

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.2918/2019

Shehryar Shareef

Versus

Additional District Judge-III, (East), Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25-11-2021	Ch. Muhammad Naseer, Advocate for petitioner.

Athar Minallah, C.J.- Shehryar Shareef

son of Muhammad Shareef (*hereinafter referred to as the '**Petitioner**'*) has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the '**Constitution**'*) assailing judgments and decrees, dated 10-05-2019 and 29-06-2019, passed by the learned trial court and the learned appellate court, respectively.

2. The facts, in brief, are that the Petitioner had entered into a marriage contract with Ms Maryam Mustafa daughter of Ghulam Mustafa (*hereinafter referred to as the '**Respondent**'*). Soon after the marriage, marital disputes led to

separation of the parties. Qainaat daughter of Shehryar Shareef (*hereinafter referred to as the 'Minor'*) was born out of the wedlock. Pursuant to divorce proceedings, the marriage was dissolved. The Respondent contracted a second marriage. The petitioner filed a petition under section 25 of the Guardian and Wards Act, 1890 (*hereinafter referred to as the 'Act of 1890'*) for seeking custody of the Minor. The petition was dismissed by the learned trial court vide judgment, dated 30-04-2018. The appeal preferred by the Petitioner was allowed vide judgment, dated 23-11-2018, and the matter was remanded to the learned trial court. The learned trial court subsequently again dismissed the petition vide judgment and decree, dated 10-05-2019. The appeal preferred by the Petitioner was also dismissed by the learned Additional District Judge, Islamabad vide order, dated 29-06-2019.

3. The learned counsel for the petitioner has been heard at length. The learned counsel has mainly argued that after contracting second marriage, the Respondent had become ineligible for the purpose of keeping the custody of the Minor. The learned counsel has referred to a judgment of

the august Supreme Court titled '*Shabana Naz v. Muhammad Saleem*' [2014 SCMR 343]. He has also placed reliance on a recent judgment of this Court titled '*Ms Shazia Akbar Ghalzai and another v. Additional District Judge, Islamabad (East) and 2 others*' [2021 MLD (Islamabad) 817].

4. The learned counsel has been heard and the record perused with his able assistance.

5. Admittedly the Respondent had contracted a second marriage. The august Supreme Court in the case titled '*Shabana Naz v. Muhammad Saleem*' [2014 SCMR 343] has held that the rule that the right of custody discontinues when the mother contracts a second marriage, is not an absolute rule. The relevant portion of the judgment is reproduced as follows.-

"It has been construed by the Courts in Pakistan that this may not be an absolute rule but it may be departed from, if there are exceptional circumstances to justify such departure and in making of such departure the only fact, which the court has to see where the welfare of minor lies and

there may be a situation where despite second marriage of the mother, the welfare of minor may still lie in her custody."

6. The judgment of the learned Guardian Judge, Islamabad, dated 10-05-2019, has been carefully perused. This Court is satisfied that the learned court, after taking the relevant matters into consideration, had determined the factum of welfare of the Minor. The well-reasoned judgment highlights the factors which were taken into consideration by the learned trial court. The appeal preferred by the Petitioner was dismissed by the learned appellate court vide judgment, dated 29-06-2019. The appellate court had also taken into consideration the relevant factors so as to determine the question of welfare of the Minor. The learned counsel, despite his able assistance, was not able to persuade this Court that the concurrent findings suffer from misreading or non-reading or any other legal infirmity. Moreover, while exercising jurisdiction under Article 199 of the Constitution, it is neither appropriate for this Court to reappraise the evidence nor to substitute the opinions formed by the two

competent courts after taking all the relevant matters into consideration.

7. For the above reasons, this petition is without merit and, therefore, accordingly dismissed.

(CHIEF JUSTICE)

Luqman Khan.