

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**CP.No.S-429 of 2021.**

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Date	Order with signature of Judge
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**Before:- Mr. Justice Salahuddin Panhwar.**

Mst. Hira Imam,  
Petitioner and Ibrahim Hassan,  
Minor through: M/s. Navin Marchant and Salim  
Ghulam Hussain, advocates.

Hassan Khurshid Hashmi,  
Respondent No.1 through: M/s. Muhammad Haseeb Jamali  
and Shahab Sarki, advocates.

Date of hearing: 04.6.2021.  
Date of order: 08.06.2021

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**ORDER**

**SALAHUDDIN PANHWAR, J.**- Through the instant petition, the petitioner has sought the following relief:

- a) *Declare that the impugned order dated 29.04.2021 for production of the Minor every fortnightly in the Family Court, Karachi from Tando Adam is illegal, ultra vires, harsh and is clearly in contravention of the principles of precedents set forth by the superior judiciary on the issue of welfare and hardship of the minor and hence is liable to be set aside/dismissed.*
- b) *Declare that the impugned order dated 29.04.2021 for submission of the Minor's passport is harsh and unwarranted as the Minor has travelled out of the country many times after the separation of the Petitioner and Respondent proving beyond any doubt that the Petitioner has no intention of removing the minor from the jurisdiction of the Court and hence is liable to be set aside.*
- c) *Forthwith suspend the impugned order dated 29.04.2021.*

2. At the outset, learned counsel for the petitioner has contended that the petitioner filed Constitutional Petition No.S-326 of 2021 with regard to territorial jurisdiction of Guardianship petition filed by respondent No.1 [father] at Karachi and that was disposed of by order dated 29.4.2021, however, she has challenged the order passed in Constitutional Petition No.S-326 of 2021 dated 22.4.2021 before the apex court which is pending. It is further contended that she is not disputing the visitation right of father, allowed by the Family Court and she has *only* impugned the condition imposed by Family Court whereby mother, who is Pakistani National, has

been directed to deposit Passport with the Nazir and further direction to bring minor at Family Court. Though petitioner is residing in Tando Adam and she is a Doctor by profession and she being one of Directors, also takes care of Suleman Roshan Medical College (Pvt.) Ltd. as an Administrator. In support of her contention she has relied upon the case law reported as Shaukat Masih V/S Mst. Farhat Parkash and others (2015 SCMR 731).

3. In contra, learned counsel for respondent No.1 has contended that the petitioner is residing at Karachi and before marriage her address as per documents shows that she is residing in Karachi and at present she is also residing in Karachi though her native place is Tando Adam and there will be no harm to bring the minor in the Court at Karachi as the petitioner is also residing in Karachi. Further it is contended that present petition is against the interim order, hence, the same is not maintainable. He has relied upon Section 14 of the Family Court Act and has also relied upon the case laws reported as 1996 SCMR 1165, PLD 2001 SC 26, 2013 MLD 1269, 2018 MLD 448 [Lahore] and 2019 YLR 700.

4. Heard the respective parties and have also perused the available material.

5. *Prima facie*, the petitioner does not challenge the impugned order to extent of *right of visitation* of the father (respondent) but she has confined her grievance to extent of condition(s), so imposed by the learned Guardians Court regarding depositing of *passport of minor* and bringing the *minor* for unchallenged right of *visitation* while claiming the same inconvenient, being resident of *Tando Adam*. It is also matter of record that she (petitioner) her C.P No.S-326 of 2021, challenging territorial jurisdiction of Guardianship petition, filed by respondent No.1 [father] at Karachi, was disposed of by order which order she has challenged before honourable Apex Court and same is pending. At the outset, It would be conducive to refer the order passed in C.P.No.S-326 of 2021, which is that:-

*“After detailed arguments, learned counsel for the petitioner concedes that in terms of Rule 6 of West Pakistan Family Court Ordinance, 1965 perhaps the territorial jurisdiction was rightly exercised by respondent by approaching trial Court as observed in the impugned order of the appellate Court.*

*However the question of welfare of the ward related to his production before the Court is still open as the petitioner/respondent in the suit is residing at Tando Adam. Per learned counsel, it would be difficult for the petitioner to produce the minor on every date of hearing. This being a question of fact and since both the Courts below have not commented on this*

point, it would be unfair if any finding is given by this Court which is seized of the matter in relation to the territorial jurisdiction of the trial Court only. Hence, I dispose of this petition with the observation that **the territorial jurisdiction was rightly exercised by the respondent in filing suit in terms of Rule 6 of ibid law. Petitioner however is at liberty to move any such application in view of order of production of the minor**, since petitioner claims that it would not be in welfare of the minor to produce the child on every date of hearing as she hails from Tando Adam now. **In case such application is filed, trial Court may hear the parties on such application and decide the controversy in a months' time.**"

The above order leaves nothing ambiguous that as regard question of territorial jurisdiction which, *always*, includes competence to pass an order, is not available for the petitioner to be *raised* even by invoking Constitutional Jurisdiction as the same is pending determination before honourable Apex Court. I would also add that such determination of territorial jurisdiction also reflects upon *ordinary* place of residence of minor within such Court therefore, it would not be appropriate to make any comments on this aspect, being one of *factual controversy*. In addition, the same has been left upon for the petitioner to be raised before the Guardians Court (trial Court), in her earlier petition which, however, has not been resorted rather she has challenged the order before Honourable Apex Court. Thus, her plea with reference to coming from *Tando Adam*, **I am afraid, legally** can't be appreciated.

6. To make position rather *brighter* and clear, it would also appropriate to reproduce the relevant paragraph of the impugned order dated 29.4.2021, which is that:-

"4. After hearing learned counsel for the applicant at length and perusing the record available before me; I am of the opinion that the applicant being father of the minor cannot be deprived from meeting his son. In view of the above mentioned facts and circumstances of the case, this **instant application in hand is allowed to the extent of meeting of the applicant being father of the minor** as he cannot be deprived from meeting with son. Respondent is directed to produce the minor within the Court premises for the meeting purpose with the applicant on every 2<sup>nd</sup> and 4<sup>th</sup> Saturday of every month from 10:00 a.m. to 01:00 p.m. Meeting shall be effective from 08<sup>th</sup> May, 2021. Applicant is also directed to pay Rs.2000/- on every meeting to the respondent as conveyance charges. As per the contention of the applicant that custody of the minor will remove from the jurisdiction of this Court, Respondent/mother is directed to deposit the passport of minor namely **Taimur Hasan @ Ibrahim Hasan** before the Nazir of the Court on or before 08.05.2021 in case of failure penalty of Rs.25000/- will be imposed on the respondent as well as respondent is also directed not to remove custody of the minor without prior permission of this Court. Both the parties further directed to follow the SOPs strictly. The instant application in hand stands disposed of with no order as to costs. The instant application in hand stands disposed of with no order as to costs in the interest of justice."

7. *Prima facie*, it was an application by the father (respondent) hence the same never included the *factual controversy* regarding place of residence of minor or petitioner as at **Tando Adam**, therefore, she can't be entitled to reopen the question before this Court which, *already*, was left open for Guardians Court *alone* while deciding her earlier CP No. S-326 of 2021. Further, since the petitioner never claimed any harm to welfare of minors if passport of *minor* is deposited, as ordered by Guardians Court. Absence of any such plea, backed by reasoning, *itself* renders such plea to be not of any help to question such condition, so imposed by the Guardians Court, which (Guardians Court) is, *otherwise*, competent to impose any *legal* condition assuring right of visitation which, *admittedly*, not challenged.

8. In view of above discussion, I am of the clear view that instant petition is not maintainable and same, being devoid of substance, is dismissed as such. This, however, shall not cause any prejudice to right of the petitioner, as provided to her by this Court while disposing of her earlier petition. While parting, I would add that since the matter is one of custody of a *minor* which always involves **welfare** and **betterment** of minor which, *too*, having effects upon her growing, therefore, the learned Guardians Court would conclude the trial within a period of two months, if not otherwise, restrained.

JUDGE

SAJID