

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C. P. No. S – 230 of 2023

*(Muhammad Siddique & another v. Muhammad Hassan & others)*

Date of hearing : 18.10.2024

Date of decision : 18.10.2024

Mr. Muhammad Ali Dayo, Advocate for petitioners.

## ORDER

**Zulfiqar Ahmad Khan, J.** – Through this petition, the petitioners have impugned the judgment dated 18.09.2023, passed by learned Additional District Judge-II, Naushahro Feroze in Guardian & Ward Appeal No.02 of 2023, whereby the appeal filed by respondent No.1 has been allowed, setting aside the order dated 21.01.2023, passed by learned Guardian / Family Judge, Naushahro Feroze in G&W Application No.58 of 2022, through which the application of respondent No.1 for acquiring custody of minor Hasnain was dismissed.

2. Petitioners No.1 and 2 are grandfather and mother respectively of the minor, namely Hasnain, whereas, respondent No.1 is his father. It was the case of respondent No.1 (applicant) before the Family Court that he contracted marriage with petitioner No.2 (opponent No.1) on 11.08.2014, and the minor is their son out of that wedlock, who was born on 12.11.2015. Due to a quarrel between petitioner No.2 and respondent No.1, she left her husband's house on 15.03.2016. On the following day i.e. 16.03.2016, upon being approached by her husband, she demanded a divorce. Consequently, he served the divorce deed to her. In the later part of the day, police came at house of respondent No.1 and informed him about filing of a criminal miscellaneous application under Section 491, Cr.P.C against him for alleged kidnapping of the minor. On the next day viz. 17.03.2016, he produced the minor before learned Additional Sessions Judge-I, Naushahro Feroze, from where the minor's custody was handed

over to petitioner No.2, her mother. Thereafter, petitioner No.2 filed a Suit for maintenance, where after failing of pre-trial, marriage between respondent No.1 and petitioner No.2 was dissolved and maintenance was allowed by the relevant Court. Then, on 22.03.2021, petitioner No.2 contracted second marriage with one Rab Rakhio alias Arsalan and resides in Karachi, while the minor started living in his grandfather's house. Therefore, respondent No.1 filed the subject G&W Application for claiming the minor's custody.

3. In contrast, the petitioners claimed before the Family Court that respondent No.1 maltreated petitioner No.2 and expelled her from his house along with the minor. With regard to filing of the criminal miscellaneous application under Section 491, Cr.P.C, their stance was that the minor was taken away from his grandfather's house by respondent No.1, so that the said application was filed. It has been alleged that during pendency of the Suit for maintenance, respondent No.1 also filed a criminal miscellaneous application under Section 22-A & B, Cr.P.C for registration of an FIR with false allegations, which was dismissed by the concerned Court. It has also been asserted that the maintenance of Rs.2,000/- per month, which is not even enough, is not being paid by respondent No.1 regularly. It has been alleged that respondent No.1 has contracted two other marriages and has also divorced her second wife. It is the claim of the petitioners that petitioner No.2 never demanded a divorce; instead, it was respondent No.1 who divorced her. If the minor lives with the respondent No.1's third wife, it may be difficult for him, as she is a stranger lady to him. Petitioner No.1 is a Government Servant in District Accounts Office, Naushahro Feroze, and with a good salary, he is caring for the minor, who is his grandson.

4. The Family Court dismissed the application filed by respondent No.1 but allowed him to meet the minor for two hours on the first and third Saturday of each month. It has also been directed that the minor would spend the occasions of Eid-ul-Fitr and Eid-ul-Azha as well as summer and

winter holidays with respondent No.1 (his father), who shall return him to petitioner No.1 (his grandfather) afterward. The learned Family Judge based his aforesaid decision on the following observations:

*“In view of above discussion upon issue No.1, I am of opinion that minor Hasnain is remained in custody of opponent No.2 maternal grand Father Muhammad Siddique till today. Minor is very well nurtured, so also receiving academic and religious education under the supervision of Opponent No.2. Since second marriage of opponent No.1 Mst: Uzma minor is residing with Opponent No.02. But it is very astonishing situation on part of applicant Muhammad Hassan that neither he has held meeting with minor since year-2017 nor has given gifts on annual declared festivals through Court of law or in person. Admittedly applicant has divorced his first and second wife and now is residing with third wife, and himself usually remains out of house for many hours to perform his job therefore he has least time for wellbeing and welfare of minor. Therefore considering four corners of matter and considering wellbeing, welfare of minor Hasnain Guardian application filed by applicant Muhammad Hassan is dismissed.”*

5. Being aggrieved, respondent No.1 filed aforesaid appeal, which was allowed, and the order of the Family Court has been set aside by directing petitioner No.1 to handover custody of the minor to respondent No.1; however, meeting of the minor with the petitioners on every 1<sup>st</sup> Friday of each month for two hours, and extra meeting on very first working day after the occasions of Eid-ul-Fitr and Eid-ul-Azha have been allowed. Therefore, the petitioners have filed this petition against the appellate Court’s judgment.

6. This petition was filed on 11.10.2023, and notice was issued to the respondents on 15.01.2024. Despite this, respondent No.1 has chosen not to appear before this Court. Therefore, I am inclined to decide this petition in his absence.

7. The Family Court’s order to grant custody of the minor to the grandfather is indeed justified for several important reasons. First and

foremost, the minor has been growing in his grandfather's care, receiving not only emotional support but also academic and religious education. This nurturing environment is crucial for the minor's development, offering him stability and continuity that are essential for his well-being. Since the mother's second marriage, the minor has consistently resided with his grandfather, reinforcing this supportive structure. In contrast, the father's lack of involvement is striking. He has not met with the minor since 2017, nor has he made any effort to maintain a connection through gifts or other means during significant occasions. This absence of engagement reflects a disinterest in the minor's life and raises serious concerns about his commitment to the child's emotional needs.

8. The father's history of multiple divorces indicates instability in his personal relationships. His current marriage to a third wife, who is a stranger lady to the minor, introduces an additional layer of uncertainty. Such an unfamiliar environment may not be conducive to the minor's sense of security and belonging. Furthermore, the father's frequent long hours at work further limit his ability to provide the necessary care and attention that the minor requires. In this situation, the minor's welfare must be the primary consideration. The grandfather's established role as a caregiver, coupled with the father's apparent disengagement and unstable living situation, strongly supports the conclusion that the minor is better off in his grandfather's custody.

9. In view of the above facts and circumstances, this petition is **allowed**. Consequently, the appellate Court's judgment dated 18.09.2023 is **set aside** and the Family Court's order dated 21.01.2023 is **restored**.

J U D G E

Abdul Basit