

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

W.P. No.2993/2021

Abbas Mustafa Kassam

vs.

Senior Civil Judge / Judge Family Court (West), Islamabad & 02 others

Petitioner by: Barrister Omar Somro and Mr. Omair Saleem Malik, Advocates.

Respondents by: Barrister Muhammad Saad Buttar and Mr. Tahir Hussain Anchan, Advocate for respondents No.2 & 3

Date of Decision: 29.09.2021

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has called in question order of the learned Senior Civil Judge(I) / Judge Family Court (West), Islamabad, dated 29.01.2021, whereby visitation schedule of the petitioner with his minor daughter has been granted in a restricted manner.

2. Succinctly, Abbas Mustafa Kassam (*petitioner*) tied the knot with Kiran Mazari (*Respondent No.2*) on 01.07.2008, who were blessed with a daughter namely Noor Kassam (*Respondent No.3 / minor*) and were permanently living in Dubai. On 20.12.2018, Respondent No.2 in a clandestine manner left Dubai for Islamabad along with the minor and informed the petitioner that she has no intention of returning back to Dubai, as such, proceedings in the Family Court, Dubai had already been commenced, where mediation proceedings were pending. Per se, Respondent No.2 filed two cases against the petitioner immediately after arriving Islamabad i.e. (i) suit for custody and guardianship of the minor and (ii) suit for recovery of dower amount and maintenance of

minor, however the suits were dismissed for lack of jurisdiction but the petitioner allowed respondent No.2 to have the custody of minor on the understanding that she will not stop the minor from meeting the petitioner (father), though since then the petitioner has been denied access to the minor by respondent No.2. Resultantly, petitioner moved an application for fixation of visitation rights before the learned Family Judge, whereupon the learned Judge, vide impugned order dated 29.01.2021, has granted visitation rights not in the manner requested by the petitioner. Hence, instant writ petition.

3. Learned counsel for petitioner contends that the learned trial Court has passed the impugned order in a hasty manner as visitation at special occasions, such as Eid, birthday, vacations, etc. has not been considered by the learned trial Court; that the direction to meet the minor in presence of respondent No.2 is not fair as the minor would not openly express her feelings with the petitioner being her father; that the learned trial Court has failed to consider the fact that respondent No.2 had illegally brought the minor to Islamabad depriving the petitioner of his rights of visitation; that the impugned order is not in accordance with the dictum laid down by the superior Courts and the learned trial Court has failed to grant a balanced, comprehensive and fair visitation schedule to the petitioner for meeting with the minor.

4. Conversely, learned counsel for respondents No.2 & 3 opposed the instant writ petition on the grounds that the same is not maintainable as appeal under Section 14 of the Family Court Act, 1964

before the learned District Judge was available to the petitioner; that the learned trial Court has rightly observed each and every aspect of the case and passed the impugned order in accordance with law, as such, respondent No.2 has been facilitating the visits in every way possible as she herself has increased the visits from two days a month to four days a month; that respondent No.2 did not object to the visitation of petitioner with minor on special occasions despite not being ordered by the learned trial Court.

5. Arguments heard, record perused.

6. Perusal of record reveals that the petitioner is aggrieved with the interim order dated 29.01.2021, passed by learned Guardian Court qua the visitation schedule of his minor daughter primarily on the ground that visitation granted by the Trial Court is restricted in all sense, which is not congenial for the brought up of the minor, therefore, the order in question may be reviewed by extending the visitation rights. He has also raised his grievance that mother is always roaming around during the visitation hours, which effects the meeting of the petitioner with her daughter.

7. In order to resolve the controversy, I have gone through the impugned order. The operative part of the said order is as under:-

"Till Further orders, Friday & Saturday of First and Third Week of every forthcoming month from 03:00 p.m to 05:00 p.m will be the meeting days and time, for meeting of father with the minor, at the Residence of Plaintiff/Mother. In case the defendant/father intends to take her daughter to some playground or picnic spot within the Jurisdiction of Islamabad, on Saturday (s), he will settle his Programme with the consent of plaintiff/mother, parents will be allowed to accompany the minor during outings. In case of any dispute, the parents will have right to approach the Court."

8. While going through the impugned order including the operative part of the order, it reveals that the impugned order is of interlocutory nature and same is not of permanent character, rather Family Court has specifically referred in the last line that “*in case of any dispute, the parents will have right to approach the Court*”, such aspect further discloses that the same is interlocutory in nature and if any party is aggrieved with any of the visitation schedule, he may approach the Court of first instance, although the reasonable visitation schedule has already been awarded by the Trial Court while considering the requirements, needs and brought up of the minor *viz-a-viz* the relationship of the parties.

9. Besides the above referred background, this Court is also convinced that the impugned order seems to be an order of consent, passed on 29.01.2021, which has been followed by both the parties till the filing of this writ petition i.e. 17.08.2021 after the elapse of approximately 07 months, such conduct also goes against the petitioner father, this shows that the visitation schedule has already been followed, but later on the petitioner has raised his concern without approaching the Court of first instance before filing the instant writ petition. The respondent's side has raised the question of maintainability of instant writ petition primarily while relying upon PLD 1989 Lahore 38 (Mst Yasmin Zafar Vs. Muhammad Anwar Khan and others) primarily on the ground that the impugned order is appealable in terms of Section 14 of The Family Courts Act, 1964, similar view has also been taken in 2021 YLR 1989 Lahore (Sarosh

Sikandar and others Vs. Guardian Judge Lahore and others, PLD 2018 Lahore 830 (*Tasaduq Nawaz Vs. Masood Iqbal Usmani and others*).

The counsel for respondent also contends that if any appeal has not been filed, the order would be deemed to be final, but without going into that controversy, this Court believes that the order in question was interim in nature, as such instant writ petition is not competent, especially when the petitioner has not approached the Judge Family Court at the first instance as reflected in the impugned order.

10. For what has been discussed above, instant writ petition is misconceived and same is hereby **DISMISSED** with the observation that petitioner may approach the Family Court, if so advised by considering the change of circumstances as highlighted by the petitioner or comes on record, the Judge Family Court may reconsider the visitation schedule including the apprehension of the respondent mother, who feels threatened by the extended visitation, such intricate questions require a strong evidence, which could not be measured without its recording by the Family Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN