

**ORDER SHEET**  
**THE HIGH COURT OF SINDH, KARACHI**  
**C.P No.448 of 2023**

Dated: Order with signature of Judge(s)

For hearing of Case (Priority)

Date of Hearing : 31 May 2023.

Petitioner : Mst. Nida Shaukat through Mr. Shafqat Gul Malik, Advocate.

Respondent No. 1: : Syed Manzoor Ali through Naheed Akhtar Bahtti, Advocate

Respondent No. 2 : Nemo

Respondent No. 3 : Nemo

O R D E R

**MOHAMMAD ABDUR RAHMAN, J.** The Petitioner maintains this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 as against an Order dated 8 May 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 whereby on 8 May 2023 directions were given by that Court to hand over the custody of a Minor H to the Petitioner with the assistance of the Police.

2. The Petitioner and the Respondent No. 1 were married on 10 May 2015 and from which wedlock the Minor H was born. The marriage was not a happy one and which resulted in the Petitioner leaving the matrimonial home in the year 2018 retaining the custody of the Minor H. The Petitioner thereafter instituted Family Suit No. 311 of 2018 before the IIIrd Civil/Family Judge Karachi (Central) seeking a 'Khullah' from the Respondent No.1 and which was granted on 2 April 2018. The Petitioner thereafter also maintained Family Suit No. 123 of 2019 before the IIIrd Civil/Family Judge Karachi (Central) seeking maintenance payments to be made by the Respondent NO. 1 to the Petitioner and which was disposed of by compromise on 5 October 2019. It is pertinent to note that in Family Suit

No. 311 of 2018, Family Suit No. 123 of 2019 and on the Marriage Registration Certificate as well as in this Petition, the address of the Petitioner is recorded as:

“ ... House No. 8/377,  
Liaquatabad  
Karachi”

3. It seems that the Respondent No. 1 thereafter instituted Guardian & Ward Application No. 74 of 2022 before the XIIth Civil & Family Judge Karachi (Central) but the address of the Petitioner in those proceedings was originally stated to be:

“ ... House No. R/377,  
Liaquatabad  
Dakkhana, Karachi”

and which was subsequently amended through an interpolation on the title to read:

“ ... House No. 4/741,  
Liaquatabad No. 4  
Karachi”

4. The Petitioner was purportedly served on 18 February 2022 and the matter thereafter proceeded ex-parte and was subsequently decreed on 18 April 2022 whereby the Respondent No. 1 was appointed as a guardian of the Minor H. The Respondent No. 1 thereafter maintained an Application under Section 151 of the Code of Civil Procedure, 1908 and sought the enforcement of the order dated 18 April 2022 and which application was granted on 8 May 2023. The Respondent No. 1 thereafter with the assistance of the Respondent No. 2 sought to obtain custody of the Minor and which, when the police landed at her door step seeking custody of the Minor, has caused the Petitioner to maintain this Petition.

3. Mr. Shafqat Gul Malik appeared on behalf of the Petitioner and stated that the Respondent No. 1 has deliberately misrepresented the address of

the Petitioner in Guardian & Ward Application No. 74 of 2022 before the XII Civil & Family Judge Karachi (Central) and was, in a clandestine manner, attempting to take away the custody of the Minor H from the Petitioner. He said the entire proceedings in Guardian & Ward Application No. 74 of 2022 before the XII Civil & Family Judge Karachi (Central) were contrived and that the Petitioner could not be deprived of the custody of the Minor H without due process. He did not rely on any case law in support of his proposition.

4. Ms. Naheed Akhtar Bahtti entered appearance on behalf of the Respondent No. 1 and contended that the Petitioner had instead of maintaining an appeal under as against the Order dated 8 May 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 had directly maintained a petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 without filing an appeal as against the Order dated 8 May 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 under Section 14 of the Family Courts Act, 1964. She maintained that this Petition was therefore not maintainable and liable to be dismissed. She did not rely on any case law in support of his proposition.

5. I have heard the counsel for the Petitioner and the Respondent and perused the record. It would seem that the Petitioner's address in Guardian & Ward Application No. 74 of 2022 was incorrect. I do not wish to dilate on the circumstances behind this act on the part of the Respondent No. 1, lest it prejudice the proceedings, suffice to say that the order in his favour on 18 April 2022 in Guardian & Ward Application No. 74 of 2022 securing the custody of the Minor H and appointing him as Guardian of the Minor H was obtained ex-parte and against which the Petitioner is clearly aggrieved. It is also apparent that no Guardianship Certificate was issued in favour of the Petitioner and the Respondent No. 1 had instead filed an application under

Section 151 of the Code of Civil Procedure 1908 seeking to execute the Judgment that had been passed in his favour on 18 April 2022 by the XIIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 and which application having been granted on 8 May 2018 resulted in this Petition being maintained, when the Petitioner was met by the police at her door step attempting to remove the custody of the Minor H from her.

7. The Petitioner has various remedies under the Family Courts Act, 1964 to set aside the Order dated 18 April 2022 and the Order dated 8 May 2023 passed by the XIIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022. In the decision reported as **Sana Jamali vs. Mujeeb Qamar**<sup>1</sup> the Supreme Court of Pakistan has opined that:

“ ... **13. The 1964 Act is a special law which provides various legal remedies and the intention of the legislature for creating such remedies is that disputes falling within the ambit of such forum be taken only before it for resolution and bypass or circumvention of the forums is not permissible under the command of Article 199(1) of the Constitution which confers jurisdiction on the High Court only when there is no adequate remedy available under any law. Where an adequate forum is fully functional, the High Court must not interfere and must relegate the parties to seek remedy before the special forum created under the special law. In the case of Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others v. Messrs Punjab Beverage Company (PVT.) Ltd. (2007 PTD 1347 = 2008 SCMR 308), the tendency of by-passing the remedy provided under law, and resort to Constitutional jurisdiction of the High Court was deprecated by this Court, while in the case of Messrs Amin Textile Mills (Pvt.) Ltd. v. Commissioner of Income-Tax and 2 others (2000 SCMR 201), also this Court referred to the case of Al-Ahram Builders (Pvt.) Ltd. v. Income Tax Appellate Tribunal (1993 SCMR 29) and discouraged the tendency to bypass the remedy provided under the relevant statute to press into service the Constitutional jurisdiction of the High Court.**

**14. The extraordinary jurisdiction under Article 199 of the Constitution is delineated in essence for affording an express remedy where the wrongfulness and impropriety of the action of an executive or other governmental authority could be demonstrated without any elongated inquiry. The expression "adequate remedy" represents an efficacious, reachable, accessible, advantageous and expeditious remedy. The object of proceedings under Article 199 of the Constitution is the enforcement of a right and not the establishment of a legal right and, therefore, the right of the incumbent concerned which he seeks to enforce must not only be clear and complete but simpliciter and there must be an actual infringement of the right. The writ jurisdiction of the High Court cannot be expended as the solitary resolution or treatment for undoing the wrongdoings, anguishes and sufferings of a party, regardless of having an equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies prevents a litigant from chasing a remedy**

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<sup>1</sup> 2023 SCMR 316

in a new court or jurisdiction until the remedy already provided under the law is exhausted, with the sole underlying principle that the litigant should not be persuaded to sidestep or disdain the provisions integrated in the relevant statute leading towards the remedies with a precise procedure to challenge the impugned action. In the case of Dr. Sher Afgan Khan Niazi v. Ali S. Habib and others (2011 SCMR 1813), this Court held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It was further held that the superior Courts should not involve themselves into investigations of disputed questions of fact which necessitate taking of evidence. It was further held that if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent and if such a remedy is prescribed the law contemplates that resort must be had to that remedy.

20. In the circumstances I am of the opinion that as the Petitioner has various alternate remedies available to her under the provisions of the Family Courts Act, 1964 and which she can clearly avail, this Petition is therefore misconceived and is not maintainable. The Petition is therefore dismissed along with all listed applications with no order as to costs, but subject to the direction that the Orders dated 18 April 2022 and 8 March 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 will remain suspended for a period of one month to allow the Petitioner to avail her remedy to set aside or appeal the Orders dated 18 April 2022 and 8 March 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022 in accordance with law. Needless, this order shall in no manner prejudice the proceedings in either Guardian & Ward Application No. 74 of 2022 or in any remedy availed by the Petitioner to challenge the Orders dated 18 April 2022 and 8 March 2023 passed by the XIIth Civil and Family Judge Karachi South in Guardian & Ward Application No. 74 of 2022.

JUDGE

Karachi dated 30 August 2023