

JUDGMENT SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

JUDGMENT

Writ Petition No. 46618 of 2021

Fayyaz-ul-Hassan Anwar Vs. Mst. Shehla Khalid etc.

Date of Hearing: 21.03.2024

**Petitioner by : Mr. Muhammad Mumtaz Faridi,
Advocate.**

Respondent No.1 by: Mr. Allah Ditta Naseem, Advocate.

MASUD ABID NAQVI, J: Brief facts of this writ petition are that petitioner/ father filed an application under Section 25 of the Guardians & Wards Act , 1890 (“Act”) for custody of the minor namely Marosh Hassan, which was contested by respondent No.1/ mother by filing reply and raising certain legal as well as factual objections. Out of divergent pleadings of both the parties, issues were framed by the learned Guardian Court. Thereafter, on 10.06.2020, the petitioner/father appeared before the learned Guardian Court and got recorded his statement which is reproduced hereunder:-

“stated that if schedule of the minor’s meeting with me as a real father be fixed by the Court then I would not be having any objection if the instant petition for custody of the minor be dismissed as withdrawn.”

Learned Guardian Court issued a schedule of meeting with minor and dismissed the petition as withdrawn vide order dated 10.06.2020. Feeling aggrieved, respondent No.1 filed an appeal and learned Additional District Judge, Pakpattan vide judgment dated 31.05.2021 **partially allowed** the appeal and issued new schedule for visitation of minor with the petitioner/father. Being dissatisfied, the petitioner/father has filed the instant writ petition and challenged the validity of impugned judgment passed by the learned Appellate Court.

2. During arguments, learned counsel for the petitioner has shown no objection on certain amendments in the order of learned Guardian Court, under instructions, while learned counsel for respondent No.1 fully supports the impugned judgment, passed by learned Appellate Court with the arguments that the petitioner/ father is living alone without any female in the house and will not properly maintain his ten years old minor daughter and the respondent No.1/mother seriously apprehends that overnight stay will be misused by the petitioner/father in removing the minor from the jurisdiction of the learned Guardian Court but also acknowledges that the petitioner/ father is paying the maintenance of minor without any arrears at this moment. On query, learned counsel for the petitioner, under instructions of petitioner present in the court, fully assures this Court that the petitioner will never ever remove the minor from the jurisdiction of the learned Guardian Court. I have heard the arguments of the learned counsels for the parties and perused the available record as well as have minutely gone through the impugned judgment.

3. Perusal of record reveals that after recording the statement of the petitioner/father, the learned Guardian Court dismissed the application under Section 25 of the Guardians & Wards Act , 1890 as withdrawn and also issued a schedule of visitation, which is reproduced hereunder: -

- (i) The interim custody of the minor will be handed over to the petitioner (father) on first Saturday of every Calendar month at 5:00p.m and respondent shall return the interim custody of the minor to the respondent (mother) on first Sunday at 5:00p.m.
- (ii) On the second day of Eid-ul-Fitar the petitioner (father) shall be entitled for interim custody of the minor on 2nd day of Eid-ul-Fitar from 5:00p.m and petitioner shall return the interim custody of the minor to the respondent (mother) on the 3rd day of Eid-ul-Fitar at 5:00p.m.
- (iii) On the second day of Eid-ul-Azha the petitioner (father) shall be entitled for interim custody of the minor on 2nd day of Eid-ul-Azha from 5:00p.m and petitioner shall return the interim custody of the minor to the respondent (mother) on the 3rd day of Eid-ul-Azha at 5:00p.m.
- (iv) On the occasion of birthday of the minor, the petitioner (father) shall be entitled for interim custody of the minor from 5:00p.m and petitioner shall return the interim custody of minor to respondent (mother) on the next day of birthday of the minor at 5:00p.m.
- (v) During summer vacations, the interim custody of the minor shall be handed over to the petitioner/father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the respondent/mother at the evening on the 4th Sunday so that minor may have four weeks to spent with his father.
- (vi) During winter vacations the interim custody of the minor shall be handed over to the petitioner/father for first half of the winter vacations and the minor shall be returned to the respondent/mother. All the above said meetings will be subject to submission

of surety bonds to the tune of Rs.700,000/- and fee payable to the bailiff by the petitioner.

Learned Appellate Court partially accepted the appeal of respondent No.1/mother and new schedule for visitation of minor with respondent was framed, which is reproduced hereunder: -

- (i) The interim custody of the minor will be handed over to the respondent (father) on first Saturday of every Calendar month at 10:00 a.m and he shall return the interim custody of the minor to the appellant (mother) on the same day at 1:00 p.m. This meeting would be happened in the visitation room established inside the court premises.
- (ii) On second day of every Eid, at 11:00 a.m the custody of minor will be handed over to the respondent. And he will return her custody to appellant at 3:00 p.m on the same day subject to furnishing surety bond of Rs.10,00,000/-. Surety will be responsible for safe custody of minor and handing over the custody of minor from one person to another.
- (iii) On the occasion of birthday of the minor, the respondent (father) shall be entitled for interim custody of the minor from 1:00 p.m and he shall return the interim custody of minor to appellant (mother) on the same day at 4:00 p.m.
- (iv) The respondent (father) will visit the minor during Summer and Winter vacations on every Saturday of month at 11:00 a.m. to 01:30 p.m. at Court premises because minor is of tender age and her custody cannot be handed over to the respondent for night stay.
- (v) All the above said meetings will be subject to submission of surety bonds to the tune of Rs.10,00,000/- and fee payable to the bailiff by the respondent (father).

4. It is a settled proposition of law that a non-custodial parent has all the rights to meet his/her children and neither right of access to his/her minor children can be denied nor a non-custodial parent will

be considered as an alien to his/her children. A minor not only needs love, affection, care and attention of a mother but also the father and negating a non-custodial parent of his/her right to meet his/her minor children would lead to emotional deprivation. A non-custodial parent has an inherent right to effectively participate in upbringing of minor and that cannot be achieved without properly chalked visitation schedule. Due to lack of interaction with non-custodial parent, the children start forgetting and in many cases disliking the non-custodial parent and this phenomenon has been named as Parental Alienation Syndrome by the psychiatrists. Hence, visiting schedule significantly bridges a relationship between the minor children and a non-custodial parent. Using visitation rights, a non-custodial parent can not only recolour the emotions of minor children for him/her but also reinvigorate the bond of love and affection with minor.

5. Although, the law on the subject of visitation is contained in the Guardian & Wards Act (VIII of 1890) but without any guidelines about the duration, frequency of those visits of minor and about the visitation schedule, hence, while deciding about the visitation schedule, the paramount consideration is the welfare of minor. Considering the paramount consideration of welfare of minor and in view of the dictum laid down by the Honorable Superior Courts about chalking the visitation schedule of minor, especially the case reported as *Mst. Madiha Younus Vs Imran Ahmed* (2018 SCMR 1991), the petitioner is entitled to meet with his daughter/ minor as per new visitation schedule which is reproduced hereunder;

- (i) The interim custody of the minor will be handed over to the petitioner (father) on first Saturday of every Calendar month at 5:00 pm and respondent shall return the interim custody of the minor to the respondent (mother) on first Sunday at 3:00 pm.
- (ii) On the second day of Eid-ul-Fitar 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 (mother) on the 3rd day of Eid-ul-Fitar at 3:00 pm.
- (iii) On the second day of Eid-ul-Azha 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 (mother) on the 3rd day of Eid-ul-Azha at 3:00 p.m.
- (iv) On the occasion of birthday of the minor, the petitioner (father) shall be entitled for interim custody of the minor from 4:00 pm and petitioner shall return the interim custody of minor to respondent (mother) on the same day of birthday of the minor at 8:00 pm.
- (v) During summer vacations, the interim custody of the minor shall be handed over to the petitioner/father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the respondent/mother by the petitioner after two weeks of minor's stay with him & during winter vacations the interim custody of the minor shall be handed over to the petitioner/father for just first three days of the

winter vacations and thereafter, minor shall be returned to the respondent/mother.

- (vi) All the above said meetings will be subject to submission of surety bonds to the tune of Rs.1000,000/- (rupees ten lacs only) by the petitioner/father to the satisfaction of the learned guardian court prior to receiving the minor from respondent/mother and also surrendering his international valid passport during the minor's stay with him and by paying fee payable to the court's bailiff by the petitioner.

6. In view of above discussion, instant petition is **partly allowed** by setting aside the impugned judgment of learned Appellate Court and by also amending the visitation schedule, chalked out by the learned Guardian Court.

(MASUD ABID NAQVI)
JUDGE

Approved for reporting.

JUDGE