

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

W.P. No.2498 of 2013

Syed Shabi Hassan

**Versus**

The Guardian Judge –West Isb Etc

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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20.11.2013	Mr. Aleem Baig Chughtai, learned ASC for petitioner, Syed Ishfaq Hussain Naqvi, Advocate for respondent.
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**ORDER**

**MUHAMMAD ANWAR KHAN KASI, CJ:-**

The petitioner [respondent in main petition under Guardian & Wards Act], assails the order dated 04.6.2013, passed by learned Guardian Judge Islamabad, whereby his application seeking dismissal of the guardian petition filed by the respondent No.2 on the ground of jurisdiction was rejected by observing **that where the plaintiff wife resides, that court has jurisdiction for all the matters including the custody of minor.**

2. Briefly the facts are that the respondent No.2 [Mst. Sitwat Fatima] filed an application under Section 25 & 12 of the Guardian & Wards Act, 1890, for the custody of her minor son Amaan Hassan aged about 11 years. The petitioner through an application raised objection qua territorial jurisdiction, which was accepted and resultantly main application under Section 25 of the Act was dismissed vide order dated 30.5.2012.

3. On Appeal filed by the respondent No.2, order impugned was set aside and the **case was remanded with the direction to decide the question of territorial jurisdiction first and then to proceed with the merits of the case.**

4. The learned Guardian Judge vide ex-parte order dated 7.3.2013 accepted the petition under Section 25 of the Act and directed the present petitioner to handover the immediate custody of the minor to respondent No.2.

5. The petitioner then filed an appeal against the said ex-parte order, which was allowed vide judgment dated

27.5.2012 and the case was remanded for second time with the same direction **to decide the question of jurisdiction first and then to proceed with the merits of the case.**

6. The learned Guardian Judge, after hearing both the sides, rejected the objection of the petitioner regarding territorial jurisdiction, vide order dated 4.6.2013 which is being assailed through this constitutional petition mainly relying on case of Anne Zehra Vs. Tahir Ali Khilji [2001 SCMR 2000].

7. It is the contention of learned counsel that the case of the respondent No.2 does not qualify the pre-requisites contained in Rule 6 of the West Pakistan Family Courts Rules, 1965, therefore, the impugned order is liable to be set-aside: on the other hand learned counsel for respondent No.2 is of the view that the amendment in the family laws has overriding effect on Section 9 of Guardian & Wards Act, 1890, therefore, petition can be filed at a place where wife ordinarily resides and the present petition is nothing but to delay the process as such it is liable to be dismissed.

8. Heard & record perused.

9. It is purely a question of law and for resolving the same, guidance may be solicited from the case of **Major Muhammad Khalid Karim Vs. Mst. Sadia Yaqoob** PLD 2012 Supreme Court 66 wherein after discussing various case laws including case of **Anne Zahra** [Supra], it was held that under Section 5 of the Act, 1964, the Family Court has the exclusive jurisdiction to entertain, hear & adjudicate all the matters, which fall within the first schedule to the Act. This admittedly includes the custody and guardianship matter and the jurisdiction of a Family Court is to be determined under Rule 6 of Family Court Rules, 1965, where there is no composite claim in terms of Section 7(2) of Family Court Act, 1964 and proviso to said Section is not attracted.

10. For ready reference Rule 6 is reproduced hereunder:-

“The Court which shall have jurisdiction to try a suit will be that within the local limits of which;

- a. the cause of action wholly or in part has arisen, or
- b. where the parties reside or last resided together:

Provided that in suits for dissolution of marriage or dower, the Court within the local limits of which the wife ordinarily resides shall also have jurisdiction."

11. It is thus clear that the controversy contained in the case regarding jurisdiction will be decided pursuant to Rule 6 and in order to ascertain whether the learned Guardian Judge Islamabad, is competent to adjudicate upon the petition under Section 25, the contents of the petition have been perused which reflect that after the marriage, the spouses lived at Peshawar and thereafter at Lahore and then settled in Abu Dhabi. It is no where the case of the respondent No.2 that she ever lived in Islamabad. Her case does not fulfill any of the pre-requisites contained in Section 6 [*ibid*] and, therefore, it can safely be held that the learned Guardian Judge Islamabad has no jurisdiction to entertain petition under Section 25 of the Guardian & Wards Act, filed by the respondent No.2.

12. In view of above, the instant petition is allowed. Impugned order dated 04.6.2013, is set aside and consequently, main petition under Section 25 of the Guardian & Wards Act filed by the respondent No.2 is ordered to be returned for its presentation before the court of competent jurisdiction. No orders as to costs.

**CHIEF JUSTICE**

Islamabad  
20<sup>th</sup> November, 2013  
Suhail

Approved for reporting