

# **IN THE HIGH COURT OF SINDH AT KARACHI**

**C.P. No.S-1456 of 2017**

Syed Zia Abbas.....Petitioner

versus

Mst. Mahiya and others.....Respondents

Date of hearing: 17.07.2017

M/s Farhatullah & Syed Ahsan Imam Rizvi, Advocates for the  
Petitioner.

Mst. Mahiya present in person.

Ms. Yasmeen Sultana, State Counsel.

## **ORDER**

**ADNAN-UL-KARIM MEMON,J:-** Through instant Petition, the  
Petitioner has impugned Order dated 20.06.2017 passed by the  
learned XII Civil Judge, Karachi, Central in Guardian and Ward  
Application No. 2197/2015 and Judgment dated 12.07.2016  
passed by learned VI Additional District Judge, Karachi, Central in  
Family Appeal No. 63/2017.

2. Brief facts of the case are that Petitioner and Respondent  
No.1 (Mst. Mahiya) contracted marriage on 13.6.2009 and out of  
the said wedlock one child namely Sayed Jarri Abass was born.  
Later on due to unavoidable differences cropping up between  
Petitioner and Respondent No. 1 the marriage could not continue  
and by mutual consent Petitioner divorced Respondent No.1 on  
7.6.2015. Petitioner further asserts that Respondent No. 1 has  
contracted second marriage with person namely Zia Abass Ansari  
and has recently given birth to one baby. That on 30.10.2015  
Respondent No. 1 filed Guardian and Ward Application under  
Section 25 of Guardian and Ward Act, 1890 in the Court of learned  
Family Judge, Karachi, Central for custody of minor/Sayed Jarri  
Abass. In the said proceedings, learned Family Judge allowed  
meeting of Respondent No. 1 with minor/Sayed Jarri Abass. That  
on 27.8.2016, Respondent No.1 filed Application under Section 12

of Guardians and Wards Act, 1890 for interim custody of minor/Sayed Jarri Abbas. The learned Family Judge allowed the said application by permitting meeting of minor with Respondent No.1 on second day of Eid-ul-Fitar from 11.00 am to 06.00 pm and also granted interim custody of minor for 10 days that is, from 16.07.2017/10.00 a.m. till 25.07.2017/05.00 p.m. Petitioner feeling aggrieved and dissatisfied with the impugned orders assailed the same before the learned VI Additional District Judge, Karachi, Central in Family Appeal No.63/2017 which was dismissed vide Judgment dated 12.07.2017 by the learned Appellate Court. Hence, Petitioner impugned both the above specified orders in this Court.

3. Syed Ahsan Imam Rizvi, learned counsel for the Petitioner contended that the impugned Order dated 20.6.2017 as well as Judgment dated 12.7.2017 are void orders therefore, not sustainable in the eyes of law; that the learned Family Judge has allowed the interim custody of minor/Syed Jarri Abbas to Respondent No.1 for 10 days without considering the welfare of the minor; that learned Appellate Court dismissed the Appeal of Petitioner as not maintainable without considering the facts and circumstances of the case as well as law involved; that the Petitioner is taking best care of minor; that Respondent No. 1 has illicit relation with a stranger therefore, giving her interim custody of minor is against the welfare of minor. He next added that learned link Judge/XII Civil Judge, Karachi, Central has no jurisdiction to decide Application under Section 12 of Guardian and Ward Act, 1980. Per learned counsel the learned link Judge neither heard the Petitioner nor perused the material available on record and allowed interim custody of minor to Respondent No.1, which is against the law. He lastly contended that minor has no interest, love and affection for his mother due to the reasons given supra; that minor is regularly meeting his mother per direction of learned Family Court therefore, granting interim custody to Respondent No.1 is not justified. In support of his contentions reliance has been placed on the case of ( 2016 SCMR 2023).

4. Respondent No.1 (Mst. Mahiya) present in person states that she is real mother of minor/Sayed Jarri Abbas and is rightly granted interim custody by the learned courts below.

5. Learned State Counsel supported the impugned judgments passed by learned Courts below. She further submits that learned family judge has passed interim order and matter has not decided yet , therefore at this stage Petition is not maintainable.

6. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

7. The impugned Order dated 20.06.2017 passed by learned XII Civil Judge, Karachi, Central explicitly shows that an interim arrangement is made by the learned Court by allowing interim custody of minor/Sayed Jarri Abbas to his mother (Respondent No.1) for 10 days. Therefore, said interim arrangement cannot be termed as illegal. Secondly, the impugned Order dated 20.06.2017 being interlocutory in nature, which is also not a final order, cannot be assailed in appeal in terms of Section 14 ( 3 ) of Family Courts Act, 1964 until and unless the order passed is not in favour of welfare of the minor. Learned Appellate Court has also taken the same legal view vide Judgment dated 12-07-2017 and rightly dismissed the Appeal of Petitioner. I am fortified by the view of Hon'ble Supreme Court of Pakistan given in the case of Sardar Hussain and others vs. Parveen Umar and others (PLD 2004 SC 357) whereby Petition of a father for custody of minor (7 years old) is dismissed.

8. It is well settled law that dominant consideration in determining the custody of a minor under the Law is always the welfare of minor. The learned Family Court has allowed interim custody of minor to Respondent No. 1 (mother) for limited period of time that is 10 days, which is neither illegal nor against the norms of justice as portrayed by the Petitioner.

9. I have noted that petitioner has raised certain factual controversies in the matter. At this stage the same factual issue cannot be decided. In this regard reference is safely made in the case of Muhammad Younis Khan and others vs. Government of

NWFP and others ( 1993 SCMR 618 ) wherein Honourable Supreme Court held that factual controversies involved in the case could not be solved without a full-fledged trial.

10. I am of the view that mother of minor being natural guardian cannot be called alien if custody of child is given to her for interim period and the same does not prejudice the rights of a father in any way, until and unless the same is against the basic welfare of minor.

11. In the light of above facts and circumstances of the case, I do not find any illegality, infirmity or material irregularity in the impugned Order dated 20.06.2017 and Judgment dated 12.07.2016 respectively. Consequently, the instant Petition is dismissed along with listed application(s). The above observations shall not prejudice the case of either party during proceedings before the learned Trial Court.

12. Foregoing are the reasons for short order dated 17.07.2017.

Karachi  
Dated: 20.7.2017.  
S.Soomro/PA

JUDGE