

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO.556 OF 2022.

AKBAR DIN.

Vs.

MST. SHAHNAZ BEGUM AND OTHERS.

Petitioner by : Mr. Khurum Masaud Kiyani, ASC.

Respondents by : Malik Mazhar Javed, Advocate.

Date of Decision : 19.05.2022.

SAMAN RAFAT IMTIAZ, J.:- The Petitioner [Akbar Din] has filed the instant petition to assail the Order dated 24.01.2022 and Judgment dated 08.09.2021 passed by the learned District & Sessions Judge-III, Islamabad-East, (“**Appellate Court**”) whereby review petition and appeal filed by the Petitioner against the Judgment and Decree dated 26.05.2021 (“**Impugned Ex-Parte Judgment and Decree**”) passed by the learned Judge Family Court/Guardian Judge, East-Islamabad (“**Guardian Judge**”) have been dismissed.

2. The facts as per the contents of the Memo of Petition are that the Petitioner filed a petition under Section 25 of the Guardians and Wards Act, 1890 before the learned Guardian Judge to seek custody of the minor/Respondent No.2. Ex-parte proceedings were initiated against the Respondents No. 1 & 2 before the learned Trial Court, who after recording ex-parte evidence of the Petitioner and after hearing arguments submitted by the learned counsel for the Petitioner dismissed the Guardian Petition through the Impugned Ex-parte Judgment and Decree while allowing visitation to the Petitioner according to the following schedule:-

- 1. Petitioner will visit the minor after each 15 days in the Court premises on each 15th day of the month and 30th day of each month for four hours from 11:00 am to 03:00 pm, father will also bear all expenses of travelling on meeting day.*
- 2. On the religious festivals, minor shall spend first day of each festival i.e Eid-il-Fitar and Eid-ul-Azha with his father subject to surety already directed.*
- 3. The father Petitioner shall have right to attend parent teacher meeting at School of minor when scheduled the father Petitioner*

shall also have right to visit the teachers of minor if required for proper study of minor.

4. *Minor shall also have right to attend the family functions of his father's family i.e wedding ceremony, or any other family function, which the father feels necessary that minor should attend subject to surety if already submitted.*

5. *Minor shall celebrate her birthday with his father and on his birthday he will stay with his father in his house for four hours from evening 06:00 pm to 10:00 pm night subject to already submitted surety if any and after celebration, Petitioner will drop the minor to the custody of his mother."*

3. Being aggrieved with the Impugned Ex-Parte Judgment and Decree, the Petitioner preferred an appeal before the learned Appellate Court which was contested by the Respondent Nos. 1 & 2 and was ultimately dismissed vide Impugned Judgment dated 08.09.2021. Thereafter the Petitioner filed a review petition which too was dismissed vide Impugned Order dated 24.01.2022. Hence, the instant petition.

4. Learned counsel for the Petitioner argued that the Petitioner, being the father, is the natural guardian of the minor/Respondent No.2, who is now eight years' old and as such needs to spend more time with his father. He contended that the Courts below have not appreciated the law laid down in 2018 SCMR 1991. The basic contention of the learned counsel on behalf of the Petitioner was that the visitation schedule determined by the learned Guardian Judge is not sufficient and not in the best interest of the minor/Respondent No.2 as it does not provide an opportunity for spending quality time with the Petitioner father whose guidance and supervision is essential at this stage in the life of the minor. To this end the learned counsel for the Petitioner submitted that the Petitioner is simply seeking that the minor may be allowed to spend 20 days of his Summer Vacations; 10 days during Winter Holidays; and one night on Eid with the Petitioner at his residence.

5. On the other hand, learned counsel for the Respondent No.1 vehemently opposed the arguments raised by the learned counsel for the Petitioner and contended that due to the presence of Petitioner's current wife and their children at the residence of the Petitioner, the life of the minor/Respondent No.2 will be at risk from his step family if the minor/Respondent No.2 is allowed overnight stay with the Petitioner at his residence.

6. I have heard the learned counsel for the parties and gone through the record.

7. A High Court in exercise of Constitutional jurisdiction does not act like a Court of appeal. It neither reappraises evidence nor does it substitute the concurrent findings of fact recorded by the Family Court and upheld by the Appellate Court with its own findings solely on the ground that another view was possible on the same evidence. A party approaching the High Court under Article 199 of the Constitution has to demonstrate that there is a gross misreading or non-reading of evidence or jurisdictional error or such legal infirmity that has caused miscarriage of justice.

8. Learned counsel has failed to point out any misreading or non-reading of evidence or jurisdictional defect which would warrant interference by this Court. Even otherwise as may be seen from the arguments submitted by the learned counsel there is a factual controversy between the parties with regard to the minor/Respondent No.2's safety and security at the residence of the Petitioner. It is trite law that factual disputes cannot be adjudicated by the High Court in exercise of its constitutional jurisdiction.

9. In view of the foregoing, the instant petition is hereby **dismissed**.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on 25.05.2022.

JUDGE