

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitution Petition No. S-106 of 2022
(*Sohrab Ali Chacher Vs. Mst. Sakeena Chachar*)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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1. For Orders on office objection.
2. For hearing of main case.

14-10-2024.

Mr. Ali Gul Abbasi, advocate for the petitioner.
Mr. Agha Nasrullah Pathan, advocate for the respondents.
Mr. Zulfiqar Ali Naich, Assistant advocate General.

Zulfiqar Ahmed Khan, J;- Brief history of the case is that petitioner filed G & W Application No. 88/2019 Re. "*Sohrab Vs. Mst. Sakeena*" for getting custody and guardianship of children baby Kalsoom aged about 15 years, baby Zainab aged about 11 ½ years, baby Ashraf aged about 04 years and Muhammad Tahir aged about 13 ½ years before the Court of Family Judge Khairpur, it was transferred to the Court of 1st Civil Judge/Family Judge Khairpur, where the same was dismissed vide order dated 16-06-2021. The said Order was assailed by the petitioner by filing G & W Appeal No. 34/2024 Re. "*Sohrab Vs. Mst. Sakeena*" before the District Court Khaiprur, it was transferred to the Court of IInd Additional District Judge Khairpur, which was dismissed vide order dated 09-05-2022, hence petitioner preferred the instant petition.

Counsel for the petitioner states that learned Courts below while dismissing the G & W Application as well as G & W Appeal arrived at wrong conclusion as the petitioner being real father of the

minors is entitled to get their custody as well as guardianship; therefore he states the custody of the minors may be restored to the petitioner.

Counsel for the respondent states that since year 2019 neither the petitioner visited the minors nor paid a single penny for their welfare, education etc; therefore, he is not entitled to get their custody.

I have gone through the impugned judgment of the Appellate Court as well as order passed by the trial Court, do not suffer from any illegality or jurisdictional error. Furthermore, it is established that the minors i.e baby Kalsoom aged about 15 years, baby Zainab aged about 11 ½ years, baby Ashraf aged about 04 years and Muhammad Tahir aged about 13 ½ years are residing with Mst. Sakeena, who is their real mother and also natural guardian. Today, the minor children were present in the Court and they were very well dressed up showing mature manners. Although the minors are residing and maintained by their mother, but the petitioner who is their real father has not performed his legal, moral and religious obligation in the manner as it is provided in an Islamic society. Articles 2 and 2A of the Constitution of the Islamic Republic of Pakistan, 1973 clearly envisage that Islamic social order has to be observed while leading life within the four corners of the law. In an Islamic culture, the father has been bestowed with so many responsibilities towards his children. Even the mother of the children can claim compensation of breast feeding from her husband which is well within the tenants of Islamic fiqh. Where this

responsibility has been ignored, how a father while forgetting his obligations towards minor children and that too at a belated stage, can claim the guardianship on the basis of bald claims. At this stage any adventure by this Court to dislodge the custody of the children and handover the same to the father would be instrumental into impairment of their mental faculty children which could imprint negative impact on their personality in future and that would squarely be against the dictates of "welfare of the minor" which is an attire of Guardian and Wards Act, 1890. In view of the facts and circumstances narrated above, this petition is dismissed. However, the visitation schedule made by the Family Court for the mother shall be considered to be made for the petitioner and the same shall be followed.

Judge