

JUDGMENT SHEET.
LABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P No.3386/2019.

**Muhammad Yasir Fayyaz Vs. Additional District Judge, Islamabad
etc.**

Petitioner by: **Mr. Jamshed Tariq & Mr. Raheel Aslam,
Advocates.**

Respondent No.3 by: Mr. Majid Nadeem Bhatti, Advocate.

Date of Decision: 06.03.2020.

MOHSIN AKHTAR KAYANI, J:- Through the instant writ petition, the petitioner has assailed the order dated 06.04.2019, passed by learned Guardian Judge (West) Islamabad and judgment dated 29.07.2019, passed by learned Additional District Judge Islamabad (West), whereby his application for rescheduling of visitation schedule settled vide order dated 02.04.2016 was dismissed concurrently.

2. Learned counsel for the petitioner contends that the petitioner is father of minors Alhan Ahmed son, date of birth 29.10.2011 and Tohraan Yasir daughter, dated of birth 05.11.2006, who are presently in custody of their mother/respondent No.3; that the petitioner filed guardian petition U/S 25 of the Guardians and Wards Act 1890, which was disposed of vide order dated 02.04.2016 after settlement of visitation schedule; that due to changed circumstances, the petitioner filed an application seeking amendment and rectification of the visitation schedule on the grounds referred in the application, which have not been considered by learned Guardian Judge as well as Appellate Court.

3. Conversely, learned counsel for respondent No.3 contends that visitation schedule was settled through consent of the parties and any rectification should be made with consent and in case of any difference, the matter should be decided by learned Guardian Judge while considering welfare of the minors, which requires proper adjudication.

4. I have heard the arguments and perused the record.

5. Perusal of the record reveals that the petitioner being father of two minors namely Alhan Ahmed born on 29.10.2011 son aged about 9 years and Tohraan Yasir born on 05.11.2006 daughter aged about 14 years, who are in custody of mother/respondent No.3. Respondent No.3 has obtained Khula from the petitioner through the Family Court.

whereas the petitioner filed guardian petition U/S 25 of the Guardians and Wards Act 1890 for the custody of the minors, which was dismissed as withdrawn after settlement of the visitation schedule, which was settled with consent of both the parties vide order dated 02.04.2016, which is reproduced as under:-

"Today, the case is fixed for respondent arguments on application filed u/s 12 of Guardian and Wards Act "GWA" for interim custody of minor namely Tohran (d.o.b. 05.11.2006) and Ilhan Ahmed (d.o.b. 29.10.2011).

2. *With the consent of both parties, following visitation schedule is fixed:-*

- a. *Petitioner / father is entitled to meet with minors on first Saturday of every month from 10:00 am to 01:00 pm.*
- b. *During winter vacations, petitioner / father is entitled to meet with minors for one day from 10:00 am to 01:00 pm on first Saturday. During summer vacations, petitioner / father is entitled to meet with minors for two days from 10:00 am to 01:00 pm on first and third Saturday of each month.*
- c. *On birthday, petitioner / father is entitled to meet with minors from 04:00 to 06:00 pm.*
- d. *Petitioner / father is entitled to meet with minors on second days of Eid ul Fitr and Eid ul Azha from 10:00 am to 01:00 pm.*

All visitations mentioned hereinabove shall be conducted outside court premises, in presence of bailiff of this court against fee of Rs.1500/- payable by petitioner / father. In case non-availability of bailiff, any representative, appointed by court will supervise the meeting. Petitioner is also liable to pick and drop the minors from residence of respondent / mother. Petitioner / father is liable to submit personal surety bond to the tune of Rs.100,000/- for safe custody and return of minors, he is also directed not to remove the minors from territorial limits of Islamabad without first obtaining permission from this court. Respondent / mother is also directed to intimate this court regarding any change in her residential address. Both parties are also directed to communicate each other through their counsels in case of any change in visitation schedule, due to emergent reasons only. For the said purpose, cell numbers and office addresses of both the learned counsels are as follows:-

- a. *Rubina Saeed Advocate for respondent 0333-5228511
Humaira Masihuddin Advocate for respondent (0300-5508529)
Office Address: Chamber No.5, Muslim Block, F-8 Markaz, Islamabad.*
- b. *Jamshed Tariq Advocate for petitioner 0300 / 0321-9431511
suit No.2, Ground floor, Fahad Arcade, 13-Regal street, 63-The Mall, Lahore.*

2. *Both the parties are also directed to comply visitation schedule fixed with their consent in its letter and spirit for welfare of the minors. In case of non compliance, both parties are at liberty to avail their legal remedies.*

3. *In view of abovementioned visitation schedule, petitioner intends to withdraw guardianship petition, however, prayed to reserve his right of custody as per law. In view of statement of petitioner / father,*

instant guardianship is dismissed as withdrawn, however, Petitioner is at liberty to invoke jurisdiction of Court for custody of minors, in future, as per law, if so desired. File be consigned to the record room after its due completion."

6. The above referred visitation schedule was followed, however, the petitioner filed application on 02.03.2017 with the prayer that visitation order should be rectified and amended. Learned Guardian Judge as well as learned Appellate Court after considering prayer of the petitioner dismissed the application on the ground that **"no cogent reason has been provided by the defendant/applicant for rescheduling the visitation schedule"**.

I have confronted learned counsel for the petitioner to justify the reasons of rescheduling of visitation schedule but no specific reason has been provided rather extension of visitation is required by the petitioner/father for claiming overnight stay, half of summer and winter vacation of minors and 50% time of gazette holidays and he is entitled in District Multan and due to the said reason he is entitled for enhancement of visitation schedule.

7. While considering the above background, visitation order 02.04.2016 was passed by learned Guardian Judge with consent of the parties, however, at present mother/respondent No.3 is not willing to give her consent for rescheduling of visitation schedule and claims that question of enhancement of visitation period would directly effect welfare of the minors and the question requires adjudication on merits by way of filing fresh custody petition U/S 25 of the Guardians and Wards Act 1890.

8. There is no denial to the proposition that father has every right of visitation, however, when issue relates to the welfare of the minors, the same requires adjudication by the competent Court of law as in previous round the custody petition was not adjudicated on merits rather the petitioner withdrew his custody petition after achieving visitation right through consent. This Court is not in position to compel mother/respondent No.3 for rescheduling of visitation schedule without determination of question of welfare of the minors, which is reciprocally important and such exercise can only be done by Guardian Court.

9. Learned counsel for the petitioner has relied upon 2018 SCMR 1991 (Mst. Madiha Younas vs. Imran Ahmed), whereby visitation schedule has been finalized and the same can be used in all cases but paragraph 3 of the said judgment clearly spells out that the

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said schedule referred by Apex Court is based upon reconciliation between the parties with consent and on the basis of compromise, hence, the referred judgment is not applicable in present case.

10. In view of above discussion, the instant writ petition bears no merits, therefore, the same is dismissed. The petitioner may avail the remedy available to him under the law to get redressed his grievance, if so, advised.

(MOHSIN AKHTAR KAYANI)
JUDGE

R. Anjam