

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CT.A. No.28 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE
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For orders on C.M.A. 1882/2023  
For orders on office objection  
For orders on C.M.A. 1883/2023  
For hearing of main case

21.08.2023

Mr. Aijaz Ali Siyal advocate for applicant.

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1. Urgency granted.

2-4. In this transfer application, learned counsel has taken me to a number of orders passed on applications u/s 12 of the Guardian and Wards Act for an interim custody i.e for few days of Eid-ul-Azha and for a week of summer vacation. Learned counsel is unable to justify that in one of the applications inadvertent insertion of 27.06.2023 instead of 24.06.2023 on the first page of order available at page 159 was actually a biasness of the Judge and is apparent or that it serve contrary to applicant's interest. He then took me to a diary sheet of 1<sup>st</sup> April 2023 where one Ali Nawaz was shown to have received Rs.500/- as conveyance allowance for the applicant Mst. Sana d/o Ghulam Mustafa whereas he maintained that no such person was assigned for receiving the amount. This could hardly justify an indulgence for transferring this matter from the court where it at present is pending.

At the end it was then submitted that a number of miscellaneous applications for the enhancement of the maintenance allowance were pending which have not been decided. It is not shown that the applicant has vigilantly pursued the matter for disposal of those applications. However, I feel that all such applications pending adjudication be disposed of in a family matter at the earliest, but the pendency does not call for a transfer of case unless a bias attitude is apparent.

It is also apparent that despite orders of handing over temporary custody to the father for a week during summer vacation applicant has not complied with the order. The order was not complied on the count that an appeal against the order was preferred without any interim order. Said Guardian and Ward Appeal in respect of the orders dated 24.06.2023 referred above was decided on 19.07.2023. Even the said appeal was dismissed. Counsel maintained that since an appeal was pending during the period, the custody was not handed over. This (pendency of appeal alone) again is hardly a justification to refuse the temporary custody. This ground was also raised by counsel that the Judge has issued a show cause for not complying order, despite pendency of appeal, where no stay was granted. It was a legal issue and the applicant Mst. Sana d/o Ghulam Mustafa was advised, as stated by counsel, not to hand over custody during pendency of appeal, and consequently show cause notice was issued to her. It is also to be seen as to who advised her that the custody should not be handed over during the summer vacation for a week as ordered by the court of Civil/Family Judge-XI Hyderabad on 24.06.2023. I am of the view that a response to the show cause notice, as issued to the applicant should be seen first and if she was advised professionally, appropriate action may also be taken in this regard if it is so desired by presiding officer. This civil transfer application merits no consideration and is dismissed.

JUDGE

