

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**C. P. No. S – 84 of 2025**

*(Deedar Hussain Memon v. Mst. Rukhsana Memon)*

Date of hearing : **14.04.2025**

Date of decision : **14.04.2025**

Mr. Abdul Qadir Khanzada, Advocate for petitioner.

**ORDER**

**Zulfiqar Ahmad Khan, J.** – Through the instant petition, the petitioner has challenged the judgment dated 08.03.2025, passed by learned Additional District Judge-III, Naushahro Feroze in G&W Appeal No.18 of 2024, whereby the order dated 08.11.2024, passed by learned Family Judge, Naushahro Feroze in G&W Application No.14 of 2023, was set aside and custody of minors Sameer Ali, Humair Ali and Abdul Rehman was directed to be handed over to their biological mother, respondent No.1 (Mst. Rukhsana).

2. The minors' father, Rahatullah, was murdered, after which respondent No.1, being the real mother, approached the trial Court seeking custody of her children. The petitioner and his brother Hakim Khan, paternal uncles of the minors, contested the application, asserting that they were already caring for the children and were better placed, financially and otherwise, to look after them.

3. The Family Court, after hearing both sides, dismissed the mother's application. The reasoning was based primarily on the fact that the petitioner and his brother were financially stronger and that the children appeared physically and mentally well under their care. Limited visitation after every two weeks was allowed to the mother, including custody on Eid holidays and school vacations.

4. The mother filed an appeal, which was allowed by the appellate Court. After carefully examining the facts and applicable law, the appellate Court concluded that the overall welfare of the children, their emotional, psychological and physical needs would be better served in the custody of their mother. The appellate Court, therefore, set aside the Family Court's order and granted full custody to the mother.

5. Instead of complying with the appellate Court's judgment, the petitioner has invoked the constitutional jurisdiction of this Court, challenging the same.

6. Upon reviewing the trial Court's reasoning, it is evident that considerable weight was placed on the financial stability of the parties, specifically the mother's limited income, her reliance on her brother, and the fact that the uncles were already providing educational and other financial support. However, it is well-established that the law governing child custody does not prioritize financial resources above all other considerations. The welfare of the minors is the overriding and paramount principle, encompassing a broader scope than mere material comforts.

7. Children, particularly at such tender ages, need emotional nurturing, affection and psychological security, all of which a mother is naturally more equipped to provide. The trial Court's observations about the mother wandering and being dependent on her brother are not backed by any real evidence. The record shows that she lives in a stable household with her brother, who is employed by WAPDA, and the home has sufficient space and resources for the children. Support from family in the wake of a spouse's tragic death reflects stability and resilience, and is not a ground for disqualification from custody.

8. In this context, Paragraph 354 of Mulla's Principles of Muhammadan Law is relevant. It outlines the circumstances under which a mother may

be disqualified from custody: (i) remarriage with a non-mahram; (ii) residence at a distance from the father's home during subsistence of such marriage; (iii) immoral conduct; or (iv) neglect of the child. None of these apply to the respondent. There is neither any allegation nor proof of remarriage, immoral lifestyle, or neglect. Mere financial limitation does not attract disqualification under Para 354.

9. Moreover, the children are entitled to income from their deceased father's estate, which can be used for their education and well-being while in the care of their mother. The maternal home is sufficiently secure, and the support provided by the maternal uncle does not detract from the mother's ability or right to nurture her own children.

10. The trial Court also relied on the statement of one minor, Sameer Ali, who reportedly expressed reluctance to reside with his mother. However, under Section 17(3) of the Guardians and Wards Act, 1890, such preference is not binding. The statute clearly provides that a minor's wish "**may**" be considered if he is of sufficient understanding. The discretion rests with the Court to determine whether such preference is intelligent and free from influence. Given the children's continued stay with their uncles after their father's demise, their attachment is expected and cannot be regarded as a reason to override the mother's natural right. The failure to record the statements of the two younger children, contrary to the appellate Court's earlier direction, further diminishes the weight of this aspect.

11. This view finds support in the case of Abdul Razzaque v. Dr. Rehana Shaheen (PLD 2005 Karachi 610), where it was held that love and affection of a real parent cannot be substituted by other relatives, and that minor children cannot be expected to determine their best interest. Similarly, in the case of Abdul Ghaffar v. Shoukat (2022 YLR 2482), the Peshawar High Court observed that preference of a minor may be

influenced by prolonged custody and is not determinative unless the child is capable of forming an independent and informed opinion.

12. In light of the foregoing, the trial Court’s findings were rightly reversed by the appellate Court, which applied the settled principles of guardianship law and correctly prioritized the welfare of the minors. No exceptional circumstance or legal ground has been raised before this Court that would justify interference with the impugned judgment.

13. Accordingly, the petition is found to be without merit and is hereby **dismissed in *limine*.**

J U D G E

Abdul Basit