

2018 M L D 1592**[Lahore]****Before Muhammad Farrukh Irfan Khan, J****Mst. AYESHA SHAHID---Petitioner****Versus****ADDITIONAL DISTRICT JUDGE and others---Respondents**

Writ Petition No. 63673 of 2017, decided on 26th March, 2018.

Guardians and Wards Act (VIII of 1890)---

---S. 12---Interim custody of minor---Visitation schedule of minor with his father---Scope---Overnight stay with father---Welfare of minor---Scope---Meeting of minor with father in Court premises---Effect---Petitioner/mother contended that Appellate Court had wrongly chalked out overnight stay of minor with his father/respondent as the same would affect his growth adversely and he was likely to confront some unpleasant situation there---Mother also apprehended removal of the minor out of territorial jurisdiction of the Court---Father contended that proper growth of the minor required love and affection of parents and Guardian Court had wrongly dismissed his prayer of meeting with his son out of Court premises---Validity---Welfare of minor was prime consideration before the Court, admittedly, respondent was father of the minor and being the natural guardian he had right of his supervision under the Islamic Law, therefore, on separation of the parents the minor could not be permanently deprived from the love and affection of either of the parents---Minor, in the present case, had crossed the age of six years, therefore, he should have maximum interaction with the father even if the custody was with the mother, otherwise, it may cause an estrangement in the mind of the child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father---Court, in order to achieve such goal, was to make every possible effort to chalk out reasonable visitation schedule in friendly atmosphere---Meeting of the minor in the Court premises with the father was neither conducive nor effective and did not serve the purpose of meeting, therefore, welfare of the minor was in meeting with the father at his residence--- Appellate Court had already imposed condition of submission of surety bonds by the father at the time of taking over custody of the minor which was sufficient to dispel the apprehension of the mother regarding removal of the minor from the territorial jurisdiction of the Court---No illegality or infirmity having been noticed in the impugned order passed by the Appellate Court, constitutional petition was dismissed accordingly.

Sh. Zahid Mehmood for Petitioner.

Fahad Ahmad Siddiqui for Respondent No.3.

ORDER

MUHAMMAD FARRUKH IRFAN KHAN, J.---Through this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner calls in question the validity of impugned judgment of the learned Appellate Court dated 09.08.2017 whereby the said court while accepting appeal of respondent No.3 against the order of the learned Guardian Judge dated 02.07.2016 chalked out meeting schedule of the minor with respondent-father in the following manner:-

"i. The interim custody of the minor shall be handed over to the petitioner on 2nd and 4th Saturday of every calendar month at 05.00 PM and petitioner shall return the interim custody of the minors to the respondent on 2nd and 4th Sunday at 5.00 PM,

- ii. On the occasion of Eid ul Fitar, the petitioner/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-Fitar from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid ul Fitar at 5.00 PM
- iii. On the occasion of Eid ul Azha, the petitioner/ father shall be entitled for interim custody of the minors on 2nd day of Eid-ul-Azha from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid ul Azha.
- iv. On the occasion of birth day of the minor, the petitioner/ father shall be entitled for interim custody of the minor from 5.00 PM and petitioner shall return the interim custody of the minor to the respondent on the next day of birthday of the minor at 5.00 PM
- v. On the occasion of birth day of father of the minor petitioner/ father shall be entitled for interim custody of the minor from 05:00 PM and petitioner/father shall return the interim custody of the minor to the respondent on the next day of birthday of father of the minor at 5.00 P.M.
- vi. During summer vacations, the appellant will be entitled to have custody of minor for one month.
- vii. During winter vacations, he will be entitled to meet with his minor children for five days."

2. Learned counsel for the petitioner submits that the visitation schedule set out by the learned Appellate Court is very harsh; that at present age of the minor is about six years and at this stage his overnight stay with the respondent-father is likely to affect his growth adversely; that the respondent-father is unable to properly maintain the minor as such, the petitioner being the real mother, has serious reservations that the minor may confront unpleasant situation over there or may encounter some psychological phenomena; that there is also strong apprehension that the respondent would remove the ward from the territorial jurisdiction of the Guardian Court; that the learned Guardian Judge had rightly formulated a schedule of meeting of the minor with the respondent/ father in the court premises which has illegally been modified by the learned Appellate Court.

3. On the converse, learned counsel for respondent No.3 submits that the respondent is real father of the minor; that proper growth of the minor requires love and affection of the parents and its deprivation from either side would not be in the welfare of the minor; that meeting schedule chalked out by the learned Guardian Judge in the court premises was not conducive as such the learned Appellate Court keeping in view the welfare of the minor has rightly formulated the visitation schedule which needs no intervention by this Court in its Constitutional jurisdiction.

4. Arguments heard. Record perused.

5. Irrespective of the fact whether the application before the learned Guardian Judge is under section 12(2) of Guardians and Wards Act, for interim custody of the minor or under section 25 of the Act ibid for permanent custody of the minor the only consideration which requires to be adhered by the learned Guardian Court is the welfare of the minor and nothing else. Admittedly, respondent No.3 is the real father of the minor and being the natural guardian he has right of his supervision under the Islamic Law. Therefore, on separation of the parents the minor cannot be permanently deprived from the love and affection of either of the parents. The minor has now crossed the age of six years, therefore, he should have maximum interaction with the father even if the custody is with the mother, otherwise, it may cause an estrangement in the mind of the child which may ultimately leave a vacuum in the accomplishment of his personality for deprivation of love, affection and company of his father. In order to achieve this goal the concerned Court should make every possible effort to chalk out a reasonable visitation schedule in a congenial, homely and friendly atmosphere. The visitation schedule chalked out by the learned Guardian Judge in the court's premises while dismissing the application of the respondent for interim custody of the minor in no manner could be construed to meet the above objective. Meeting of the minor in the court premises with the father is neither conducive nor effective and does not serve the purpose of meeting. Therefore, welfare of the minor lies that his meeting with the respondent-father should be arranged at his residence. The learned Appellate Court after taking into consideration all the pros and cons has rightly chalked out the visitation schedule of the minor in the above terms which in my considered view is in

the interest and welfare of the minor. The learned Appellate Court has already imposed a condition of submission of surety bonds by the respondent at the time of taking over custody of the minor which is sufficient to dispel the apprehension of the petitioner regarding removal of the minor from the territorial jurisdiction of the Guardian Court. Learned counsel for the petitioner is unable to convince this Court in what manner the welfare of the minor is compromised if the impugned schedule is implemented upon as such this Court is not inclined to intervene with the same in its Constitutional jurisdiction.

6. Resultantly, this writ petition is **dismissed**.

MQ/A-45/L Petition dismissed.

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