

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No. S-756 of 2019

Sohail Ahmed.....Petitioner

Versus

Mst. Tehniat and another.....Respondents

Mr. Israr Ahmed Abro, advocate for Petitioner.
Mst. Tehniat Respondent No. 1 in person.

Date of short order: 23.07.2019.ORDER

FAHIM AHMED SIDDIQUI, J:- This constitutional petition is filed against the order dated 21-05-2019, passed by the learned IX Family Judge; Karachi East on an application under Section 12 of Guardian and Ward Act, 1890 (hereinafter referred as 'G & W Act') for interim custody of a minor in the G & W Application No. 308 of 2018. Through the impugned order, the petitioner's, request for interim custody of his minor son namely Ashbaal, was declined by the learned trial Court.

2. The facts of the case in a nutshell are that the petitioner and respondent married in the year 2003 and from the wedlock, a son namely Master Ashbaal was born on 21-01-2005. The marital life of the spouses passed through thick and thins and due to certain reasons, the petitioner entered into another marriage in the year 2016. In spite of that the marriage remains continued but relation between the parties turn out to be unbecoming for a smooth marital life and the respondent with her minor son started to live separately. Facing such a situation, the petitioner filed an application against the respondent under Section 25 of the G & W Act, which is pending adjudication. During the pendency of such proceedings, the petitioner filed an application under

Section 12 of the said Act, which was dismissed through the impugned order.

3. It is the contention of the learned counsel for the petitioner that the welfare of the minor demands that the interim custody of the minor should be handed over to the petitioner. According to him, the petitioner is a well-off person and as against the respondent, he is able to better look after and take care of the minor. He submits that in respect of interim or final custody, the wishes of minor are immaterial and the Family Court has to consider the betterment of minor, which lies with the petitioner. He apprehends that the respondent would brainwash the minor, if his custody will remain with her. He relies upon Saad Amanullah Khan v. IVth Senior Civil Judge (South), Karachi and 3 others (PLD 2008 Karachi 499).

4. Respondent has strongly opposed such contention by submitting that being a mother; she is in a better position of looking after and taking good care of the minor. She submits that the petitioner being a father is not fulfilling his responsibility to maintain the child properly. According to her, age of the minor is 14 years and being a grown up teen aged boy; the court should not be oblivion to consider his wishes at the time of dealing with such matters.

5. In the existing position of affairs, the observation of the trial court appears to be proper that the matter of interim custody cannot be decided at this stage of the case without examination of the parties and bringing some material on record. The learned counsel for the petitioner cited the case of Saad Amanullah Khan (supra) but the same is distinguishing as it pertains to final custody and visitation rights and not in respect of interim custody. I am afraid that the contention of the learned counsel for the petitioner, that at the time of interim or final custody, the wishes of minor are immaterial, is also contrary to law as per provision under Section 17(3) of G & W Act; which says that if minor

is old enough to form an intelligent preference, the same may also be considered by the Court. Nevertheless, such issue should also be required to be thrashed out after recording of evidence, hence I found no illegality or infirmity in the impugned order, as such the same requires no interference under the constitutional jurisdiction of this Court.

6. With these observations, the instant petition was dismissed through a short order dated 23-07-2019 and these are the reasons for the same.

Dated: _____

J U D G E