

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-89 of 2024

[Yousuf Hassan Khanv.....Mehreen Azim Kidwai]

Date of Hearing : 22.01.2024
Petitioner through : Mr. Abdul Moiz Jafferi, Advocate.
Respondents through : *Nemo.*

ORDER

Zulfiqar Ahmad Khan, J:- The Petitioner impugns an order dated 12.12.2023 (“Impugned Order”) passed by learned Additional District Judge-VII South, Karachi in Family Appeal No. 164 of 2023.

2. The anxiety of the petitioner’s counsel is that the respondent mother lives in London but she was granted permanent custody of the minor. Per petitioner’s counsel, he filed G&W Application No.2642 of 2023 before the learned trial Court but through impugned order the said application of the petitioner was dismissed on the ground of *resjudicata*.

3. Heard learned counsel and perused the record. The crux of impugned order is that the petitioner earlier filed a G&W application 953/2018 for custody of the minor which was declined by the learned trial Court vide order dated 05.11.2020, Family Appeal whereof was preferred by the petitioner which too was dismissed vide order dated 07.12.2021 and petitioner was granted only visitation rights. The petitioner again moved another G&W application No.2642/2023 (being a second round of litigation on the same facts, grounds, same parties as well as particulars too) which was dismissed through the impugned order on the ground of *resjudicata*. It is considered

expedient to reproduce the relevant excerpt of the impugned order hereunder:-

“Needless to say that an admitted fact that earlier application was filed and it was decided by Court of law including the appeal whereby the custody was granted to appellant/mother and visitation rights were granted to respondent/father. It is a fact that respondent had filed an application vide GW Application No. 953 of 2018 which was dismissed vide order dated 05.12.2020 while he was granted visitation therein. The appeal was preferred which was dismissed vide order dated 07.12.2021. Now the new GW application as preferred by the respondent ad as pending before learned trial Court, the main ground on which edifice of conclusion id draw is that the appellant allegedly has moved to UK and the minor is in custody of family of the appellant (grandparents) which is determined to interest of minor.

It is a fact that factum of moving applications on score of appellant having moved abroad is mentioned within 2nd application but no order or copy thereof is appended however, the fact is that such applications were dismissed.”

4. It is gleaned from appraisal of the foregoing as well as impugned order that the petitioner herein litigated the same issue between the same parties second time which is hit by the principle of res-judicata. 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 provided¹, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is trite law² that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound

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

² 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

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 order appear to be well-reasoned and no manifest infirmity is discernable therein or that they could not have been rested upon the rationale relied upon.

5. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi
Dated: 22.01.2024

JUDGE

Aadil Arab.