

2021 Y L R 1915

[Lahore (Rawalpindi Bench)]

Before Jawad Hassan, J

SHAHIDA ADNAN---Petitioner

Versus

ADDITIONAL DISTRICT JUDGE and others---Respondents

Writ Petition No. 3312 of 2020, decided on 1st June, 2021.

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

----S. 25---Custody of minor---Visitation right---Scope---Petitioner/mother was aggrieved of issuance of a schedule of meeting of the minor with her father---Contention of petitioner was that the minor had no attachment with her father and that the father did not regularly maintain the minor---Validity---Father could not be denied the right of access to his minor daughter nor would he be considered an alien/enemy to her---Minor not only needed love, affection, care and attention of a mother but also the company and guiding hand of father---Negating the father of his right to meet his daughter would lead to emotional deprivation---Constitutional petition was dismissed.

Mst. Madiha Younus v. Imran Ahmed 2018 SCMR 1991 ref.

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

----S. 25---Custody of minor---Scope---Paramount consideration in the matter of custody of minor is the welfare of minor.

Ms. Farhana Qamar Rana for Petitioners.

Fahad Ahmad Siddiqui for Respondents.

Date of hearing: 1st June, 2021

JUDGMENT

JAWAD HASSAN, J.---Through this writ petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the "Constitution"), the Petitioner/Mst. Shahida Adnan has called in question the judgments and decrees dated 30.10.2020 and 02.03.2020, whereby Application under Section 25 of the Guardians and Wards Act, 1890 (the "Act") seeking custody of minor Mst. Fatima Adnan, filed by the Respondent No.3/Adnan Haroon, was dismissed by making a Schedule of meeting.

2. Brief facts for the disposal of this petition are that the Respondent No.3/ Adnan Haroon filed an Application under Section 25 of the Act for custody of his minor daughter Mst. Fatima Adnan, on the grounds that marriage between the Petitioner and the Respondent No.3 was solemnized on 29.08.2014 according to Muslim rites; out of this wedlock minor daughter (Fatima Adnan) was born on 12.07.2015. That unfortunately desertion took place between the parties and presently the minor/daughter is living with the Petitioner/mother, which was contested by the Petitioner by raising certain objections. The learned Guardian Judge after framing of issue, recording of evidence and hearing the arguments of learned counsel for Parties dismissed the Application vide judgment dated 02.03.2020 by making a meeting schedule in the following manner:

"9. Law favours right of visitation of a parent to remain intact even if the custody is awarded to the other parent and it is God-given right of minor to have association with their real moth. Hence this issue is answered in negative. Thus it is held that petitioner being real father is entitled for meeting with the minor in the following manner:

(i) The interim custody of the minor shall be handed over to the father on 4th Saturday of every calendar month at 09:00 A.M. and petitioner shall return the interim custody of the minor to the Respondent on 4th Sunday at 09:00 A.M.

(ii) The Petitioner shall be entitled to meet the minor daughter in court room on every first Saturday of every calendar month from 09:00 A.M. to 01:00.P.M.

(iii) On the occasion of Eid-ul-Fitar, the petitioner/father shall be entitled for interim custody of the minor on 2nd day of Eid-ul-Fitar from 03:00 pm and petitioner shall return the interim custody of the minor to the respondent on the 3rd day of Eid-ul-Fitar at 03: 00 pm.

(iv) On the occasion of Eid-ul-Azha, the petitioner/father shall be entitled for interim custody of the minor on 2nd day of Eid-ul-Azha from 03:00 pm and petitioner shall return the interim custody of the minor to the mother on the 3rd day of Eid-ul-Azha at 03:00 p.m.

(v) The petitioner/father shall be entitled for interim custody of minor for two days of the minor in winter vacations.

(vi) The petitioner/father shall be entitled for custody of minor for one week in summer vacations."

Feeling aggrieved thereof, the Petitioner filed an Appeal but the learned Appellate Court vide judgment and decree dated 30.11.2020 dismissed the same. Hence, this writ Petition.

3. Ms. Farhana Qamar Rana, Advocate for the Petitioner submits that the impugned judgments and decrees to the extent of chalking out schedule of meeting of Respondent No.3 with the minor are patently illegal, against law and the facts. She adds that both the learned Courts below failed to appreciate the evidence produced by the Petitioner/ mother that the minor has no attachment with the Respondent No. 3. Learned counsel also states that as the Respondent No.3 did not maintain the minor regularly therefore, he is not entitled for any meeting with her. Lastly, she prayed for acceptance of the writ petition and setting aside of the impugned judgments and decrees to the extent of meeting schedule. Learned counsel relied on the judgments cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991), "Mst. Hanifan Bibi v. I. G. Police and others" (2003 MLD 1329), and "Shahbaz Aftab Khan v. Judge Family Court and others" (2014 CLC 1168).

4. Conversely, Mr. Fahad Ahmad Siddiqui, Advocate for the Respondent No.3 has supported the impugned judgments and decrees by contending that both the courts below have correctly appreciated as well as evaluated the evidence on record in its true perspective to the extent of meeting schedule, therefore, no exception can be taken to it in constitutional jurisdiction. In support of his contention learned counsel relied on the judgment cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991), wherein comprehensive plan for custody, visitation rights and maintenance of minors and obligation of both the parents have been issued by the Hon'ble Supreme Court of Pakistan. He also relied on "Mst. Aliya Fazil and another v. Mirza Farhan Rubbani and another" (2013 MLD 1631), "Saira Anjum and 2 others v. Rizwan Riaz Saigal and 2 others" (2014 MLD 1137), "Mst. Ayesha Shahid v. Additional District Judge and others" (2018 MLD 1592), "Abdul Khaliq and others v. Ms. Mahnoor and others" (PLD 2018 Balochistan 44) and "Mst. Hira v. 7th Additional Sessions Judge, Hyderabad and another" (2019 MLD 804). He has further argued that the Respondent No.3 is also entitled to get the custody of the minor because the Petitioner has failed to provide conducive atmosphere to minor, whereas the Respondent No.3 being natural guardian/father is entitled to get custody of the minor who will provide better maintenance to her. Learned also placed reliance on "Mrs. Seema Chaudhry and another v. Ahsan Ashraf Sheikh and others" (PLD 2003 SC 877), "Shabana Naz v. Muhammad Saleem" (2014 SCMR 343), "Nazia Bibi and others v. Additional District Judge, Ferozewala and others" (PLD 2018 Lahore 916), "Muhammad Alam v. Nazish Qazi and 2 others" (2018 YLR 1771) and "Mst. Shahnaz Bibi and another v. Nazeer Ahmed and 3 others" (2019 MLD 753).

5. Arguments heard. Record perused.

6. It is reflected from perusal of record that in the matter of custody of minor, the paramount consideration is welfare of the minor and the Courts have to adjudge

that out of father and mother who is the best suited for the custody of minor. Under Muslim Personal Law, mother is entitled to the custody of daughter even after she has attained the age of puberty and until she is married. Hence, both the learned Courts below have rightly appreciated the law as well as evidence while dismissing the Application under Section 25 of the Act and declined custody of the minor daughter to the Respondent No.3.

7. As regard chalking of meeting schedule of minor with the Respondent No.3 is concerned, the learned Guardian Judge has rightly passed the judgment because the father could not be denied right of access to his minor daughter nor would he be considered an alien enemy to her. The minor/daughter would not only need love, affection, care and attention of her mother but also the company and guiding hand of father. Therefore, negating father of his right to meet his daughter would lead to emotional deprivation. Hence, the learned Courts below have rightly chalked out reasonable visitation/meeting schedule of the minor with the father in light of the dictum laid down by the Hon'ble Supreme Court of Pakistan in the judgment cited as "Mst. Madiha Younus v. Imran Ahmed" (2018 SCMR 1991).

8. In view of above, the findings of both the learned Courts below are based on cogent reasons and no illegality, irregularity, misreading or non-reading of evidence has been found. Resultantly, this petition is hereby dismissed with no order as to costs.

SA/S-42/L
dismissed.

Petition