

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,**  
**(JUDICIAL DEPARTMENT).**

**Writ Petition No. 1454 of 2021**

Muhammad Faisal Manzoor

***Versus***

Qudsia Munir and others.

**Writ Petition No. 1455 of 2021**

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***Versus***

Mst. Qudsia Munir and others.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	06.06.2022	Syed Javed Akbar, Advocate for the petitioner in both the writ petitions. Mr. Maher Abdul Majid, Advocate for the respondents in both the writ petition.

By way of this single order, I intend to decide the above captioned two (02) writ petitions, having common questions of law and facts.

02. In W.P. No. 1454/2021, the petitioner has impugned judgment and decree dated 12.01.2021, passed by learned Additional District Judge, West-

Islamabad, whereby the appeal preferred against the impugned judgment and decree dated 24.07.2019, passed by learned Senior Civil Judge-III (Judge Family Court), West-Islamabad, was dismissed.

03. In W.P. No. 1455/2021, the petitioner has assailed judgment and decree dated 12.01.2021, passed by learned Additional District Judge (MCAC), West-Islamabad, whereby the appeal filed against the judgment and decree dated 15.10.2019, passed by Senior Civil Judge-III (Guardian Judge), West-Islamabad, was dismissed.

04. Brief facts of the case are that the petitioner was married to respondent No. 1 in the year 2001 under the Muslim Rites and Ceremonies, from the wedlock the spouses were blessed with children / respondents Nos. 2 to 5. The respondents Nos. 2 to 4 / minors are in custody of respondent No. 1 / mother, whereas respondent No. 5 namely Muhammad

Hayyan Faisal is in the custody of petitioner / father.

05. During initial period, the relation between the parties remained cordial, which turned strained due to conduct of the petitioner and under compelling circumstances, respondent No. 1 went to the house of her parents in the year 2005, later on she rejoined the petitioner and even then his conduct did not change.

06. The respondent No. 1 filed a suit for recovery of maintenance allowance, dowry articles, personal belongings and documents against the petitioner, whereas the petitioner filed a petition for custody under Section 25 of the Guardian and Ward Act, 1890 for custody of respondents Nos. 2 to 5.

07. Written statements were filed in both the suit, issues were framed and after recording evidence of both the parties, learned Senior Civil Judge-III (Judge Family Court), West-Islamabad held respondent

No. 1 entitled for recovery of maintenance allowance for her *Iddat* period only at the rate of Rs. 10,000/- (Ten Thousand) per month; also held entitled respondents / minors No. 2 to 4 for recovery of maintenance allowance at the rate of Rs. 8000/- (Eight Thousand) per month for each of the minor, in addition to expense of their education, transportation and clothing, till their legal entitlement, subject to 10% annual increase from the date of decree and the interim maintenance was ordered to be adjusted towards arrears of outstanding amount of maintenance allowance of the minors. The respondent No. 1 was also held entitled for the recovery of her diary from the petitioner. The claim of respondent No. 1 regarding dowry article was satisfied by delivering of such articles by the petitioner, as the marriage between the parties has already been dissolved, hence prayer of the petitioner for restitution of conjugal rights has become redundant.

08. The petition U/S 25 of Guardian and Wards Act, 1890 for custody of respondents Nos. 2 to 5 was dismissed and visitation schedule of the minors with the petitioner was also decided in detail by the learned Senior Civil Judge-III (Guardian Judge), West-Islamabad. Respondent No. 5 / Muhammad Hayyan Faisal in W.P. No. 1455/2021 is in custody of petitioner.

09. Being aggrieved, petitioner filed appeals against both the impugned judgments and decrees dated 24.07.2019 and 15.10.2019, which were dismissed by the Court of learned Additional District Judge (MCAC), West-Islamabad vide impugned judgment and decree dated 12.01.2021.

10. Learned counsel for the petitioner *inter alia* contends that both the impugned judgments and decrees are against the facts and law applicable on the subject; the issues have not been decided properly in the light of evidence produced by the

parties; learned Senior Civil Judge-III (Judge Family Court), West-Islamabad has not decided maintenance of the minors according to the financial status of the petitioner; after passing the impugned judgments and decrees, the petitioner transferred to Karachi, so it is not possible for the petitioner to follow the visitation schedule pronounced by the learned Senior Civil Judge-III (Guardian Judge), West-Islamabad; both the impugned judgments and decrees are based on surmises and conjectures, hence are liable to be set aside.

11. Learned counsel for the contesting respondents has controverted the arguments advanced by learned counsel for the petitioner and stated that both the impugned judgments and decrees are passed strictly in accordance with law and evidence produced by the parties; the minors are school going children and maintenance allowance at the rate of Rs.

8,000/- (Eight Thousand) per month for each minor is not exorbitant, rather according to the financial status / salary of the petitioner; custody of the minors has also not handed over to the petitioner, as the petitioner has contracted second marriage, hence prayed for dismissal of both the petitions.

12. Arguments advanced by learned counsel for the petitioner and learned counsel for the respondents in both the writ petitions have been heard and record has been perused with their able assistance.

13. Learned Judges of both the lower Courts have discussed the merits of the case in detail. Admittedly, the minors are school going children and maintenance allowance at the rate of Rs. 8,000/- (Eight Thousand) per month for each of the minor in addition to expenses of their education, transportation etc. is not exorbitant. The amount has been decided by both the

learned lower Courts according to the financial status of the petitioner.

14. As far as, handing over the custody of minors to the petitioner is concerned, admittedly the petitioner has contracted second marriage and is living with his second wife, however the respondent No. 1 has not contracted second marriage and being mother she look after her minor children and is giving them proper education.

15. It would be in the fitness of things that the fate of custody of the minors should be decided keeping in view welfare of the minors which, in fact, is the paramount consideration in respect of custody of the minors. I am fortified by the judgments of the superior Courts. In the case reported as **Mst. Firdous Iqbal Vs. Shifaat Ali and others (2000 SCMR 838)** Honourable Supreme Court held as under:--



***"The custody of a minor can, however, be delivered by the court only in the interest of welfare of the minor and not the so-called right of one parent or another. It is true: that a Muslim father is lawful guardian of his minor child and is ordinarily entitled to his custody provided it is for the welfare of the minor. It would, thus, be noticed that right of the father to claim custody of minor son is not an absolute right, in that, the father may disentitle himself to custody on account of his conduct in the light of the facts and circumstances of each case."*** Reliance is placed upon the cases titled as **Khan Muhammad Vs. Mst. Surayya Bibi and others (2008 SCMR 480) and Muhammad Ashraf Vs. Sakina (1989 SCMR 1277).**

16. As far as the fact with regard to transfer of the petitioner from Islamabad to Karachi is concerned, no document / transfer order has been placed on record, the petitioner can come from Karachi to Islamabad, in order to see his minors children.

17. Learned counsel for the petitioner has failed to point out any illegality in the impugned judgments and decrees. It is well settled that certiorari is only available to quash a decision for an error of law. It will also be issued for correcting errors of jurisdiction when an inferior Court or a tribunal acts without jurisdiction or in excess of its jurisdiction, or fails to exercise its jurisdiction or where the Court or a tribunal acts illegally in exercise of its undoubted jurisdiction and it decides a matter in violation of the principle of natural justice. The High Court while issuing a writ of certiorari acts in exercise of supervisory and not appellate jurisdiction. The High Court in exercise of its writ jurisdiction will not review the findings of facts reached by the inferior Court or a tribunal.

18. In this regard, reliance is placed upon the following dictums / laws laid

down by the Hon'ble Supreme Court of Pakistan:

- i. **Amjad Khan Vs. Muhammad Irshad (Deceased) through LRs (2020 SCMR 2155).**
- ii. **President All Pakistan Women Association, Peshawar Cantt Vs. Muhammad Akbar Awan and others (2020 SCMR 260).**
- iii. **Chief Executive MEPCO and others Vs. Muhammad Fazil and others (2019 SCMR 919).**
- iv. **Chairman, NAB Vs. Muhammad Usman and others (PLD 2018 SC 28).**
- v. **Shajar Islam Vs. Muhammad Siddique and 2 others (PLD 2007 SC 45).**

19. Further, there are concurrent findings of both the learned Courts below against the petitioner. In case of concurrent findings of the courts below, scope of the constitutional petition becomes very limited. The petitioner has failed to point out any misreading or non-reading of the evidence. It has been laid down in a case titled as **Syed Arif Ali Sabri Vs. Abdul Samad**

**through L.Rs. and 2 others (2008 YLR 2309)** that:

***"When there are concurrent findings of Courts below, the scope of the constitutional petition for interference is very limited and it can only be interfered when the orders of the Courts below are fanciful or based on misreading or non-reading of the evidence".***

Reliance is also placed on cases titled as **Khuda Bukhsh Vs. Muhammad Sharif and another (1974 SCMR 279)**, and **Sadrudin Vs. Aslam Madad Ali and others (PLD 2008 Karachi 2005)**.

20. For what has been discussed above, impugned judgments and decrees dated 12.01.2021 and 24.07.2019 (*in writ petition No. 1454/2021*), passed by learned Additional District Judge, West-Islamabad and learned Senior Civil Judge-III (Judge Family Court), West-Islamabad, respectively as well as impugned judgments and decrees dated 12.01.2021 and 15.10.2019 (*in writ*

*petition No. 1455/2021*), passed by learned Additional District Judge (MCAC), West-Islamabad and Senior Civil Judge-III (Guardian Judge), West-Islamabad, respectively, are in accordance with law and facts of the matter, hence do not require any interference by this Court.

21. In view of above prospective, both the writ petitions have no merits and the same are **dismissed** with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

*Bilal /-*