner's sporadic assertions of affection cannot substitute for the day-to-day nurturing that the respondent has been providing.

14. The concurrent findings of the Family/Guardian Court and the appellate Court are based on a meticulous appraisal of evidence, correct application of legal principles and adherence to the welfare doctrine. No misreading, non-reading, perversity, or jurisdictional defect has been pointed out. The petitioner seeks re-appraisal of factual determinations, which this Court, in its constitutional jurisdiction, ordinarily refrains from undertaking unless the findings are shown to be arbitrary or contrary to law. The record does not reveal any such infirmity.

15. For the reasons recorded above and in view of the settled principles governing custody matters, this Court finds no illegality, perversity, misreading or non-reading of evidence in the concurrent findings recorded by the Courts below. Both the learned Family/Guardian Court and the appellate Court have correctly applied the welfare test, have appreciated the evidence in its proper perspective and have reached a conclusion fully aligned with the paramount consideration of the minor's best interest. No ground has been made out to justify interference in the exercise of constitutional jurisdiction.

16. Consequently, this constitutional petition stands **dismissed** in *limine* along with the pending application. The impugned Judgment dated 04.10.2025 and the order dated 24.01.2025 are hereby maintained. However, it is observed that the petitioner, being the natural father, retains an undeniable emotional bond with the minor. The Respondent-mother shall, therefore, continue to facilitate the petitioner's visitation rights strictly in accordance with the schedule already determined by the learned Family/Guardian Court or any modification thereof that the said Court may deem appropriate in future proceedings, keeping in view the welfare and convenience of the minor.

**JUDGE**

Sajjad Ali Jessar