

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-505/2022

Date	Order with signature of Judge
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1. For hearing of MA No.3406/2022
2. For hearing of main case.

25.10.2022

Mr. Yousuf Khan advocate for petitioner.
Mr. Muhammad Manzoor Khan advocate for respondent No.1.
Mr. Zahid Farooq Mazari, AAG.

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Present petition is against concurrent findings recorded by both courts below whereby under the right of *Hizanat*, custody of minor baby Mehak Haleema was handed over to the mother until her puberty. Being relevant paragraph No.4 of impugned judgment is reproduced herewith:-

I have heard the learned counsel for the parties and have examined the propriety of impugned order dated 12.11.2021. It is apparent that the baby child namely Mehak Haleema has been continuously in the custody of her mother. She is aged about 5 years and she needs proper care in the lape and custody of her mother. The respondent also has the right of *Hizanat* to keep the custody of the female child till her age of puberty. It is well settled that the minor who has not attained the age of puberty would remain in *Hizanat* of her mother under the injunction of Islam. The paramount consideration for the custody of the minor is the welfare of the child. Nothing has been brought on record that the minor while in custody of the mother would not be properly looked after, cared and maintained. The respondent has categorically stated that she has the capacity to provide all basis needs and necessities of life to the minor. Thus, the welfare of the minor in such circumstances rest in the custody of the mother/respondent. It is also settled position that second marriage of a mother cannot disentitle her from the custody of minor.

It is pertinent to mention that in constitutional jurisdiction scope of this court is limited and findings of the both courts below can only be disturbed if same are contrary to the law and practice. Here counsel for the petitioner has failed to point out

any illegality in impugned judgments hence this constitutional petition being misconceived is dismissed.

With regard to any inconvenience in visitation right, petitioner would be at liberty to approach Guardian and Wards Court with fresh application.

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