

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. S – 713 of 2024

Present

Mr. Justice Muhammad Jaffer Raza

Izzat Gul & others Petitioners.

Versus

Wahab Uddin Respondent.

Ms. Arjumand Khan, Advocate for the Petitioners.

Mr. Shah Imroz Khan, Advocate for the Respondent.

Date of Hearing: 30.04.2025.

Date of announcement: 12.05.2025

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has been filed against the Impugned judgment and decree dated 04.05.2024 passed in Family Appeal No.35/2024. The said Family Appeal was filed against the consolidated judgment dated 31.01.2024 passed in Family Suit No.2526/2022 (Izzat Gul & others v. Wahab Uddin) and Guardian & Ward Application No.2880/2022 (Wahab Uddin v. Izzat Gul & others). Brief facts of the case are encapsulated in the paragraphs hereinbelow.

2. Family Suit bearing No.2526/2022 (**“Family Suit”**) was filed by the maternal grandfather of the minors i.e. the Petitioners for maintenance, with the following prayers:

- “(i) To pass a judgment and decree in favour of the Plaintiffs and against the Defendant for Rs.2,80,000/- towards their past maintenance from July 2021 and Rs.20,000/- per month for each Plaintiff as their future maintenance with 20% increase per annum till their legal entitlement.

- (ii) To pay Rs.1,50,000/- to Plaintiff No.1 as medical charges of his wife Mst. Farrukh Taj.
- (iii) Grant any other or better relief(s), which this Honorable Court may deem fit and proper in the circumstances of the case.”

3. At this juncture it is imperative to specify that the said Family Suit was filed by the maternal grandfather of the minors for the reasons that his daughter, who was married to the Respondent, expired on 21.07.2021.

4. Thereafter a Guardian and Ward Application bearing No.2880/2022 (**“Application”**) was preferred by the Respondent under Section 25 of the Guardians and Wards Act, 1890 (**“Act”**), primarily on the ground that he is the natural guardian of the minors and the custody of the minors ought to be handed over to him. The above-mentioned Family Suit and the Application were adjudicated vide consolidated judgment dated 31.01.2024, whereby it was ordered that the Petitioner is entitled to receive Rs.5,000/- per month for each minor from the period of 21.07.2021 till final disposal of the matter as past maintenance. In respect of the Application under Section 25 of the Act, the same was allowed and the Petitioner was directed to handover the custody of the minors to the Respondent and the Petitioner was granted visitation rights as stipulated in the judgment of the learned Family Judge.

5. Thereafter the Petitioner filed Family Appeal bearing No.35/2024 and the same was dismissed vide Impugned judgment and decree.

6. Learned counsel for the Petitioner has stated that the minors are deeply attached with the grandparents for the reason that the Respondent is a negligent father and had “abandoned” the minors and left them at the mercy of the Petitioner. Learned counsel has further stated that the Petitioner along with his wife who is also maternal grandmother of the minors, has taken care of the minors exclusively for many years. Learned counsel has further stated that the mother of the minors expired in the year 2021 and thereafter the minors were voluntarily left by the Respondent with the Petitioner and they have been residing with the

Petitioner happily ever since. Learned counsel has stated that the Respondent has failed to maintain the minors and his lack of concern for them can easily be deciphered from the fact that the Respondent father himself voluntarily left the minors with the Petitioner. Learned counsel further stated that the Respondent has not filed the Application till 06.10.2022 and the same was nothing but a “counterblast”. Learned counsel has averred that the Application was only filed after the Petitioners filed the Family Suit for maintenance of the minors. Lastly learned counsel has stated that significant period of time has been lapsed since the litigation between the parties pertaining to the minors and minors are of intelligible age and desire to continue living with the Petitioner. The names and the respective ages of the minors are stated hereinbelow: -

- Manahil age 10.
- Abdul Rehman age 9.
- Anabia age 3.5.

7. Learned counsel for the Respondent has argued that the Respondent is a natural guardian being the biological father; hence he is entitled for the custody of the minors. He has stated that he did not pay maintenance for the minors for the reason that he was granted permanent custody of the minors by the learned Family court. In that respect he has further stated that he wishes to maintain the minors if the order of the learned Family Judge is implemented in letter and spirit.

8. I have heard the learned counsels and perused the record. Prior to delineating into the facts of the instant petition, it is noted that significant time has lapsed from the time litigation commenced before the learned Family Judge, and the instant petition shall be adjudicated in light of changed circumstances. In this respect, considering minors are involved, I am not inclined to adopt a rigid view in the instant petition and the adjudication shall only be based on the only relevant criterion i.e. welfare. Reliance in this regard can be placed on a recent

pronouncement of the Honourable Supreme Court in the case of **Shaista Habib Versus Muhammad Arif Habib**¹ wherein it was held as under: -

“As already noted above, while determining the welfare of the child in the context of custody disputes the court may grant the custody to a person other than the parents e.g. the grandparents or aunt, if doing so would promote the welfare and best interest of the child. As a general rule the guardian and family court is the final arbiter for determining the question of custody, except when it has made a determination in an arbitrary, capricious or fanciful manner i.e. when the fundamental principle of welfare of the child has not been considered or determined in the light of the variables which are relevant in the given circumstances. If the court has ignored the welfare of the child and the latter's best interest or has given preference to some other ground then the decision would not be sustainable. The court, in its endeavor to assess and determine the welfare of a child, is not bound to follow rigid formalities, strict adherence to procedure or rules or technicalities if doing so may hamper the determination or undermine the fundamental criterion of the best interest of the child. In a nutshell, the overarching and fundamental principle that must prevail and guide a court in determining custody disputes is the welfare of a child. The court has to adopt a course that would be in the best interest of the child because his/her welfare must always be the paramount consideration.” (Emphasis added)

9. The same principle was expounded in the case of **Asjad Ullah Versus Mst. Asia Bano and others**² wherein it was held by the Honourable Supreme Court as under: -

“10. It is the duty of the Court to ensure that the welfare of the minor is of paramount concern, and that the actions of the litigating parties are not motivated by personal vendettas, vanity, or emotional desires for affection, but solely in the best interest of the minor. In matters concerning the custody of a child, the Family Court is not obliged to delve into the intricacies or technicalities of the case but must focus on determining what is in the best interest of the minor.”

10. Guided by the principles as laid down in the case of **Shaista Habib** (supra) it is clear that the custody of the minors can be granted to a person other than the parent in cases where the same is in the welfare of the minor. Minors appeared in Court today before me and expressed their desire to continue living with the Petitioner. Without delineating too deeply into the conduct of the Respondent, I do not wish to forcibly grant the custody of the minors to the Respondent father. The Honourable Supreme Court in the case of **Rashid Hussain Versus**

¹ P L D 2024 Supreme Court 629

² Civil Petition No. 3920 OF 2024

Additional District Judge, Islamabad (East) and others³, in similar circumstances, granted the custody of minors, (who were of similar age to the present minors) to the maternal grandparents. In this regard I am fortified by the judgment of the Honourable Supreme Court in the case of **Malik Mahmood Ahmad Khan Versus Malik Moazam Mahmood and others**⁴ in which the Honourable Court has laid down guidelines for a “*child-centered approach*” in judicial adjudication. The said approach was codified in the following words: -

“6. A child-centered approach in the judiciary is essential because it acknowledges that children, unlike adults, are still in their formative years and are particularly vulnerable to the psychological and emotional impacts of legal proceedings. Scholars such as Karl Hanson and Olga Nieuwenhuys have emphasized that a child-centered approach recognizes that children shape, interpret, and practice what their rights and emphasizes living rights as dynamically experienced and realized by children. This approach advocates for judicial processes that are rehabilitative rather than punitive, protecting the child’s dignity while fostering rehabilitation and reintegration into society. Such a framework aligns with both national and international legal standards, ensuring that children’s voices are heard, their rights safeguarded, and their future prospects protected.”

12. Guided by the principles laid down in the judgment of **Malik Mahmood Ahmad Khan** (supra) the instant petition is partly allowed and disposed of in the following terms: -

- (i) The permanent custody of the minors shall remain with the Petitioner.
- (ii) The Respondent is directed to pay past and future maintenance of the minors at the rate stipulated in the order of the learned Family Court.
- (iii) It is however, specified that should the Petitioner seek to increase the quantum of maintenance he may file necessary application before the learned Family Court.
- (iv) The Petitioner is permitted to meet with the minors in the schedule and for the time stipulated for the Petitioner in the order of the learned Family Court i.e.

³ P L D 2022 Supreme Court 32

⁴ P L D 2025 Supreme Court 247

every Sunday for three (03) hours from 04:00 p.m. to 07:00 p.m. as well as on Eid-ul-Fitar and Eid-ul-Azha. Should the Petitioner desire to meet the minors other than the schedule specified above he may file appropriate application before the concerned Family Court.

The petition stands disposed of in the above terms with no order as to cost.

J U D G E

Nadeem Qureshi "PA"