

JUDGMENT SHEET.

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

W.P. No. 1814/2019

Jahanzeb Shah

versus

The Additional District Judge (West), Islamabad, etc.

Petitioner: In Person.

Respondents by: Mr. Mushtaq Hussain, Advocate along with
Respondent No.3

Date of Decision: 01.10.2020.

MOHSIN AKHTAR KAYANI, I: Through this Writ Petition, the petitioner has assailed the order dated 11.04.2019, passed by learned Additional District Judge (West), Islamabad, whereby appeal filed by respondent No.3/Mst. Saba was allowed and custody of two minors namely Muhammad Waleed Shah alias Abdul Samad (Respondent No.4) and Muhammad Adeen Shah alias Muhammad Musa (Respondent No.5) has been handed over to respondent No.3/mother.

2. Petitioner in person states that Muhammad Waleed Shah alias Abdul Samad born on 28.01.2007, aged about 13-1/2 years and Muhammad Adeen Shah alias Muhammad Musa, born on 27.04.2011, aged about 9-1/2 years are his real sons who were born during subsistence of marriage with respondent No.3/Saba; that respondent No.3 got khulla which was decreed on 11.12.2012 and she secretly contracted second marriage, which has also been dissolved by way of khulla and now she intends to contract third marriage with another person namely Muhammad Azam and due to conduct of respondent No.3/mother, minors could not be looked after in a proper manner; that he is highly qualified

being PhD and working as Scientist with Atomic Energy Commission and even not entered into second marriage after dissolution of marriage with respondent No.3 for the sake of minors but first appellate court has reversed the findings of learned trial Court without considering the law on the subject and as such decree of appellate court is liable to set aside.

3. Conversely, learned counsel alongwith respondent No.3/mother contends that respondent No.3 is working as teacher in the Islamabad Model School and minors are studying in class 9th and 4th respectively who are properly looked after by respondent/mother at her own, although decree for maintenance has been passed against the petitioner who has not paid a single penny w.e.f. February 2019; that minors are not willing to join their father in any circumstances; that in this petition, petitioner/father has leveled false and frivolous allegations and resorted to character assassination, whereas during the course of cross-examination he has acknowledged that respondent/mother is living a pious life and as such appellate Court has rightly passed the decree in favour of respondent/mother; that father may be directed to deposit monthly expenses in the account No.0274393831002704, (titled Saba Sadiq), MCB, F-10/4 Markaz Branch, Islamabad and if he can achieve love and affection of two sons for overnight stay or for vacations, minors are allowed to see their father for the purpose of visitation but this opportunity is conditional if father is able to demonstrate his love and affection towards the minors who are looked after by respondent/mother since 2012 all alone.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner/father filed application for custody of minors namely Muhammad Waleed Shah alias Abdul Samad born on 28.01.2007, aged about 13-1/2 years and Muhammad Adeen Shah alias Muhammad Musa, born on 27.04.2011, aged about 9-1/2 years, who are studying

in class 9th and 4th respectively at IMCB, Islamabad, whereby he has prayed for custody mainly on the ground that respondent No.3/mother after getting khulla on 11.12.2012 entered into second marriage which was also dissolved by way of khulla and she now intends to contract third marriage with another person Muhammad Azam and as such she is not looking after minors properly. Learned trial Court after recording of evidence allowed the custody in favour of petitioner. Feeling aggrieved with the said order, respondent/mother assailed the same which was decided by learned Additional District Judge (West), Islamabad vide order & decree dated 11.04.2019, whereby judgment & decree passed by learned trial Court was set aside and minors custody was declared to be in favour of mother/respondent.

6. I have gone through the evidence of petitioner who appeared before the Guardian Court as AW-1 and submitted his evidence through Ex.A-1 in which he has reiterated his stance qua the conduct of respondent No.3, which reveals that certain instances were referred which amounts to character assassination of respondent No.3/mother though during the course of cross-examination it was acknowledged by the petitioner himself that he has no proof to justify that respondent No.3/mother has some relation with third person, such admission on his part clarify the entire position that petitioner in order to settle his personal vendetta leveled false allegations though he is a PhD doctor and Scientist in the Pakistan Atomic Energy Commission, on the other hand respondent No.3 is also a school teacher who is managing the affairs of minors w.e.f. the date of khulla i.e. 11.12.2012 single handedly. It is important to mention here that the petitioner/father is not paying maintenance w.e.f February, 2019 till date, which is approximately one year and seven months, such aspect suggest that petitioner/father is negligent in performance of his duties qua the minors. Both the minors are studying under the supervision of their mother, even this Court

called the minors and interviewed on 09.01.2020 and their preference has been considered who have volunteered to live with their mother, hence the preference of two minors who are 13-1/2 & 9-1/2 years respectively could not be brushed aside. Reliance is placed upon 2017 MLD 1116 (Muhammad Afzal Vs. Parveen Bibi).

7. I have also gone through the judgment rendered by first appellate Court who has thoroughly scanned the evidence and has rightly appreciated the evidence and allowed the appeal in favour of respondent/mother, even preference of two minors have also been recorded by the appellate Court, therefore, at this stage, petitioner has failed to justify any valid reasons for interference in the impugned judgment, which has been passed in accordance with law as the minors have developed their secured environment, law and affection with the real mother/respondent No.3, who is presently looking after the minors from last eight years all alone in comparison to the role of the petitioner, who has not paid the maintenance for about 19 months, therefore, instant writ petition merits dismissal. Be that as it may, petitioner/father is duty bound to deposit the due maintenance w.e.f. February, 2019 till October, 2020 in the above mentioned account number of respondent No.3 i.e. No.0274393831002704, (titled Saba Sadiq), MCB, F-10/4 Markaz Branch, Islamabad after its confirmation by the Bank. The petitioner/father has been confronted qua his stance for non deposit of maintenance whereby he conceded that he is ready to deposit said amount in the account of Respondent No.3/mother.

8. Instant writ petition stands dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE