

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Writ Petition.No.1686/2019

Mona Wahid

Vs.

Additional District & Sessions Judge, (West), Islamabad etc

Petitioner by : Ms.Jamila Jahanoor Aslam, Advocate

Respondent No.2 : Sardar Shabbir Hussain, Advocate.

Date of decision : 10.10.2019

MOHSIN AKHTAR KAYANI J. Through this writ petition, petitioner has assailed the order dated 16.4.2019, passed by learned Additional District Judge, (West), Islamabad whereby visitation rights earlier granted to the petitioner have been curtailed.

2. Learned counsel for the petitioner contends that petitioner was married to respondent No.2/Naveed Abid Wahid and they were blessed with three children namely Ayeman wahid born on 10.11.1998, Nina Wahid born on 08.09.2001 and Kamil Wahid was born on 01.01.2013, however, due to family issues parties were separated and at present all the three children are living with petitioner whereby respondent No.2 filed application under section 12 of Guardian & Ward Act for custody of minor Kamil Wahid which is pending before the learned trial Court and is fixed for recording of evidence. It is further contended that learned trial Court during the hearing of the application under section 12 of Guardian & Wards Act, 1890 vide order dated 14.2.2019, has allowed respondent No.2 to visit the minor son on every Saturday of every month from 10.00 a.m to 2.00 p.m in Court premises which was changed by the Appellate Court vide impugned order dated 16.04.2019 and respondent father was allowed to meet minor son from Friday after School to Sunday evening every week. It has further been contended that impugned order is without jurisdiction as no appeal lies against the order dated 14.02.2019 and has placed

Reliance on case law titled **Mohtarma Benazir Bhutto, MNA and Leader of the Opposition, Bilawal House Karachi Versus The State (1999 SCMR 1447), Abdul Hameed Versus Additional District Judge, Dera Ghazi Khan etc (2014 CLC 11), Syed Mohsin Shah Versus Mst.Mommal Aftabl etc (2013 MLD 1269), Nargis Naureen Versus Judge Family Court Multan etc (PLD 2018 Lahore 735), Muhammad Sabir Versus Mst.Azra Bibi etc (2011 CLC 417) and Arshad Rasool Versus Mst.Saniya etc (2019 YLR 700).**

3. Conversely, learned counsel for the respondent No.2 contends that the main question of custody of minor is yet to be adjudicated upon and visitation right has been settled by way of impugned order, however, respondent No.2 is ready to re-arrange the visitation term with the petitioner/mother. It is further contended that instant writ petition is not competent and has placed reliance on case law titled **Dr.Kiran Qadir Versus Maj.Dr.Muhammad Ali Yousaf Khan (PLD 2014 Lahore 17), Mst.Maham Shabbir Versus Salman Haider etc (2014 CLC 330), Mst.Fatima Ali etc Versus Mst.Rubina Ehtesham etc (2018 YLR 1891), Mst.Ayesha Shahid Versus Additional District Judge etc (2018 MLD 1592) and Mst.Madiha Younas Versus Imran Ahmed (2018 SCMR 1991).**

4. Arguments heard. Record perused.

5. Perusal of record reveals that petitioner is mother of the minor son namely Kamil Wahid aged about six years who is in her custody whereas respondent No.2 is the father of the minor son who through application under section 25 of Guardian & Wards Act claimed the custody of minor which is pending before the learned trial Court and is fixed for recording evidence of the petitioner. The application under section 12 of Guardian & Wards Act was dismissed, however, respondent No.2 was allowed to visit the minor on every Saturday of every month from 10.00 a.m to 2.00 p.m in the Court premises, however, said order was set-aside by the Appellate Court in appeal through the impugned order whereby respondent No.2 was granted revised schedule of visit

WRIT PETITION.NO.1686/2019

with minor son from Friday after School to Sunday evening every week as prayed in the appeal.

6. During the course of arguments parties alongwith their counsels with due consultation have agreed to settle the question of visitation that respondent father will take the minor son from the petitioner on Friday after school hours till Sunday evening upto 6.00 p.m (2nd and 4th week) of every month and on (1st and 3rd weekend) minor son will be with his mother/petitioner, therefore, the order passed in appeal is modified to that extent, however, the legal question relating to the status of order passed in term of Section 14 of the Family Court Act, 1964, in visitation matter is appealable or otherwise will be dealt in some other appropriate proceedings. Disposed of.

(MOHSIN AKHTAR KAYANI)
JUDGE

M.S.ZAKI.