

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.1536/2016

Nauman Ali Abbasi

Versus

Additional District & Sessions Judge-V, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	05-11-2021	Sh. Muhammad Khizar Ur Rashid, Advocate for petitioner. Mr Zia Ur Rehman, Advocate for respondents.

Athar Minallah, C.J.- Through this constitutional petition, the petitioner has assailed judgments and decrees, dated 21-03-2016 and 28-12-2015, passed by the learned Additional District Judge (West), Islamabad and the learned Guardian Judge (West), Islamabad, respectively.

2. Nauman Ali Abbasi through his father/ attorney, namely Qari Nishan Ali Abbasi filed a petition under sections 7, 17 and 25 of the Guardian and Wards Act, 1890 (*hereinafter referred to as the 'Act of 1890'*) seeking custody of the minor, namely Rohan Ali Haider Abbasi (*hereinafter referred to as the 'Minor'*). The Petitioner and Mst Safia Ghulam daughter of Ghulam Ahmad Abbasi

(*hereinafter referred to as the '**Respondent**'*) had entered into a marriage contract but they were later divorced. The petitioner was seeking custody of the Minor through the petition filed by his father. The learned Guardian Judge (West), Islamabad vide judgment and decree, dated 28-11-2015, dismissed the petition. However, a schedule was prescribed regarding visitation rights. The petitioner preferred an appeal but that too was dismissed vide judgment and decree, dated 21-03-2016.

3. The learned counsel for the petitioner has been heard at great length. He has argued that; the learned appellate court has misinterpreted the provisions of the Family Courts Act, 1964 (*hereinafter referred to as the '**Act of 1964**'*); the petition was filed under the Guardian and Wards Act, 1890 and, therefore, the provision of the Act of 1964 were not applicable; the impugned judgment and decrees are not sustainable.

4. The record has been perused with the able assistance of the learned counsel for the petitioner.

5. The learned Guardian Judge after considering the welfare of the Minor had dismissed the petition filed by the petitioner. However, an order was passed regarding the visitation rights of the petitioner. The learned appellate court dismissed the appeal on the sole ground that the petition filed by the father of the petitioner was not competent. It is not disputed that the petition filed by the petitioner was not signed and verified in the manner prescribed under the Code of Civil Procedure, 1908 (*hereinafter referred to as the 'CPC'*). Section 10 of the Act of 1890 explicitly provides that if an application is not made by the Collector, then it shall be through a petition signed and verified in the manner prescribed under the CPC for signing and verification of a plaint. The argument of the learned counsel for the petitioner that the requirements prescribed under CPC regarding filing of a plaint are not attracted in case of a petition filed under the Act of 1890, is misconceived in the light of the explicit provisions of section 10 of the Act of 1890. Moreover, the learned Guardian Judge (West) after carefully perusing the record had passed a well-reasoned judgment, dated 28-11-2015. The reasoning regarding welfare of the child does not

suffer from any legal infirmity nor interference is required therewith while exercising jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

6. For the foregoing reasons, this petition is without merit and is, therefore, accordingly **dismissed.**

(CHIEF JUSTICE)