

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Const. Petition No.S-100 of 2022

Petitioner: Mohib Ali, through Mr. Raja Hans Raj  
Naurang, Advocate

Respondents: Nemo

Date of hearing: 02.12.2022

Date of decision: 02.12.2022

**ORDER**

**KHADIM HUSSAIN TUNIO, J.-** Through instant petition, the petitioner has impugned the judgment dated 13.05.2022, passed by the learned Additional District Judge(MCAC), Kandiaro in Guardianship Appeal No.07/2022, whereby the learned appellate court dismissed the appeal filed by the petitioner and upheld the order dated 11.02.2022, passed by the learned Family Judge-III, Kandiaro, in Guardian Application No.38/2021, dismissing the Guardian Application.

2. Precisely, facts of the instant constitutional petition are that the petitioner Mohib Ali married the respondent No.1 Mst. Mansoor Khatoon and from the said wedlock they had a minor daughter namely Uroosa and during this time, they were living happily. Allegedly, after some time the respondent started misbehaving with the petitioner and his family members and then left the house of the petitioner and took away the minor with her. Then, after not being able to come to an agreement, the petitioner filed chose to file a G&W application which was dismissed and then appealed the decision which was upheld by the learned appellate Court.

3. Learned counsel for the petitioner contended that the petitioner is the natural guardian of the minor baby and entitled to the custody of the minor; that the petitioner and the respondent No.1 had come to the agreement that once the baby reaches 8 years of age, her custody would go to the petitioner; that the conclusion arrived at by the two courts below is arbitrary; that the learned trial Court wrongly held that the petitioner had not supported his pleadings while adducing strong evidence; that the minor is residing with the second husband of the respondent No.1 which is against the injunctions of Islam.

4. I have heard the learned counsel for the petitioner and perused the record available before me.

5. An exhaustive perusal of the orders of the learned two Courts below show that the Courts have considered all the relevant aspects of the matter while keeping the welfare of the minor and the convenience of their mother in mind. Courts are to always look at the welfare of children and ascertain where their upbringing will be ensured in the best way possible for them to grow and be respectable members of the society. The Hon'ble Apex Court has also time and again observed that the welfare of children is the prime consideration in matters of custody. Reliance in this respect is placed on the case of ***Mst. Hameed Mai v. Irshad Hussain (PLD 2002 Supreme Court 267)***. In a recent judgment dated 05.10.2022 passed by the Hon'ble Apex Court in Civil Petition No. 240 of 2021, it was observed that:-

“Time and again, this Court has held that the paramount consideration where custody is concerned is the welfare of the minor; that is to consider what is in the best interest of the child. The court's jurisdiction in custody cases is in the form of parental jurisdiction which means that the court must consider all factors from the **parents' ability**

**to provide for the child including physical and emotional needs, medical care but also relevant is the parents' ability to provide a safe and secure home where the quality of the relationship between the child and each parent is comforting for the child.** Hence, there is no mathematical formula to calculate the welfare of the minor, as the **factors range from financial and economic considerations to the household environment, the care, comfort and attention that a child gets.** Accordingly, the concept of welfare of the child is an all-encompassing concept which will cover not only the manner in which the child has to be cared for, but will also include the physical, mental and emotional well-being of the child.”

**(emphasis supplied)**

6. It is a matter of record that the minor is living with her maternal grandmother (respondent No.2) and it is reportedly an admitted fact that she is taking good care of the minor. The minor baby appeared before the learned trial Court and got her statement recorded wherein she categorically denied ever knowing the petitioner as her father which shows that in the 12/13 years, he never visited her or showed his presence in the upbringing of the minor baby. The minor also stated that she knows her father's name to be Allah Dino who is in fact her maternal grandfather and that he had died. She also stated that her grandmother was taking good care of her and she was also visited by her mother who lives in the same village in a different house. It is also a matter of record that the minor is studying in class IV and shifting her custody at this point will also hinder her studies. In the present case, the minor is almost 13 years of age and can show reasonable preference as to whom she wants to go with and this coupled with the welfare of the child would favour the custody staying with the grandmother especially since the petitioner failed in all ways to develop any relationship with his daughter for almost 12 years and stayed quiet. In

a similar case titled ***Mst. Parveen Umar and others (PLD 2004 SC 357)***, the Hon'ble Apex Court allowed the mother to retain custody despite her second marriage solely on the basis that the minor regarded the father as a stranger and wished to stay with the mother.

7. In the light of the above facts and circumstances, finding no illegality or infirmity in the impugned judgments, the same were upheld vide short order dated 02.12.2022. These are the reasons for the same.

**J U D G E**