

Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)
Writ Petition No. 1639 of 2021

Zeeshan Ali

Versus

Fozia Bibi and others

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(04)	21.06.2021	Mr. Mozzam Ali Sheikh, Advocate for the petitioner. Mr. Riffat Hussain Malik, Advocate for the respondent No. 1. Petitioner in person. Respondent No.1 in person.

Petitioner has invoked the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 with the following prayer;

"It is, therefore, humbly prayed and requested that impugned order being illegal and unlawfully, is to be set aside and cancelled and called the minor along with respondent No. 1 and decide the writ on merits, in the interest of justice, good conscious and equity".

02. Succinctly stated facts of the case are that, marriage of the petitioner and responding No. 1 was solemnized according

to Muslim rights and ceremonies, in the year 2011. From the wedlock, a daughter was born in the year 2013. Thereafter, relationship between the husband and wife has become strain and the petitioner thrown respondent No. 1 out of his house about 2 ½ years back. Respondent No. 1 / mother is living with her parents, the minor / daughter was also living with her mother. Allegedly the petitioner snatched the minor daughter from her mother. In consequence whereof, respondent No. 1 filed the petition under Section 491 Cr.P.C. Learned Additional Sessions Judge-West, Islamabad vide impugned order dated 26.04.2021 handed over custody of the minor daughter / detinue to respondent No 1 / real mother and the parties were advised to approach the Guardian Court having competent jurisdiction to regulate custody of the minor.

03. Learned counsel for the petitioner *inter alia* contends that the impugned order has been passed without touching the merits of the case; learned Additional Sessions Judge-West, Islamabad has

illegally handed over custody of the minor to respondent No. 1 / mother; learned Additional Sessions Judge has gone beyond its jurisdiction and forcibly handed over the minor / daughter to her mother without considering wishes of the minor, who is capable of understanding nature of act and the impugned order is not a speaking order, hence liable to be set aside.

04. Learned counsel for respondent No. 1 has controverted the arguments advanced by learned counsel for the petitioner and has stated that the impugned order has been passed in accordance with law; as the petitioner has contracted second marriage and the minor is aged about 8 years, therefore, her welfare lies with the mother, so custody of the minor was rightly handed over to the respondent No. 1 / mother.

05. Arguments of learned counsel for the parties have been heard and record has been perused with their able assistance.

06. It is admitted that the petitioner after contracting the first marriage with respondent No. 1 in the year 2011, has

contracted the second Nikkah in Multan and again contracted the third marriage on 20.01.2016, whereas respondent No. 1 after the marriage with petitioner has not contracted any marriage. The minor / daughter namely Ibbah Zeeshan, whose date of birth is 16.08.2013 aged about 8 years) is living with her mother and her school certificate shows that she is getting education in Bint-e-Hawa Girls School of Education, Islamabad. Mother / respondent No. 1 is bearing all expenses of her daughter / minor. The marriage between the parties is still intact but not even a single penny in lieu of maintenance has been paid by the petitioner, to the minor or her mother. According to law, custody of the minor is to be regulated by the Guardian Court having the competent jurisdiction, so the impugned order dated 26.04.2021 has rightly been passed.

07. Learned counsel for the petitioner has made no submission on the point as to how the impugned order is not in consonance with law or without jurisdiction or in excess

of jurisdiction.

08. The learned Additional Sessions Judge-West, Islamabad has only granted temporary custody of minor to respondent No. 1 directing the parties to approach proper forum regarding proper custody of minor. Moreover, there is also no extraordinary or real urgency warranting interference by this Court.

09. In view of above prospect, instant writ petition has no merit and same is hereby **dismissed**.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE