

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT

W.P.No.2584 of 2022
Mst. Irum Aftab and others
Versus
Additional District Judge (West) Islamabad and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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06.07.2022	Syed Zulfiqar Abbas Naqvi and Mudassar Hussain Malik, Advocates for the petitioners.	
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Through the instant writ petition, petitioner No.1 (Mst. Irum Aftab), partially impugns the judgments and decrees dated 16.12.2021 and 21.06.2022 passed by the learned Family Court and the learned Additional District Judge, Islamabad-West, respectively, to the extent of schedule set therein about child visitation rights for respondent No.3 *i.e.*, father of the minor petitioners No.2 and 3 (“Minahil and Shahzain”).

2. The facts essential for the disposal of the petition are that petitioner No.1 and respondent No.3 are the parents of Minahil and Shahzain. The marriage between petitioner No.1 and respondent No.3 came to an end on 12.09.2019. On 08.02.2019, respondent No.3 filed petition under Section 25 of the Guardians and Wards Act, 1890 for the custody of Minahil and Shahzain. The said petition was contested by petitioner No.1. Vide judgment and decree dated 16.12.2021, the learned Judge Family Court dismissed respondent No.3’s petition for permanent custody of Minahil and Shahzain. However, in paragraph 29(i) to (v) of the said judgment, the learned Family Court specified a schedule for the visitation rights of respondent No.3. Petitioner No.1 is aggrieved by the clause (ii) of the said visitation schedule which is reproduced herein below:-

“(ii) He (the father) would be entitled to their custody for half spell of both Summer and Winter vacations. He shall retain the custody during second part of summer and winter vacations.”

3. Petitioner No.1 had filed an appeal before the learned District Judge, *inter alia* for modification of the visitation schedule. To the said extent, petitioner No.1's said appeal was dismissed vide impugned judgment and decree dated 21.06.2022 passed by the learned Additional District Judge, Islamabad-West. Hence this petition.

4. Learned counsel for petitioner No.1 submitted that the impugned visitation schedule is against the principles of law; that the learned Courts below erroneously relied on the judgment of the Hon'ble Supreme Court cited as Mst. Madiha Younus Vs. Imran Ahmed (2018 SCMR 1991) as the said judgment was passed on the basis of consent of parties; that after concluding that the minors are of tender age and cannot live without their mother, the learned Courts should not have allowed the visitation for nearly a month during vacations; that when the minors come back after visitation on weekends, they remain disturbed and it is adversely affecting their health; that the children complain about the rude and harsh behavior of respondent No.3; that due to absence of any female family member at respondent No.3's house, the stay of minors there for more than a month is not conducive to their welfare; and that staying of minors with respondent No.3 for a long period would carry bad effect on their health and mental growth. Learned counsel for petitioner No.1 prayed for the petition to be allowed in terms of the relief prayed therein.

5. I have heard the contentions of the learned counsel for the petitioners and perused the record with his able assistance.

6. The record shows that Minahil was born on 14.02.2014 and is now nearly 8½ years old whereas Shahzain was born on 10.11.2015 and is now nearly 7 years old. Considering the ages of Minahil and Shahzain, it is extremely important for their psychological well-being that they develop an association and bond with their father. Respondent No.3 is non-custodial parent and his right of meeting with his children cannot be refused either under the law or *sharia*. Petitioner No.1 has herself averred that she has no objection on the meeting between father and children. She however has objection over stay of children with their father during half of their summer and winter vacation.

7. Petitioner No.1 could not give convincing justification for her apprehension about well-being of Minahil and Shahzain while they are staying with their father during half of the vacation period. Respondent No.3 cannot be denied his right of meeting and developing natural parental bond with Minahil and Shahzain. He, being real father, is to be considered protector of his children, who need his company and affection as much as they need care and love of their mother. Mere short-lived meetings can be stressful for the children. It is thus necessary for them to develop emotional association with their father so that they look forward to meetings with him, as much as he does. The short period may cause the bond of the minors with respondent No.3 to erode. Respondent No.3 can avail the opportunity during vacation to fortify natural bonding with the minors, which is also necessary for their proper upbringing. The right of a father to have access to his minor children has been well explained in paragraph 7 of judgment in the case of Mst. Mariyam Masood Vs. Mughisuddin Mirza (2009 CLC 1443), which is reproduced herein below:-

“7. ... It may be held that the cases pertaining to custody/visitation issues of the minors are not ordinary cases like the breach and enforcement of other civil right/obligation, such as the property disputes etc. These cases have their own dimensions, repercussions and consequences, founded upon the human emotions and the sentiments. The resolution and adjudication of this special kind of matters, therefore, should be conceived considered and settled in a different perspective and context, which obviously revolves around the welfare of the minor, but at the same time the natural feelings of the parents cannot be overlooked and ignored; if the parents means something great for a child, the child may also mean the whole world the parents. In such cases therefore, (where the lis is between the parents), there are three main characters of the scenario, a mother, a father and a child and in certain cases the brothers and sisters of the minor, they are all the stakeholders and the emotions and feelings of every one of them should be kept into view while deciding the noted issue, besides the personal law of the minor and the rule about his welfare as mentioned earlier which should be of pivotal consideration. All these putting together contemplates that regarding the visitation schedule neither the mother should be altogether deprived of the complete custody if she has the lawful custody of the minor (until her right of custody terminates on account of some Courts' order or otherwise) nor the father should be deterred and prevented and yearn to meet and see his own child with whom in the normal situation, he shall have a free access and interaction, and could shower his love and affection, if the relation between the parents was normal; this also is true position vice versa. The third important character is the child himself, who under the law of nature should have the privilege of the love and affection of both the parents, which is one of the greatest blessings of the God Almighty, but if for certain reasons, the parents on account of their discord and disparity have fallen apart, the child should not be deprived to have the maximum of the possible he/she could achieve the above from either of the parents. And it does not behave of the adversary parties, who may even have hatred towards each other to claim exclusive possessory right over the child in exclusion of the other, as one could demand in the matter of the property dispute etc. Besides, it may be clearly, understood that the father is the natural and legal guardian and under the Islamic Personal Law, the right of mother to "Hizanat", in case of a male child, terminates around the age of seven years, (My this observation, in no manner, shall be construed of causing any prejudice to either party in the issue of minor's custody), which has nexus and must be kept into view while considering the question of

visitation. The father, once the child has passed the age of seven years, must have maximum interaction with the minor even if the custody is with the mother, but this again should be subject to the rule of welfare of the minor; if for any reason it shall be against the noted principle, the court should either restrict the visitation or even can decline. But if it is otherwise, to prevent the minor from meeting with his father may cause an estrangement, prejudices, psychological intricacies and cobwebs in the mind of the child, which may ultimately prove to be a pivotal vice and a shortcoming in the growth of his personality on the count that, he at the relevant time could not get sufficient love, affection and company of his father, which a normal child would enjoy. It may be stated with concern that it seems quite unnatural rather harsh and coercive to hold that though the father is the legal and natural guardian of the minor and has the right of his supervision under the Islamic law as well, yet has to wait for a week, a fortnight or a month or even more than that in certain cases, to meet his son for the reason that the custody under the Court's order or otherwise is with the mother or the matter is sub judice. This all as mentioned is true for the mothers as well, who are the de facto guardians of their children, keeping the child in their womb for 9 months and undergoing the labour pains, the rigour of feeding, nurture and raising them; a child is a part of their flesh and it is for this reason, why in Islam the Paradise is said to be underneath the mother's feet. One is really shocked, dismayed, disappointed and disgusted to see that in the Family/Guardian Courts the parents waiting to meet their own children, which opportunity they might be having after weeks or month and may only last for not more than an hour or so. The food cloth, sweets and toys brought by them are sometime not 'accepted or are thrown away by the child, because he may have the instruction not 'to take those by the one from whose custody he is brought, coupled with the staring of the adversary party may also spoil the pleasure of such a short meeting. ...” (Emphasis added)

8. In view of the above, I see no infirmity or jurisdictional error in the schedule for meeting set in by the learned Courts below, therefore, the instant writ petition, being without merit, is dismissed in limine.

(MIANGUL HASSAN AURANGZEB)
JUDGE