ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI C.P. No.S-744 of 2020

Date Order with Signature(s) of Judge(s)

1.For order on CMA No.3843/2020. 2.For hearing of main case.

07.03.2022

Ms. Bad-e-Saba, Advocate for petitioner alongwith petitioner and minor baby Noor-ul-Eman. Mr. Qadir Hussain, Advocate for respondent No.1 alongwith respondent No.1. Mr. Ghulam Akbar, AAG.

This constitution petition is directed against the order dated 20.08.2020, whereby the learned Additional District Judge-IX, Karachi West while allowing Family Appeal No.64/2019 set aside the order dated 17.07.2019 passed by the Family Judge-XV Karachi-West in G&W Application No.1493/2018 filed by the respondent No.1, by observing that since the petitioner has already got second marriage with a stranger, she has no right to retain the custody of the minor baby Noor-ul-Eman and entitling the petitioner to meetings/visitings right with minor by directing the respondent No.1 to produce the minor for meeting with the petitioner on 02nd and 04th Saturday of each month from 10:00 a.m. to 01:00 p.m. in the trial Court.

Heard the learned counsel for the parties and perused the material available on record.

It is an admitted position that marriage of the petitioner and the respondent No.1 was dissolved on 29.8.2016 and thereafter the petitioner contracted second marriage on 06.07.2018 with a person who is not related to minor baby within prohibitory degree i.e. stranger. As per paragraph 352 of D.F. Mulla's Muhammadan Law "The mother is entitled to the custody (hizanat) of her male child until he has completed the age of seven years and of her female child until she has attained puberty. The right continues though she is divorced by the father of the child, unless she marries a second husband in which case the custody belong to the father".

Hence, the impugned order does not suffer from any illegality or irregularity requiring any interference of this Court under its Constitutional jurisdiction. Accordingly, instant Constitution Petition is dismissed being devoid of any merit by directing the petitioner to handover the custody of minor baby Noor-ul-Eman to respondent No.1, which has been handed over by her in the Court.

This petition stands disposed of alongwith pending application.

JUDGE

Abrar