

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**C.P No.S-380 of 2016**

Date	Order with signature of Judge
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**Before: Mr. Justice Nazar Akbar**

Petitioner: : Naseer Ahmed,  
through Khawaja Naveed Ahmed, Advocate

Respondents No.1 : Mst. Azra

Respondents No.2 : Master Wasif Naseer  
Mr. Shaharyar Ibrahim, advocate.

Respondents No.3 : Public at Large

Respondent No.4 : XVIth Family Judge, Karachi (South)

Respondent No.5 : VIIth Addl. District Session Judge, Karachi (South)

Date of hearing : 19.10.2018

Decided on : 26.10.2018

**Nazar Akbar, J.** This constitution petition is directed against the order dated **08.2.2016** whereby Family Appeal No.69 of 2013 filed by the petitioner was dismissed by the VIIth Addl. Session Judge, South Karachi and the order dated **30.09.2013** passed by Civil and Family Judge & JM-XVI, South Karachi in G & W No.959/2010 was maintained.

2. Brief facts of the case are that Respondent No.1 was married to the petitioner on **11.1.2001** at Karachi according to Sunni Hanfi Muslim Law and from the said wedlock no child was born. Respondent No.1 on **16.2.2005** adopted a minor son of one Ms. Rozeena through Mst. Amina and Mst. Khursheed in presence of witnesses A stamp paper regarding adoption was duly prepared and signed / thumb impression by the real mother of the minor in presence of the witnesses. The ward was born on **16.2.2005**, the real mother handed over the minor to Respondent No.1 because her husband (father of the ward) was narcotic addict and jobless. Respondent No.1 named the ward Wasif Naseer and took him to

Aziz Medicare Hospital for initial vaccination and for further vaccination he was taken to Agha Khan Jan Bai Hospital, Kharadar, Karachi.

3. Respondent No.1 is an educated lady and serving as High School Teacher and earned more than Rs.35,000/- per month. Respondent No.1 is co-sharer of agriculture land situated at Punjab. The petitioner demanded said land from Respondent No.1 and on her refusal the dispute arose between the parties and ultimately Respondent No.1 obtained khulla. The petitioner to harass respondent No.1 filed G&W Application No.251/2009 for the custody of the ward from Respondent No.1 when the minor was continuously living with Respondent No.1 from his birth and he is very familiar with Respondent No.1 and she is also very much attached with the minor as she has provided to the minor all facilities and necessities of life as per her status. During the course of proceedings, the petitioner was directed for DNA test but the petitioner did not agree for DNA test and gave up the contest of the case. Subsequently the case was dismissed for non-prosecution. However, the petitioner kidnapped the ward. Respondent No.1 lodged FIR No.152/2010 against the petitioner and during the course of investigation the minor was recovered from him. In these circumstances the trial Court dismissed G&W Application filed by petitioner and appeal was also dismissed. The instant petition is against the concurrent findings.

4. I have heard learned counsel and perused the record.

5. It is averred by the learned counsel for the petitioner that the impugned orders passed by the two Courts below are illegal, unlawful, unwarranted, flimsy, fanciful, whimsical, capricious as well as bad in law as such is not sustainable and liable to be set aside being null & void ab-initio. He further contended that the impugned orders are based on misreading and non-reading of the evidence as well as facts.

6. The petitioner has impugned concurrent findings of the Court below and when he was confronted with the two impugned judgments he was unable to identify any piece of evidence which could be said to have been misread or not read by the trial Court in coming to the conclusion for dismissing his application for appointment of guardian of Wasif Naseer. The petitioner has claimed to be father of the minor through his second wife but he has failed to establish not only second marriage but also failed to produce the mother of the child who gave birth to the child of the petitioner as alleged by him in his G&W Application. Respondent No.1 has very categorically challenged his claim by offering the petitioner to undergo DNA test. As such a specific order was passed by the trial Court directing the petitioner to undergo DNA test for proving his parentage of minor. The failure of the petitioner to follow order of the Court about his DNA test as well as production of evidence by producing his wife from whom he claimed that the baby was born was more enough to appreciate that the two Courts below have rightly decided the controversy against the petitioner. As against the claim of the petitioner the defense taken by the Respondent Azra that minor Wasif Naseer is adopted son, she has produced all the documents showing his adoption, her love and affection for the child and her ability to look after the child.

7. In view of the above, concurrent findings are maintained and the petition is dismissed.

**JUDGE**

Karachi  
Dated:26.10.2018

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