

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD**

**WRIT PETITION NO.4253 OF 2019**

**Shakeela Akhtar, etc**  
**Vs.**  
**The learned Additional District Judge, etc**

**Petitioner by : Ms. Nosheen Gul Kharral, Advocate.**

**Respondent by : Sardar Waqas Naseer, Advocate.**

**Date of hearing : 28.07.2020.**

**LUBNA SALEEM PERVEZ, J.** Through this petition, the Petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan seeking following prayer:-

*“In view of the above mentioned circumstances, it is therefore, respectfully prayed that the instant writ petition may kindly be allowed and the impugned order dated 04.12.2019 passed by Mr. Nasir Javed Rana, Learned Additional District Judge, Islamabad-West may very kindly be set aside and the appeal of the petitioner may very kindly be allowed / decreed as per prayer by declaring the order dated 29.07.2019 passed by the Court of Miss Ayesha Shabbir, Learned Guardian Judge, Islamabad and order dated 21.11.2019 passed by the Court of Miss Saira Irum, Learned Guardian Judge, Islamabad as illegal, unlawful, void ab-initio, ineffective and inoperative, against the rights of the petitioners, in the best interest of justice.”.*

2. Brief facts of the case are that the marriage between parties were solemnized on 11.11.2007, and from the wedlock two children namely Fatima Arif (now aged 11) and Muhammad Saadain (now aged 05), were born. Due to domestic disputes and bitter relation the parties initially got separated and then Respondent No.2 pronounced divorce to the Petitioner No. 1 on 28.01.2016. The Respondent No. 2 filed petition u/s 25 of the Act, 1890, for custody of minors, wherein with the consent of the parties it was decided that the custody of minors be retained with Petitioner No. 1 and Respondent No. 2 was allowed visitation right/meeting the minors as per schedule given by the Court. The petition u/s 25 was thus disposed of with consent on 27.05.2019. The Petitioner No. 1, when violated the Court order dated 27.05.2019, the learned Guardian Judge, after allowing several opportunities and issuing show cause notice, handed over minors' permanent custody to

respondent No.2, vide order dated 29.07.2019. This order was challenged by Petitioner No.1 in appeal before learned Additional District Judge, West-Islamabad, who vide order dated 04.12.2019, dismissed the appeal holding it to be hopelessly time barred. Hence present petition.

3. Learned counsel for the petitioner submitted that the learned Additional District Judge, West-Islamabad, has not considered the merits of the case and has summarily disposed of the appeal solely on the point of limitation; that in the present case the future of two minor children is involved who do not want to live with their Father/Respondent No. 2; that the second wife of Respondent No. 2 ill-treats the minors; that Respondent No. 2 has stopped the maintenance of the minors; that the learned Guardian Judge as well as learned Additional District Judge have ignored the order dated 27.07.2019, passed in the transfer application filed by the petitioner before the learned District Judge, West-Islamabad, whereby the order of the same date i.e. 27.07.2019, passed by learned Guardian Judge was suspended; that the appeal before the learned Additional District Judge was not hit by limitation as the order dated 29.07.2019, was an ex-parte order and as soon as the said order came into the knowledge of the petitioner the appeal was filed. The learned counsel for the petitioner prayed for setting aside the orders dated 29.07.2019 & 04.12.2019.

4. Learned counsel for Respondent No. 2 vehemently controverted the arguments made on behalf of the petitioner and submitted that father of the minors/Respondent No.2 has every right to meet his children, whereas, the petitioner is trying her level best to restrain him from meeting the children by filing frivolous applications; that the petitioner has not come to the Court with clean hands; that the petitioner has deliberately concealed the facts from the Court; that for violation of order of the learned Guardian Judge by removing the children from the jurisdiction of Court, the cost of Rs. 10,000/- has also been imposed on her; that due to contemptuous behavior before the Court, deliberate violations of court's order and not bringing the minor children as per meeting schedule, the permanent custody of the minors children has been handed over to Respondent No. 2; that it is not correct that the children were ill-treated at their father's house; that even today the children are residing with the Petitioner No. 1; that Petitioner No. 1 has misstated regarding stoppage of maintenance as Respondent No. 2 is regularly depositing the maintenance before the Court; that the appeal against order dated

29.07.2019, is badly time barred as copy of the order was applied on 01.08.2019, which was prepared and received on the same date and the appeal was filed on 23.11.2019; that the time for filing appeal is 30 days; that even if the argument of the petitioner regarding knowledge of the order on 12.10.2019 is believed to be true even then the appeal is barred by more than 40 days; he, therefore, submitted that the impugned order dated 04.12.2019, is in accordance with law and prayed for dismissal of the instant petition.

5. Heard learned counsel for the parties at length and perused the documents appended with the case file and subsequently filed through various C.Ms.

6. Though the Petitioner No. 1 in the present petition has challenged the orders dated 29.07.2019 & 21.11.2019 of the learned Guardian Judge as well as order dated 04.12.2019, passed by the learned Additional District Judge, West-Islamabad, on merits of the case, and prayed for setting aside of the same, however, the issue of limitation is also involved as in the last order dated 04.12.2019, merits of the case have not been discussed and the appeal has been dismissed only on the point of limitation. Hence, before going into the details of the controversy between the parties it is to be seen that the appeal against the impugned order has been filed by the petitioner within the period of 30 days as prescribed under the law or not.

7. Learned counsel for Respondent No. 2 referred to the attestation stamp on the order dated 29.07.2019, according to which copy of the order was obtained on 01.08.2019 and from that date, the period for filing of appeal expired on 30.08.2019. Perusal of the order dated 29.07.2019 showed that no one on behalf of the petitioner was in attendance despite having knowledge of the fixation of case on the said date, therefore, the argument of the learned counsel for the petitioner that on 12.10.2019, she was informed about the passing of the said order where after she challenged the same through filing of appeal. This argument on behalf of the Petitioner No. 1 is not convincing that she was not aware of the order dated 29.07.2019, as record reveals that she was constantly filing applications before various courts seeking different orders, in violation of the consented order dated 27.05.2019, passed by the learned Guardian Judge regarding visitation right of Respondent No.2. Perusal of the order sheets further reveals that on 27.07.2019, court proceedings were duly attended by the learned counsel for Petitioner No. 1

when she was issued show cause notice for removing the minors from the jurisdiction of the Court and notice for proceedings u/s 39 of the Act, 1890, for filing reply on 29.07.2019. Perusal of the said order revealed that the learned Judge has kept the case till the last hours of the Court and consequently on failure of the petitioner to submit reply of the show cause notice, and due to intentional absence from the proceedings, the learned Judge has passed the order of removing the guardianship of the minor children from Petitioner No. 1 and handed over the custody to Respondent No. 2. Thus, I am convinced that Petitioner No.1 deliberately avoided her attendance during Court proceedings before the learned Guardian Judge on 29.07.2019 and her argument of having no knowledge about order dated 29.07.2019, till 12.10.2019, is not persuasive.

8. For what has been discussed above, I am of the considered view that the impugned order dated 04.12.2019, passed by the learned Additional District Judge, West-Islamabad, is legally correct as it has now been established principle of law that issue of limitation when raised is to be decided first before taking into consideration the dispute and other merits of the case rather the Hon'ble Supreme Court of Pakistan has further held in its judgment passed in case re: **Commissioner of Income-Tax, Companies Zone-IV, Karachi Versus Hakim Ali Zardari** (2006 SCMR 170) that *"Matter of limitation would not be left to pleadings of parties but a duty was imposed on the Court itself to decide whether the proceedings had been filed within the period of limitation"*.

9. For the foregoing reasons, impugned order dated 04.12.2019 is held to be just and legal which does not call for any interference. Resultantly, present petition stands dismissed accordingly.

(LUBNA SALEEM PERVEZ)  
JUDGE

Announced in the open Court on 18-08-2020.

JUDGE