

IN THE HIGH COURT OF SINDH, KARACHI  
**CP No.S-1449 of 2018**

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

Petitioner No.1 : Mst. Sat Bai,  
 Petitioner No.2 : Nazir Ahmed,  
 Through Mr. Jan Muhammad, Advocate.

**Versus**

Respondent No.1 : Manzoor Ali. (Nemo).  
 Respondent No.2 : Judge Family Court, Thata  
 Respondent No.3 : Ist Additional District Judge, Thatta.  
 Date of hearing : **28.02.2020**  
 Date of Decision : **18.05.2020**

**J U D G M E N T**

**NAZAR AKBAR, J--** The petitioners through this constitution petition have challenged concurrent findings of the two Family Courts below. The Family Judge and Judicial Magistrate, Thatta by order dated **22.07.2017** dismissed G&W Application **No.02/2016** filed by Respondent No.1, however, he was granted visitation rights to the minors. The said findings of the trial Court were upheld by the Ist Additional District Judge, Thatta by common judgment dated **17.04.2018** passed in **Family Appeal No.13/2017** filed by Respondent No.1 as well as in **Family Appeal No.17/2017** filed by the Petitioners and both the appeals were dismissed.

2. To be very precise the facts of the case are that Respondent No.1/applicant filed G&W Application No.02/2016 before the Family Judge and Judicial Magistrate, Thatta for custody of three children namely (1) Anila, daughter (2) Gulshan, daughter and (3) Anil Ahmed,

son, who have born from wedlock of Respondent No.1 and Petitioner No.1. The said G&W application was contested by the Petitioners. The trial Court framed issues, recorded evidence and keeping in view the circumstances of the parties dismissed the Guardian and Ward Application No.02/2016 in the following orders:-

*“In view of above reasons and circumstances the welfare of the minors does not lie with the applicant. So, applicant is not entitled for custody of the minors. Hence, the said application is dismissed with no order as to costs. However, the applicant being a father of the minors namely baby Anila aged 13 years, Baby Gulshan aged 11<sup>1/2</sup> years and one son namely Anil Ahmed aged about 5<sup>1/2</sup> years, has a right to meet the minors as well. Meeting and interim custody schedule is given to applicant as under,*

- A. It is ordered that on alternative Saturday of each calendar month the minors namely baby Anila aged 13 years, Bably Gulshan aged 11<sup>1/2</sup> years and one son namely Anil Ahmed aged about 5<sup>1/2</sup> years shall be handed over to the applicant for two hours from 10 am to 12 pm in Court, the fair charges Rs.1000/- will be paid by applicant. If the parties wanted to have meeting outside of the court by consent then they are at liberty to make their schedule of meeting and inform about the schedule to this Honorable Court.*
- B. The respondent No.1 is directed to handover the interim custody of the minors to the applicant on 2<sup>nd</sup> day of Both EIDS, i.e Eid ul Fitr and Eid ul Azha from morning 10:00 am to 09:00 pm. (Pick and drop services will be provided to Minors by Applicant side).*
- C. The respondent No.1 is directed to handover the interim custody of all three minors to the applicant on their Birthdays from 03 pm to 09:00 pm. (all three minors will collectively be handed over to applicant on every minor's birth day. pick and drop services will be provided to Minors by Applicant side).*
- D. The respondent No.1 is directed to handover interim custody of the minors to the applicant during summer and winter vacations for two days in a week as from 9 am on Saturday to Sunday till 9:pm. Days for meeting can be varied either on parties wish or on vacations schedule. (Pick and drop services will be provided to Minors by Applicant side).*

*E. The above schedule of meeting can be changed/ varied at the request of either party or otherwise this court in the light of circumstances in future.*

*F. Both the parties are also directed to comply the above schedule of meeting. In case of failure the meeting order will be complied by the concern SHO where the minors reside.*

Respondent No.1/applicant and the Petitioners both have filed separate Family Appeals No.13/2017 and 17/2017 respectively against the above findings. The appellate Court dismissed both the Family Appeals by common judgment dated **17.04.2018**. Only the Petitioners have challenged the concurrent findings of two Courts below herein this Petition, irrespective of the fact that both the findings are in their favour.

3. On **28.02.2020** when this case was fixed before this Court, I have heard learned counsel for the Petitioner at length and directed him to file written arguments **within a week** but till date he has not filed the same, therefore, I have perused the record available in the file.

4. Learned counsel for the petitioner has assailed both the orders but unfortunately he has not identified any misreading and non-reading of evidence in coming to the conclusion by both the Courts below, not a single sentence from the evidence of either side has been referred to by the learned counsel to assert that the two judgments suffer from any illegality on account of misreading of evidence, therefore, he has not filed even written arguments since **28.2.2020** in order to get the concurrent findings set aside. It is pertinent to mention here that both the concurrent findings are in favour of the Petitioner and only visitation right was granted by the two Courts

below to Respondent No1/father of the minors. It is settled law that constitution petition does not lie against concurrent findings of facts.

5. In view of the above, the instant constitution petition is dismissed with no order as to cost.

JUDGE

Karachi, Dated:18.05.2020

Ayaz Gul