

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 4240/2021

Jahanzeb Shah

versus

The Senior Civil Judge/Executing Judge (West), Islamabad, etc.

Petitioner: In Person.

Respondents by: Mr. Mushtaq Hussain and Mr. Afzaal Qadeer
Satti, Advocates.

Date of Decision: 10.01.2022.

MOHSIN AKHTAR KAYANI, J: Through this Writ Petition, the petitioner has prayed for the following relief:-

That the order dated 01.10.2020 be clarified and the petitioner/father be granted visitation rights with his minor sons according to the schedule fixed by learned trial court (vide order dated 29.09.2018) and learned ADJ(W) (vide order 11.04.2019). Any other relief that IHC deems beneficial for welfare of the minors may also be granted.

2. Petitioner in person states that respondent No.3 and petitioner were married but later on due to acute disparity respondent No.3 filed suit for dissolution of marriage and got decree of Khulla on 11.12.2012 from the Family court, Islamabad; that during the subsistence of marriage respondent No.4 namely Muhammad Waleed Shah alias Abdul Samad and respondent No.5 namely Muhammad Adeen Shah alias Muhammad Musa were born on 28.01.2007 and 27.04.2011 respectively; that he filed petition U/S 25 of the Guardian & Wards Act for the custody of the minors, which was allowed vide judgment & decree dated 29.09.2018, passed by learned Guardian Judge (West), Islamabad with a specific visitation schedule referred in para-2, however, the

judgment was set-aside in appeal and reversed vide judgment & decree dated 11.04.2019, passed by learned Additional District Judge-VII (West), Islamabad while maintaining para-32 of Family Court judgment with the visitation right in favour of petitioner instead of respondent No.3; that he filed writ petition No.1814/2019 against the said judgment of the appellate court and same was also dismissed by this court vide order dated 01.10.2021, however, during the pendency of writ petition this court has passed interim order dated 09.01.2020 with the consent of the parties to regulate the visitation of the minors and as such the Executing Court has now applied the said interlocutory order notwithstanding the judgment & decree passed in favour of the petitioner; that order passed by the Executing Court is contrary to the judgment & decree of the appellate court, therefore, direction be issued for strict compliance of visitation schedule as order by the appellate court.

3. Conversely, learned counsel for respondents No.3 to 5 has raised the question of maintainability of instant writ petition primarily on the ground that petitioner has initially filed appeal before learned Additional District Judge (West), Islamabad but the same was withdrawn vide order dated 12.10.2021 without any justification and filed instant writ petition, which is not maintainable; that parties have also amicably resolved the dispute through consenting statement recorded on 11.09.2021 as a result whereof execution proceedings stands withdrawn, therefore, instant writ petition is not competent.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner/father of respondents No.4 & 5 was granted visitation right by the first appellate court vide para-14 of the judgment & decree dated 11.04.2019 in the following manner:-

However, since Jahanzeb is father and natural guardian of the two minors, therefore, he has the visitation rights as to frequency of the visitation rights, I see that the visitation rights granted by the learned Family Court

in Para-32 of the impugned judgment and decree may be applied on Jahanzeb instead of Saba. All pending applications in the appeal, if any, have become infructuous. File be consigned to record after completion and compilation.

6. The above referred order clearly reflects that visitation schedule was fixed by the Judge Family Court in Para-32, which has now been considered in favour of petitioner/father, which is as under:-

- a. The respondent/mother shall have the right to meet the minors on every Saturday and the minors will be handed over to the respondent for the period of one day from Saturday morning 10:00 AM till 5:00 PM Saturday Evening. It will be the responsibility of the respondent to pick the minors from the house of the petitioner on the Saturday morning 10:00 a.m. to 5:00 p.m. Saturday evening and drop them back at the house of the petitioner.*
- b. In addition to weekly visitation schedule, respondent/mother has also been allowed visitation rights on specific events to the effect that respondent/mother shall have the right to meet with the minors on second day of Eid-ul-Fitar and Eid-ul-Azha, from morning to evening at the house of respondent/mother.*
- c. Moreover, during visitation, the respondent/mother shall not remove the minor beyond territorial limits of Islamabad. Petitioner/father shall be bound to intimate the court regarding any change in her address; otherwise it shall be deemed as an act contrary to the welfare of the minor. All the meeting will be subject to furnishing surety bond of Rs.500,000/- for safe return of minors.*

7. The petitioner/father despite this order filed writ petition No.1814/2019, which was dismissed by this court. However, during the pendency of matter before this court interim visitation schedule was agreed between parties vide order dated 09.01.2021 in which petitioner have to meet the minors on 2nd and 4th weekend of the month for two hours in visitation room of learned Guardian Court but after dismissal of writ petition the original order restored. However, learned Executing Court has not implemented the judgment & decree passed in

favour of the petitioner rather interpreted the interlocutory order dated 09.01.2021 as final order against the spirit of decree, whereby complete schedule has been announced in Para-32 of the trial court judgment which has been converted in favour of petitioner by the appellate court.

8. Besides this clarification another astonishing factor comes into lime light that on 11.09.2021 both the parties stated before the court that compromise has been effected between them on the issue of visitation and maintenance of minors, where-after conclusive order was passed by learned Sr. Civil Judge, Islamabad as a result whereof execution proceedings stood disposed of. However, at this stage, petitioner has invoked the jurisdiction of this court and he has not referred as to why he has withdrawn the appeal without any lawful justification against the order of executing court dated 21.01.2021, which is impugned before this court. In such scenario, writ petition is not maintainable but cumulative effect reveals that the petitioner and respondent No.3 agreed as per schedule referred in Para-32 of the order of trial court, which was converted in appeal in favour of petitioner. In such eventuality instant writ petition stands disposed of with observation that petitioner shall approach the Guardian Court for implementation of visitation schedule in line with joint statement dated 11.09.2021, recorded by the Executing Court as referred above and may visit the minors as per agreed schedule mentioned in Para-32 of the trial court judgment.

(MOHSIN AKHTAR KAYANI)
JUDGE