

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1234/2019

Mst. Ghulam Begum

Versus

Additional District Judge (West), Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(03)	01.10.2019	Ch. Muhammad Nasir, Advocate for petitioner. Sheikh Nazakat Hussain, Advocate for respondent No.2.

Through this writ petition, petitioner has assailed the judgment dated 26.03.2019 passed by Additional Sessions Judge (West), Islamabad, whereby appeal preferred against the judgment/decreed dated 29.09.2018, passed by learned Guardian Judge (West), Islamabad was accepted wherein respondent No.2 has been appointed guardian of minors namely Habiba Khalid Malik aged about 17 years and Taha Khalid Malik aged about 13 years.

2. Learned counsel for petitioner contends impugned judgment/decreed passed by respondent No. 1 is against the law and facts of the case; that appellate Court has deprived the petitioner from his valuable right of guardianship despite the fact that minors are living outstanding life and getting excellent education; that while deciding the question of guardianship appellate Court has erred in the prime consideration; that petitioner is currently doing job abroad, however, intends to settle here soon.

3. Conversely, learned counsel for the respondent No.2 contends that appellate Court has rightly passed the judgment/decreed on the ground that when mother of minors is alive, they cannot be left at mercy of grandmother; that since father of minors/petitioner is living abroad the mother is suitable to be granted custody as well as to be appointed as guardian.

4. At this point, learned counsel for respondent No.2 has been confronted as to whom the custody of minors is allowed, the learned counsel points out that presently custody is with petitioner and learned appellate Court has not yet decided question of custody. The point raised by the counsel has been confirmed from the record and the same is silent qua the findings upon custody of minor.

5. On Court question, learned counsel for the parties are in agreement that it would be appropriate that the matter may be remanded to learned appellate Court for decision afresh.

6. Keeping in view the above, the impugned judgment/decreed dated 26.03.2019 passed by learned appellate Court is hereby **set-aside** and matter is remanded to appellate Court, accordingly.

7. Learned Sessions Judge (West), Islamabad is directed to entrust the instant matter to any other available learned District Judge Court except (Mr. Abdul Ghafoor Kakar, learned Additional District Judge-IX (West), Islamabad). The Court seized with the matter

shall decide the same within a period of two (02) months, after hearing learned counsel for the parties.

8. Instant Writ Petition stands ***disposed of***, in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khuram