

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**CP.No.S-11 of 2021**

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Date

Order with signature of Judge

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1. For orders on CMA No. 46/2021 (Urgent if granted).
2. For orders on CMA No. 47 of 2021 (Ex/ A).
3. For hearing of main case.

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**22<sup>nd</sup> January 2021.**

M/s. Muhammad Sharif Bhutto and Irshad Ahmed Chachar, advocate for petitioner.

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Heard learned counsel for the petitioner. At this juncture, paragraph-9 of the judgment dated 28.11.2020 passed in G & W appeal No.06/ 2020, wherein trial Court has assigned reasons with regard to dismissal of Guardian & Wards petition, is reproduced as under:-

“9. During the hearing before this forum the learned advocate for appellant has contended that trial Court had failed to properly appreciate the record and evidence, however, the counsel for respondent has pointed out that in the impugned judgment the trial Court had discussed each and every aspect of the matter. For the sake of clarity, the relevant part of the impugned judgment is reproduced below:

*“Learned counsel for the applicant have raised questions regarding character of the respondent, however, failed to produce a single proof regarding her immoral character. Learned counsel for the applicant argued that respondent has solemnised second marriage and he does not know with whom respondent has solemnised marriage? Whether respondent’s husband is Muhram or Na-Muhram to the daughters of the respondent. Daughter of the respondent are of tender age as elder one is now about 4 years old and the younger one having age of about one year. Further, learned counsel for the applicant argued that respondent is not residing with the minors and minors maternal grandmother is looking after the minors as respondent ha(s) solemnised second marriage. It is admitted by the respondent in her cross-examination that minors are being look after by their maternal grandmother and she is up bringing the minor. In this respect, I have called minors and respondent and respondent submitted that her second husband is son of*

*her "Phuppo" and she is still residing at her mother house as her second husband is residing at her own house. Applicant did not submit anything regarding second marriage of the respondent in his application as well as affidavit in evidence. On the other hand, respondent also failed to disclose regarding her second marriage in her written statement as well as affidavit in evidence. However, respondent admitted her second marriage in her cross-examination. I have called minors and minors were brought by the respondent. The elder minor was asked their house and she disclosed that she is residing with her mother and her mother is taking care of her and i have observed that minors were very close with their mother. On contrary, applicant who is father of minors and doing job from 09:00 am to 05:00 pm and he cannot look after female minors all the day as their mother is doing. Further, applicant failed to disclose his own residence, his salary, and how welfare of minors lying in his favour except he is father of minors. Applicant failed to produce any proof that respondent is not residing with minors and she is not taking care of them. As minors are in Hazanat Period and are females, therefore, it is in welfare of minors to reside with their mother/ respondent. In my opinion, applicant is not entitled for permanent custody of minors at this age of Hazanat and welfare of minors lies with the respondent."*

Above findings were also endorsed by the appellate court. Needless to mention that minors are babies living with mother; they are of tender age; and at this stage welfare of minors as well as right of *hizanat* lies in favour of mother. Issue agitated by the learned counsel for the petitioner that both kids are girls and living with strangers, since they are of tender age and living in joint family; second marriage of mother is with her cousin, thus at this stage instant petition is not maintainable, hence, dismissed. However, petitioner would be at liberty to file fresh application after the lapse of two years on fresh grounds.

**J U D G E**