

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
C.P No.S-177 of 2012

Date of hearing: 05.12.2016.
Date of decision: 15.12.2016.
Petitioner Azhar Ali: None present.
Respondent Mst. Zareena Bibi: Present in person.

ORDER

MUHAMMAD FAISAL KAMAL ALAM- J:- Through this constitutional petition, the petitioner has called in question the judgment dated 14.02.2012, passed in Guardian Appeal No.01 / 2011, preferred by present respondent No.1 (Mst. Zareena), whereby the order dated 19.02.2011 of the learned Guardian Judge in Guardian Application No.08 / 2009 filed by present petitioner, was set-aside and the hizanat/custody of minors were given to the present respondent.

2. Succinctly the controversy in question has a chequered history as for the past many years present petitioner (Azhar Ali) and respondent Mst. Zareena Bibi have entangled into litigation for the custody of minors, namely Mariya Azhar, Abdullah Azhar and Mariyam Azhar, who are children of present petitioner but were brought up by present respondent No.1 who is their real maternal aunt (khala) as the mother of these minors deceased Sakina Bibi who was an Army Officer, died in a Train accident on 13.05.2007.

3. The record of present proceeding shows that for the past few dates, petitioner side is not proceeding with the case, while present respondent No.1 was present in person. On last date of hearing (22.11.2016), she also pointed out that latter (respondent No.1) has filed a Miscellaneous Application being MA No.16741 of 2016 for dismissal of present petition as the first two above named minors have attained majority and Mariyam Azhar was only 18 days away from turning 18 years. To further corroborate her stance, the said respondent No.1 has also enclosed the NADRA Certificate wherein dates of birth of above named persons have been mentioned, which supports the version of present respondent No.1. This application was filed on 25.10.2016, which means that even Mariyam Azhar has now attained majority as her date of birth as mentioned in the above NADRA Certificate is 14.11.1998. Even if record of earlier proceedings is perused (available in present case/Court file), the plea of present respondent No.1 about the fact that all the above named minors (as they were at that time) have now attained majority, stands proven. Therefore, this petition has otherwise have become infructuous as all the above named persons, who during pendency of litigation, have become *sui juris* can now take an independent decision about the issue at hand. Even otherwise, in the impugned decision, reliance was rightly placed on a reported judgment of Hon'ble Supreme Court–1998 SCMR 1593 (*Mst. Nighat Firdos v. Khadim Hussain*), wherein, though father of minor was alive, but the minor's maternal aunt was allowed to retain the custody/hizanat of the minor.

4. However, before parting with this order in my considered view, though now the question of hizanat has ceased to exist but examining the record of the proceedings below, it appears that there exists some estrangement between above named children of petitioner and the latter (the petitioner), who is their real father. It is expected from respondent No.1 that at least she would make a sincere effort that relationship between above named children / persons and petitioner are not severed (permanently cut off), keeping in view the noble Islamic values as well as of Pakistani society.

With the above observations, instant petition is disposed of with no order as to costs.

JUDGE

Shahid