ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI CP.No.S-397 of 2021.

Date Order with signature of Judge

- 1. For orders on CMA No. 2605 of 2021 (U/A).
- 2. For orders on office objection Nos. 21 & 32 as at "A".

- 3. For orders on CMA No. 2606/2021 (Ex/A).
- 4. For hearing of main case.
- 5. For orders on CMA No. 2607/2021 (U/A 199 (4) (B).

09th June 2021

Ms. Sabra Qaiser, advocate for petitioner.

At the outset, it would be conducive to reproduce relevant paragraph No. 8 of the impugned order, which is that:-

The circumstances of the present case are quite "8 unique as father and mother and residing in Australia, while the minor is being looked after by the paternal grandfather. The maternal grandparents are now seeking the visiting rights. Admittedly, Mst. Zaina Umair, mother of minor, has contracted second marriage, and she has two children from the said wedlock. However, Shaikh Muhammad Azhar Danish as per statement of his counsel (which has not been denied by the other side) has not contracted second marriage. It appears that Shaikh Muhammad Azhar Danish and Mst. Zaina Umair have permanently settled in Australia, and seem to have no intention to return back. During the conversation with the minor who seems to be in good spirit, it appears that he (minor) also wants to go to Australia and lives with his father and mother. However, same is not possible as real mother has already contracted marriage and have two more children. The counsel for Shaikh Muhammad Azhar Danish and his father apprised the Court that at present minor cannot go to Australia because of travel restriction due to corona pandemic. The minor has also stated that he wants to meet his maternal grandparents. There is no denying that for normal upbringing of the children, the care and affection of both the sides are necessary. In cases for custody of minor the paramount consideration is the welfare of minor. However, I would like to close this discussion by relying on case of Scherazade Jamali versus Hisham Gillani & Others (PLD 2018 Sindh 377), where the Honorable Sindh High Court has started the judgment in G&W matter with following words:

"No matter how genuine the dispute would be between husband and wife, the victim is always a ward"

Learned counsel for the petitioner contends that mother of the minor is residing abroad whereas paternal grandfather and paternal grandmother have been allowed for visitation on fortnightly basis for two years. Since no Power of Attorney is given by their daughter, therefore, they are not entitled to visit their grandson. Plea raised by learned counsel for petitioner is misconceived as *Mohammedan Law* provides entitlement, even custody with the maternal side, grandmother and grandfather with the grandson and visitation allowed by the appellate court is in accordance with law. Accordingly, Petition stands dismissed alongwith pending applications.

JUDGE

SAJID