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JUDGMENT SHEET

LAHORE HIGH COURT LAHORE

JUDICIAL DEPARTMENT

Writ Petition No.66966 of 2020

Shamim Ismail, etc. Versus Addl. District Judge, etc.

J U D G M E N T

Date of Hearing:	02.10.2023
Petitioners by:	Barrister Syeda Maqsooma Zahra Bukhari, Advocate. Mr. Mubashar Hussain, Advocate. Ms. Iqra Liaqat, Advocate alongwith petitioners in person.
Respondent No.2 by:	Syed Qamar Ali Rizvi, Advocate. Mr. Wajahat Ali Niazi, Advocate.

Anwaar Hussain, J. By way of factual background, it has been noted that the issue relates to the year 2010, when respondent No.2, namely, Abdul Rasool Qadri (“**the respondent**”) filed a guardian petition, under Section 25 of the Guardians & Wards Act, 1890 (“**the Act**”) against petitioner No.1 who is the real mother of petitioner No.2 (“**the minor**”), for the custody of the latter, which was dismissed by the Guardian Court, after preparing a visitation schedule, *vide* order dated 26.01.2010. Thereafter, the petitioners challenged the aforesaid order of the Guardian Court to the extent of visitation schedule and the Appellate Court modified the same *vide* order dated 01.06.2010. The respondent, being dissatisfied with the said modification, filed constitutional petition bearing W.P No.13115/2010, which was decided by this Court on 29.06.2011 by allowing the respondent to meet the minor every Saturday for six hours from 9:00 AM to 3:00 PM in the premises of the Guardian Court. Thereafter, on the application of the respondent, time of the

meeting was extended and the venue of the meeting was also changed through the impugned judgment dated 21.11.2020. When the case was admitted for regular hearing by this Court on 18.12.2020, it was the assertion of the petitioners that the impugned judgment is against welfare of the minor inasmuch as the age factor of the minor had been ignored, who had attained the age of 15-years, and being a female, it was inappropriate to spend a long time without the company of her mother at the premises of the respondent who is statedly a *Peer/Imam* and whose residence is mostly occupied by men and young boys.

2. It is the case of the petitioners that the matter has become infructuous as by afflux of time, the minor has attained the age of majority and they are not bound by the visitation schedule chalked out by the Courts below let alone the schedule chalked out by the learned Appellate Court, through the impugned judgment, more particularly, when the respondent has never discharged his obligations as a father including payment of maintenance and was never keen in meeting the minor which is evident from the fact that after the case was earlier decided by this Court through order dated 29.06.2011, in W.P. No.13115/2010, it took almost nine years for the respondent to realise that he needed to see the minor for extended period.

3. Conversely, learned counsel for the respondent submit that even if the minor has attained majority, it is the right of the respondent to meet the minor who is his real daughter and therefore, this Court should direct the minor to meet the respondent.

4. In rebuttal, learned counsel for the petitioners submit that once the minor has attained age of majority, this Court also lacks jurisdiction to pass any direction. The minor is also in attendance

and has completely shown her disinclination to see the respondent and contends that she has been neglected by the respondent and has neither any bonding with the latter nor does she expect any love and affection or other benefit from the respondent.

5. Arguments heard. Record perused.

6. Issue of custody of the minor was decided by Courts below in favour of petitioner No.1 and the controversy was regarding the venue of the meeting of the respondent with the minor when the present petition was filed, however, since the minor has attained age of majority, therefore, the only question that requires opinion of this Court is to examine the effect of change in age of the minor during the pendency of a *lis* emanating from the guardian petition and whether in such an eventuality, this Court has jurisdiction to pass any direction compelling the minor to meet the respondent.

7. Before answering the legal question, it will be in fitness of things to examine the object of the Act, which is a special enactment. The Act aims at ensuring that welfare of a minor is kept at forefront while deciding the guardian petition and chalking out the visitation schedule for which the jurisdiction vests with the Guardian Courts. Jurisdiction of the Court, in law, refers to authority vested with a Court to hear and adjudicate the cases according to the subject matter of the cases. One cannot lose sight of the fact that it is the Act that vests jurisdiction in the Guardian Court to ensure that a minor's person and property is extended proper protection through appointment of a guardian since a minor is presumed to suffer from disability and is not in a position to appreciate his/her welfare. Therefore, through appointment of a guardian, the minor is brought to the protection of the Guardian Court which is obligated to exercise the jurisdiction vested with it to ensure continuity of the

welfare of a minor. Once a guardian is appointed, such a minor is treated as a “Ward” in terms of Section 4(3) of the Act that reads as under:

“ward” means a minor for whose person or property, or both there is a guardian;”

8. In the instant case, jurisdiction, under the Act, was exercised by the Guardian Court, in the first instance and the custody of the minor was given to petitioner No.1 and thereafter, the venue of the meeting of the minor with the respondent was changed through the impugned judgment by the Appellate Court and the order of the Appellate Court was challenged before this Court through present petition. This jurisdiction exercised by the Trial Court as also the Appellate Court and the present proceedings are continuity of the *lis*. The aim is to review whether the welfare of the minor was considered at the time of deciding the guardian petition, chalking out and amending the visitation schedule including change of venue of the meeting of a minor with the non-custodial parent. Such protection of the minor and the jurisdiction of the Courts continues so long as the ward is under the legal disability (minority); however, the moment the said disability transforms into the legal capacity, on attaining the age of majority, the jurisdiction of the Guardian Court ceases to exist along with the power of the guardian so appointed by the Guardian Court. Section 41(1)(c) of the Act is amply clear in this regard, which for facility of reference is reproduced hereunder:

“41. Cessation of authority of guardian.--

(1) The Powers of a guardian of the person cease—

- a)
- b)
- c) *by the ward ceasing to be a minor;”*

9. The law in its wisdom envisages that once a minor attains the age of majority, he becomes *sui juris*, and it is believed that such person is well aware of the consequences of his/her acts and omissions. He/she is also vested with certain fundamental rights under the Constitution to decide what is in his/her best interest and cannot be compelled to meet someone against his/her wishes, even if such other person is his/her real father. Since on attaining the age of majority, the Guardian Court ceases to have any jurisdiction, therefore, the constitutional jurisdiction of this Court also comes to an end as power of this Court to issue a *writ of certiorari* is not an independent jurisdiction but supervisory in nature and is used to bring into the High Court, the decisions of subordinate Courts in order to investigate the same and if any jurisdictional defect or procedural impropriety is pointed out, the same are quashed.

10. Therefore, the moment, at any stage of the proceedings in a guardian case, the minor attains the age of majority, the *lis* becomes infructuous as the Courts cease to have jurisdiction, under the Act and cannot pass any directions. As a natural corollary, any further proceedings by this Court would be *coram-non-judice*. However, this Court feels incumbent to observe that for a minor, like Sameen Rasool, who has attained the age of majority and suffered due to the litigation between her parents in general and the purported neglecting attitude of the respondent in particular, it is natural to develop disinclination, if not hatred towards a non-custodial parent like the respondent but once grown up, it is expected that such a minor will exhibit wisdom and voluntarily show kindness towards her non-custodial parent, who is her real father, even if the respondent has been negligent, in the past, in respect of discharge of his obligation(s), towards the minor, since such kindness to be exhibited, on part of the children towards their parents, is the

command of Allah Almighty and the teachings of Prophet Muhammad, (S.A.W.), which every Muslim, including the minor, is obligated to follow.

11. In the light of above discussion, this Court is of the opinion that the matter has become infructuous and this Court lacks jurisdiction to issue any direction compelling the erstwhile minor, namely, Sameen Rasool to meet the respondent.

12. **Disposed of** in above terms.

(ANWAAR HUSSAIN)
JUDGE

Approved for reporting

Judge

Maqsood