

## **ORDER SHEET.**

### **IN THE ISLAMABAD HIGH COURT, ISLAMABAD.** **JUDICIAL DEPARTMENT.**

**Writ Petition No. 871/2019**

Abdul Rouf

***Versus***

Learned Sessions Judge (West), Islamabad etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
<b>(03)</b>	03.04.2019	Mr. Muhammad Afzal Janua, Advocate for petitioner. Ms. Saima Naqvi, State Counsel. Petitioner and minor Aisha Zumar in-person. Mushtaq, S.I. with record.

Through this writ petition, the petitioner has assailed order dated 02.03.2019, passed by learned District Judge (West), Islamabad, whereby petitioner was directed to hand over the custody of Aisha Zumar (minor) to her mother/respondent No.2.

2. Brief facts as referred in the instant writ petition are that marriage between Abdul Rouf/petitioner and Mst. Sadaf Ameen/respondent No.2 was solemnized according to Muslim Family Laws Ordinance, 1961 on 26.01.2001 and have been blessed with a son Muhammad Hazma and daughter Aisha Zumar, however respondent No.2 was divorced on 24.05.2004, which resulted into litigation up to Hon'ble Supreme Court between the parties regarding custody of minors, whereby custody of minors were given to respondent No.2. When minors attained the age of 12/13 years, petitioner again filed petition under Section 25 of the Guardian and Wards Act, 1890 for custody of minors before the learned Guardian Judge, Taxila, which was rejected, however an appeal was filed before learned Additional District Judge, Taxila, which was decided in his favour. During pendency of the said petition, respondent No.2 moved an application before learned Sessions Judge (West), Islamabad, whereby the Court vide order dated 02.03.2019 directed the petitioner to hand over custody

of minor to respondent No.2 despite the fact that guardian appeal preferred before learned Additional District Judge, Taxila was decided in his favour, but learned Sessions Judge (West), Islamabad refused to hear the petitioner and directed the petitioner vide order dated 07.03.2019 to hand over custody of minor to respondent No.2. Hence, the instant writ petition.

3. Learned counsel for petitioner, *inter alia*, contends that learned Sessions Judge (West), Islamabad refused to record the statement of Aisha Zumar, who herself requested the Court to record her statement; that despite the fact that the minor, who is *sui juris* now, the learned Sessions Judge (West), Islamabad did not record her statement; that the orders dated 02.03.2019 and 07.03.2019 are against the law and facts of the case, therefore, the same liable to be set-aside.

4. I have heard the arguments advanced by learned counsel for petitioner as well as of the State Counsel and perused the record with their able assistance.

5. Perusal of record reveals that notice has been served upon respondent No.2 through the Court of learned District & Sessions Judge (West), Islamabad on 26.03.2019 and the same was received by respondent No. 2/Mst. Sadaf Ameen (mother), but no one has put appearance on her behalf.

6. In view of above, this Court has no other option but to proceed ex-parte against respondent No.2.

7. Minor Aisha Zumar present before the Court states that she is living with her father/petitioner with her own free will. She further states that she has telephonically contacted her mother/respondent No.2, but her mother is not willing to resolve the dispute with petitioner. She also conceded that she was not abducted by anyone and her father is looking her day to day affairs in proper manner.

8. At this stage, learned counsel for petitioner contends that petitioner is aggrieved with the order dated 02.03.2019, passed by the learned District Judge (West), Islamabad, whereby custody of the minor Aisha Zumar was handed over to her mother/ respondent No.2. He further contends that such order could not be passed on mere application of the respondent No.2, whereas the minor is presently *sui juris* and can understand entire dispute. He further contends that minor is mature enough and can decide to live with her father or mother with her own choice.

9. Perusal of record reveals that the learned District Judge (West), Islamabad has directly passed the order against the petitioner without considering the statement of minor (daughter), even otherwise, the matter could only be adjudicated by learned Guardian Court, under the law.

10. In view of above, this Court is fully convinced that minor Aisha Zumar wants to live with her father/petitioner, as she has expressed her willingness in her statement before this Court, even she has attained the age of puberty and fully understands the nature of her parents' family dispute. The learned District Judge (West), Islamabad has no jurisdiction to pass the order in question without adopting the provisions of Guardian and Wards Act, 1890, therefore, the instant writ petition is **allowed**, order dated 02.03.2019, passed by learned District Judge, Islamabad is hereby **set-aside**. However, respondent No.2 is at liberty to approach concerned Guardian Court for redressal of her grievance, if any.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Khalid Z.