

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P No. 229/2019**

Abdul Basit Bilal

***Versus***

Ayesha Batool 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>(01)</b>	22.01.2019	Mr. Shuja Ullah Gondal, Advocate for the petitioner.

**MOHSIN AKHTAR KAYANI J.** Through this writ petition, the petitioner has assailed the order dated 23.11.2018, passed by learned Additional District Judge (East), Islamabad, whereby the order dated 19.09.2018, passed by learned Judge Family Court/Guardian Court regarding schedule of visitation was set-aside and matter was remanded back to the learned Trial Court.

2. Learned counsel for the petitioner inter-alia contends that petitioner being father of three minors had filed an application before learned Trial Court for visitation of the minors namely Haala Bilal, Hawa Bibi and Abdul Samad Bilal, who were born on 10.02.2012, 04.07.2013 and 11.12.2014 respectively. The application for visitation has been decided by the learned Trial Court in favour of petitioner vide order dated 19.09.2018, which was assailed by the respondents before learned Additional District Judge (East), Islamabad, who had set-aside the order of

visitation and remanded back the matter to the learned Trial Court with the direction to record the evidence afresh for adjudication of the visitation terms.

3. Learned counsel for the petitioner has been confronted to justify the grounds raised in the instant writ petition on the basis of evidence recorded by the learned Guardian Judge in this regard, in response to said query, learned counsel for the petitioner contends that the petitioner has filed application U/s 12 of Guardians and Wards Act, 1890, which was adjudicated by the Judge Family Court/Guardian Court (East) while considering the pleadings as well as arguments of the parties only, and as such no evidence was recorded. Learned counsel for the petitioner further contends that the petitioner has not filed any application for permanent custody of the minors with reference to Section 25 of the Guardians and Wards Act, 1890.

4. Be that as it may, the record reveals that the entire controversy was initially adjudicated through the order dated 19.09.2018, passed by learned Judge Family Court on the basis of mere assertion and pleadings of the parties and no issues were framed, even evidence was not recorded and the learned Additional District Judge (West), Islamabad has rightly set-aside the order of learned Guardian Judge and remanded back the matter with the direction to the learned Guardian Court to record evidence first and then to decide the petition, so that welfare of the minors could be ensured.

5. The above referred view of the learned Additional District Judge (West), Islamabad is within the four corners of law and as such when the disputed facts have been raised, the best course to decide any controversy is to record the evidence of the parties for final determination, especially in cases of welfare of the minors, such questions could not be adjudicated without recording of pro and contra evidence of the parties.

6. Keeping in view the above background, learned counsel for the petitioner has failed to point out any legal defects in the impugned order dated 23.11.2018, passed by learned Additional District Judge (West), Islamabad.

7. For what has been discussed above, instant writ petition stands **dismissed in limine**. However, learned Guardian Court seized with the matter is directed to decide the application of Section 12 of Guardians and Wards Act, 1890 within three (03) months from the date of receipt of copy of this order under intimation to this Court.

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