

THE HIGH COURT OF SINDH AT KARACHI

C.P. NO.S-564 of 2021

Present: Mr. Justice Salahuddin Panhwar

Petitioners : Ms. Sunniya Tirmizai and another through M/s Rajendar Kumar advocate

Respondent No.1 : Syed Mohsin Shah AAG

Respondent No.2 : Syed Khawaja Ziauddin through Fahad Ahmed Siddiqui advocate

Date of hearing : 14.03.2022

Date of decision : 14.03.2022

J U D G M E N T

SALAHUDDIN PANHWAR, J.- Through this petition, the petitioner No.1/mother has called in question the judgment dated 28.05.2021 passed by learned X-Additional District Judge, Karachi East in Family Appeal No.136 of 2021, whereby the said appeal was disposed of with amendment in the order dated 06.05.2021 passed by XXIII- Family Judge, Karachi East in G&W Case No.808 of 2020 with the following prayers:

- A. To set aside the judgment dated 28.05.2021 to the extent of meetings on every Saturday during vacations and on 2nd day of Eid from 4:00 P.M to 9:00 P.M at the house of the respondent No.1 and order for meeting of minor with father in Court premises.
 - B. Pending decision of this Appeal, this Honorable Court may be pleased to suspend the impugned Judgment to the extent of meetings on every Saturday during vacations and on 2nd day of Eid from 4:00 P.M to 9:00 P.M at the house of the respondent No.1.
2. Succinctly, the relevant facts for the disposal of the instant petition are that respondent No.2 had filed an application under Section 25 of the Guardian & Wards Act, 1890 for custody of the

minor, however, on 20.04.2021, he withdrew the same with prayer for ordering comprehensive annual visitation schedule. While disposing of the case as withdrawn comprehensive visitation schedule under Section 12 of the Act was announced. Such order was challenged by the petitioner No.1 before Appellate Court by preferring Family Appeal No. 136 of 2021. The learned X-Additional District Judge, Karachi East, after hearing learned counsel for the parties and the offer made by the mother/petitioner No.1 that she may allow visitation rights to the father, amended the order of the Family Judge as follows:

1. The mother is directed to produce minor in the meeting half of this Court on alternate Saturdays for meeting with the father of the ward twice in a month for two hours against furnishing transportation to her in the sum of Rs.1500/- visit.
2. The father is also entitled for his meeting with his daughter in her school vacations on every Saturday from 4:00 P.M to 9:00 P.M at his house against the same transportation amount to be paid the mother. However, such custody could be handed over to him after submission of security bond in sum of Rs.500,000/- before trial Court.
3. Meeting on second day of every Eid shall also be conducted from 4:00 P.M to 9:00 P.M at his house against the same transportation amount to be paid the mother. However, such custody could be handed over to him after submission of security bond in sum of Rs.500,000/- before trial Court.

3. It is, inter alia, contended by the learned counsel for the petitioners that meeting of the minor with respondent No.2/father should not have been allowed as the respondent No.2 had withdrawn his G&W case and any order to this effect is null and void; that earlier trial court had granted visitation rights to the father during winter vacations which order was challenged by the petitioner and the Appellate Court suspended the same, such appellate order was challenged by the respondent No.2 before this Court by filing a petition, but the same was dismissed; that allowing meeting at the house of respondent No.2 is unsafe for the minor as there is no womenfolk at the house of the respondent No.2 to take care of minor and the respondent No.2 is irresponsible and careless; that brother of

the respondent No.2 also resides with him who had been released on bail in a criminal case; that respondent No.2 is not paying proper maintenance to the minor and is only interested in causing mental agony to the petitioner No.1, therefore, it is prayed that the petition may be allowed and the impugned judgment passed by the learned Appellate Court may be set aside.

4. Learned counsel for the Respondent No.2 has opposed the instant petition while submitting that appellate Court has committing no illegality by allowing the visitation rights to him and that the petitioner has filed this petition with intention to deprive him of his meeting with his minor daughter. He, therefore, prays that the petition may be dismissed.

5. Learned AAG also supported the impugned order and prayed for dismissal of the instant petition

6. Heard and perused the record.

7. Record reflects that learned Appellate Court passed the impugned judgment after the counsel for the petitioner/mother offered before the Court that mother was willing to allow visitation rights to the respondent No.2/father of the minor. The learned Appellate Court has rightly ordered visitation rights to the respondent No.2/father because the father could not be denied right of access to his minor daughter nor would he be considered an alien enemy to her. The minor/daughter would not only need love, affection, care and attention of her mother but also the company and guiding hand of father. Therefore, negating father of his right to meet his daughter would lead to emotional deprivation. In **Chiragh Bibi v. Khadim Hussain (PLD 1967 Lahore 382)**, it was held that father has constructive custody over the child and if the mother who has physical custody precluded the father from accessing the child, it would be deemed as removing the child from the constructive custody of the father and a ground for reconsidering custody given to the mother. Admittedly, splitting up of parents is a source of severe anguish for a child and it is in the best interest of the child to grow up in a manner that both parents are involved in his/her upbringing and he/she has the opportunity to develop a normal healthy relationship with both parents,

whether it is a case of shared custody or where one parent has custody over the child and the other has visitation rights. Hence, the learned Appellate Court has rightly chalked out reasonable visitation/meeting schedule of the minor with the father, which does not require any interference by this Court.

8. In view of above, the findings of learned Appellate Court are based on cogent reasons and no illegality and infirmity has been found. Resultantly, this petition is hereby dismissed with no order as to costs.

J U D G E

Sajid