

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-26 of 2025

[Syed Imran Abbas Jafferri vs. Mst. Ambreen Fatima]

Petitioner: Through Mr. Nadeem Shahzad Advocate
 Respondent: None is present for the respondent.
 Date of Hearing: 06.03.2025
 Date of Order: 06.03.2025

ARSHAD HUSSAIN KHAN, J. The petitioner through instant constitutional petition while challenging the judgment dated **16.12.2024**, passed by XII Additional District Judge, Karachi [East] in G & W Appeal No.13/2024, which was dismissed by maintaining the order dated **11.12.2023**, passed by Family Judge, Karachi [East] in Guardian & Ward Application No.2876/2020 under Section 25 & 12 of Guardian & Ward Act, 1890, has prayed as follows :

- a) To set aside the impugned judgment dated 16.12.2024 passed by the learned XII Additional District Judge East at Karachi in G & W Appeal No.13/2024.
- b) To call R&Ps of G&W Application No.2876/2020 from the Court of Family Judge East at Karachi.
- c) To restrain the respondent to remove and shift the custody of minor Muhammad Jafri Abbas from the jurisdiction of Family Judge East at Karachi and XII Additional District Judge East at Karachi till deciding the instant petition.
- d) To grant any other relief or relieves which this Honourable Court may be pleased to deem fit and proper under the circumstances of the case.

2. Heard learned counsel for the petitioner. At the very outset, he was asked about maintainability of the present constitutional petition, however, he has not been able to satisfy the Court.

3. From perusal of the record, it reveals that the petitioner herein filed G&W Application No.2876/2020 under Section 25 of the Guardian and Wards Act, 1890, against the respondent for custody of the minor namely; Muhammad Jarri Abbas, which, **vide order dated 11.12.2023**, was disposed of with the observations that *both the parties are directed to comply with the prescribed arrangements [as setout in para-14 of the judgment] in letter and spirit*. This order was appealed against in

Guardian & Ward Appeal No.13/2024 before the XII Additional District Judge Karachi [East], which was dismissed by maintaining the order of the trial court, vide order of the appellate Court dated **16.12.2024**, which is impugned in the present constitution petition.

4. It may be observed that the constitution petition cannot be considered a substitute of second appeal against the order passed by first appellate court. Furthermore, learned counsel for the Petitioner could not point out any substantial error and or any illegality, infirmity or jurisdictional error in the impugned judgment, which could warrant interference by this court in extra ordinary jurisdiction of High Court.

5. In the instant case, the two courts below have given concurrent findings against which the petitioner has not been able to bring on record any concrete material or evidence, whereby, such findings could be termed as perverse or having a jurisdictional defect or based on misreading of fact. It is well settled that if no error of law or defect in the procedure has been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled law that concurrent findings of the two courts below are not to be interfered in the constitutional jurisdiction, unless extra ordinary circumstances are demonstrated, which in the present case is lacking.

6. The jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice¹. It may also be observed 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 provided², and is restricted, inter alia, to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the

¹ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

² Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].

supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

7. Furthermore, the supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [2023 SCMR 1434] while dilating scope of the constitutional jurisdiction of High Court has observed as under:

7. The right to appeal is a statutory creation, either provided or not provided by the legislature; if the law intended to provide for two opportunities of appeal, it would have explicitly done so. In the absence of a second appeal, the decision of the appellate court is considered final on the facts and it is not for High Court to offer another opportunity of hearing, especially in family cases where the legislature's intent to not prolong the dispute is clear. The purpose of this approach is to ensure efficient and expeditious resolution of legal disputes. However, if the High Court continues to entertain constitutional petitions against appellate court orders, under Article 199 of the Constitution, it opens floodgates to appellate litigation. Closure of litigation is essential for a fair and efficient legal system, and the courts should not unwarrantedly make room for litigants to abuse the process of law. Once a matter has been adjudicated upon on fact by the trial and the appellate courts, constitutional courts should not exceed their powers by re-evaluating the facts or substituting the appellate court's opinion with their own - the acceptance of finality of the appellate court's findings is essential for achieving closure in legal proceedings conclusively resolving disputes, preventing unnecessary litigation, and upholding the legislature's intent to provide a definitive resolution through existing appeal mechanisms.

In view of the above observations and the law laid down by the Hon'ble Supreme Court of Pakistan in the case of *M. Hamad Hassan v. Mst. Isma Bukhari and 2 others* [supra], the present constitutional petition is dismissed as being not maintainable.

JUDGE