

*Order Sheet*  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD  
C.P. No.S-672 of 2021

---

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

---

For hearing of main case

**02.11.2023**

Mr. Muhammad Saleem Ansari advocate for petitioner.

This petition challenges concurrent judgments rendered in the family jurisdiction. Guardian Application No.84 of 2018 was allowed by order dated 29.01.2019 passed by the Family Judge, Hyderabad and the custody of the minor was given to the mother. The petitioner filed Guardian Appeal No.06 of 2019 before the VIIIth Additional District Judge, Hyderabad and the same was dismissed vide judgment dated 31.08.2021.

At the very onset, learned counsel was asked to identify any jurisdictional defect in the judgments impugned, however, the response received was in the negative. Instead, it was averred that the evidence had not been appreciated in its proper perspective by the respective fora and since there is no further provision of appeal, hence, the exercise may be conducted *de novo* in this writ petition.

It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided<sup>1</sup>, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law<sup>2</sup> that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law. The impugned judgments are well reasoned and the learned counsel has been unable to demonstrate any manifest infirmity therein or that they could not have been rested upon the rationale relied upon.

In so far as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard<sup>3</sup>.

The Supreme Court has recently had occasion to revisit the issue of family matters being escalated in writ petitions, post exhaustion of the entire statutory remedial hierarchy, in *Hamad Hasan*<sup>4</sup> and has deprecated such a tendency in no uncertain words. It has *inter alia* been illumined that in such matters the High Court does not ordinarily appraise, re-examine evidence or disturb findings of fact; cannot permit constitutional jurisdiction to be substituted for appellate / revisionary jurisdiction; ought not to lightly interfere with the

---

<sup>1</sup> Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

<sup>2</sup> Per *Faqir Muhammad Khokhar J.* in *Naheed Nusrat Hashmi vs. Secretary Education (Elementary) Punjab* reported as *PLD 2006 Supreme Court 1124*; *Naseer Ahmed Siddiqui vs. Aftab Alam* reported as *PLD 2013 Supreme Court 323*.

<sup>3</sup> *2016 CLC 1*; *2015 PLC 45*; *2015 CLD 257*; *2011 SCMR 1990*; *2001 SCMR 574*; *PLD 2001 Supreme Court 415*.

<sup>4</sup> Per *Ayesha A. Malik J* in yet to be reported judgment dated 17.07.2023 delivered in *M. Hamad Hassan v. Mst. Isma Bukhari & Others (Civil Petition No.1418 of 2023)*.

conclusiveness ascribed to the final stage of proceedings in the statutory hierarchy as the same could be construed as defeating manifest legislative intent; and the Court may remain concerned primarily with any jurisdictional defect.

It is the deliberated view of this Court that the present petition does not qualify on the anvil of *Hamad Hasan*. Therefore, in *mutatis mutandis* application of the ratio illumined, coupled with the rationale delineated supra, this petition is found to be misconceived, hence, hereby dismissed along with listed application.

Judge

Ahmed/Pa,