

IN THE HIGH COURT OF SINDH, KARACHI
CP No.S-1255 of 2014

Date	Order with Signature of Judge
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Petitioner : Murtaza Mooman,
Through Mr. Kashif Hanif,
Advocate

Versus

Respondent No.1: Mst. Hina Zehra through
Mr. Muhammad Faisal, advocate.

Respondent No.2: Vth District Judge, South Karachi.

Respondent No.3: Family Judge, South Karachi.

Date of hearing : 04.02.2020

Decided on : 14.02.2020

J U D G M E N T

NAZAR AKBAR, J-- The petitioner through this constitution petition has challenged concurrent findings in G&W Application **No.856/2008** by order dated **29.1.2013** by the Family Judge South, Karachi, which was modified/maintained in G&W Appeal **No.10/2013** by the learned Vth Addl. District Judge South, Karachi. The parties contested the G&W case before the Court and led their evidence. The trial Court keeping in view the circumstances of the parties disposed of the Guardian and Ward Application **No.856/2008** in the following terms:-

“On the basis of above discussion, I do not find any cogent reason to disturb the current set up of the minor, hence, the prayer for restoration of custody of minor to the applicant is hereby declined. Though, being father of the minor, applicant is very much entitled to the visitation rights with the

minor, until and unless, there appears something contrary, therefore, in the interest of justice, applicant is allowed to meet the minor on every Sunday from 10:00 a.m to 6:00 p.m. Applicant may also take the custody of minors of the 2nd day of every Eid from 10.00 a.m. till 6.00 hrs. On birthdays the minor will be handed over to applicant on same time. In case of summer and winter vacation the minor will be handed over to applicant in the 2nd and 1st half, respectively. Both the parties are directed not to remove the custody of minor from the jurisdiction of this Court, without prior permission”.

2. The appeals against the said orders were preferred by the petitioner and Respondent No.1, the appellate Court dismissed the appeal of the petitioner and allowed the appeal of the Respondent No.1 in the following terms:-

“For the reasons, recorded above, the impugned order is hereby modified to the extent of visitation rights as granted by the learned trial Court, which are allowed in the manner that the respondent/father may visit his minor son on every Sunday as well as summer/winter vacation for the same period of time and duration, however, such meeting will be held in the house of the appellant/Mst. Hina Zehra, who shall provide a separate room with privacy as offered during the course of arguments; as regards, the direction of the learned trial Court that on birthday and 2nd day of every Eid, the minor will be handed over to respondent/father from 10.00 a.m. till 6.00 p.m., there appears no illegality in such direction as it would be in the interest of minor as well to go outside the house with his father/respondent, with direction to both the parties not to remove the custody of minor from the jurisdiction of the trial Court without prior permission. Moreover the liberty to move fresh G&W application in the changed circumstances allowed by the learned trial Court shall be remained intact. Resultantly, Family Appeal No.10/2013 filed by the appellant/Mst. Zehra stands allowed

and impugned order is modified in the above manner, whereas Family Appeal No.17/2013, filed by the respondent /Murtaza Abbas Mooman is hereby dismissed”.

3. In appeal learned Appellate Court again examined the facts of the case and the evidence and upheld/modified the judgment.

4. I have heard learned counsel for the parties and perused the record as well as written arguments filed by the learned counsel for the parties.

5. 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. It is settled law that constitution petition does not lie against concurrent findings of facts and therefore, this petition was dismissed with no order as to cost.

JUDGE

Karachi
Dated:14.2.2020

SM

