

**JUDGMENT SHEET.**

**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Writ Petition No.4513 of 2019**

Syed Waseem Abbas.

**Versus**

Additional District Judge (East), Islamabad and 02 others.

Petitioner By : Malik Muhammad Ashfaq, Advocate.

Respondent By : Raja Mazhar Ali, Advocate.

Date of Decision : 02.07.2020.

\*\*\*\*\*

**AAMER FAROOQ, J. -** Through the instant petition, the petitioner has challenged judgment dated 26.10.2019, whereby the appeal filed by respondents No.2 and 3 was allowed and the guardianship application filed by the petitioner under Section 25 of the Guardian and Wards Act was dismissed.

2. The facts, in brief, are that the petitioner filed an application under Section 25 of the Guardian and Wards Act for custody of respondent No.3. The referred respondent is the minor daughter born out of wedlock of the petitioner and respondent No.2. Due to strained relations, respondent No.2 left the house of the petitioner and ultimately the marriage ended in divorce in 2017. Respondents No.2 and 3 also filed proceedings for maintenance of respondent No.3. Both the matters were consolidated and the learned Family Court, vide consolidated judgment dated 01.10.2019 allowed the petition for guardianship,

filed by the petitioner, by granting custody of respondent No.3 to her paternal grandmother. The suit for maintenance was also allowed and in this behalf sum of Rs.5,000/- per month was awarded as maintenance. Appeal was preferred by respondents No.2 and 3 before respondent No.1, which was allowed, as noted above.

3. Learned counsel for the petitioner, *inter-alia*, contended that since respondent No.2 is a woman of promiscuous character, hence it is inappropriate that the petitioner's minor daughter should remain with her. It was further contended that respondent No.2 has no independent means to bring up respondent No.3; that it is appropriate that respondent No.3 should be brought up in a congenial environment by her paternal grandmother. Learned counsel took the Court through the evidence to substantiate his plea that respondent No.2 is not entitled to retain the custody of respondent No.3.

4. Learned counsel for respondents No.2 and 3, *inter-alia*, contended that there is nothing on record about the character of respondent No.2; that a bald allegation was leveled upon the character of respondent No.2, which is neither here nor there. It was further contended that since birth, respondent No.3 is in custody of respondent No.2 and is of tendered age i.e. about four years, hence it is appropriate that she should remain with her mother. It was further contended that despite judgment by the Family Court the petitioner is not depositing maintenance amount.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The controversy leading to filing of the present petition has been mentioned hereinabove therefore need not be reproduced.

7. The thrust of the arguments by the learned counsel for the petitioner was that the character of respondent No.2 is not above board. In this behalf, attention was drawn towards affidavit filed by the petitioner. The bare perusal of the affidavit, which was exhibited in evidence as Ex-A/1 shows that in paragraph 5 it has been mentioned that the character of respondent No.2 is not good and in paragraph 6 he has alleged that a person with whom respondent No.2 is having an affair namely Ahmad shot him, however, during the course of cross-examination nothing to the effect was substantiated; rather in cross-examination petitioner admitted that due to strained relations respondent No.2 went to her Khalas's house where he was shot, nothing was mentioned about Ahmad or the nature of relationship between respondent No.2 and him. Moreover, no independent evidence was produced regarding the character of respondent No.2 to substantiate the plea. In the referred background the plea raised by the petitioner remains unsubstantiated and is nothing but a mere allegation. Respondent No.1 while dealing with the matter has rightly observed that the petitioner has not produced any evidence or placed on record anything to prove bad character of respondent No.2. The impugned judgment does not suffer from any misreading or non-reading of evidence or any illegality or jurisdictional error calling for interference.

8. For what has been stated above, the instant petition is without merit and is accordingly **dismissed**.

**(AAMER FAROOQ)**  
**JUDGE**