

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 3895 OF 2020

HUMAIRA NAZLI.
Vs.
SHAUKAT ALI, ETC.

Petitioner by : **Tahir Afzal Abbasi, Advocate.**
Mr. Shahzad Hussain, Advocate.

Respondents by : **Ms. Neeli Khan, Advocate.**

Date of hearing : **12.03.2021**

LUBNA SALEEM PERVEZ, J. Through present petition, the petitioner Humaira Nazli, has assailed order dated 17.11.2020, passed by learned Additional District Judge, West-Islamabad (*hereinafter referred to as the ADJ*), whereby, the appeal of the petitioner against order dated 07.01.2020, passed by the learned Trial Court, has been dismissed, whereas, Respondent No.1's appeal filed against the said order has been accepted and order dated 07.01.2020, passed by the learned Trial Court has been set aside.

2. Brief facts of the case are that the marriage between the petitioner and Respondent No.1 was solemnized on 16.01.2006 and they were blessed with two children namely Muhammad Abu Bakar and Zunaira Shaukat, Respondent Nos. 2 & 3, respectively, out of the wedlock. Relation between the parties became strained and ultimately on 25.08.2019, the petitioner left the house of the Respondent No.1 and filed a suit for dissolution of marriage, which was decreed in her favor. Petitioner then filed petition u/s 491 Cr.P.C. against Respondent No.1 which was accepted and temporary custody of the minors was handed over to the petitioner. Respondent No.1 preferred petition u/s 25 of the Guardian & Wards Act, 1890 for permanent custody of the minors, which was decided, vide judgment dated 07.01.2020, whereby custody of the minors/Respondent Nos. 2 & 3 was ordered to be retained by the petitioner, however, Respondent No.1 was allowed visitation rights while chalking out the meeting schedule. Petitioner being, dissatisfied with

the meeting schedule, preferred appeal before the learned District Judge, Islamabad. Respondent No.1 also filed appeal against the order dated 07.01.2020. Both the appeals were consolidated and were decided, vide impugned consolidated judgment dated 17.11.2020, whereby appeal filed by Respondent No.1 was accepted, whereas, petitioner's appeal was dismissed.

3. After being unsuccessful in appeal, petitioner has preferred present writ petition against the judgment dated 07.01.2020, of learned Trial Court as well as judgment dated 17.11.2020, passed by the learned Additional District Judge, respectively.

4. Learned counsel for the petitioner submitted the impugned judgments passed by the learned Courts below suffer from misreading and non-reading of material evidence produced by the petitioner; that the learned courts below failed to appreciate the proposition that in cases of custody of minor children undeniably right of custody vests in the mother; that the Respondents No.1 during the cross-examination admitted that he is not capable of ensuring welfare of the minors; that there can be no substitute to the love, affection and commitment of a mother to her children as the lap of real mother is God's cradle for a child; that a grave prejudice and miscarriage of justice have been meted out to the petitioner, by handing over custody of the minors to Respondent No.1. Learned counsel submitted that the impugned judgments have been passed in derogation to the settled law regarding custody of the minors, therefore, liable to be set aside.

5. On the other hand, learned counsel for Respondent No. 1, *inter-alia*, submitted that while considering the welfare of the minor children their intelligence preference cannot be ignored and in the present case the minors are emotionally attached with their father and are not willing to live with their mother; that the learned Appellate Court, while handing over custody of the minors to the Respondent No.1, has duly appreciated the fact that welfare of the minor is with their father. Learned counsel in support of his contentions placed reliance on the case law reported as *Mst. Ayesha Abdul maleek versus Additional District judge*,

Sahiwal and others (2020 YLR 401), Imran Ahmed versus Mst. Madiha Younus and others (2018 YLR 649) and Mst. Sardaran (deceased) through L.Rs versus District Judge, Mianwali and others (2016 MLD 801) and prayed for dismissal of instant writ petition.

6. Arguments heard. Record perused.

7. It is established principle through various pronouncements of the superior courts of the country that while deciding matter of custody of minor children preference should be given to his or her welfare amongst all other considerations and for this purpose capability of either of the parents is to be seen. In the present case the petitioner / mother of the minors is a working lady who lives in a combined family system with her brothers and mother. The petitioner, being a working lady, most of the times remains outside the house and children shall be looked after by her mother and family of her brothers, whereas, the concept behind handing over custody of the minor children to the mother is that she remains available all the time for taking care of the children and in case where the mother is a working lady just like in the present case, the other circumstances just like suitable atmosphere for the children is also to be seen. On the other hand, Respondent No.1 lives with her mother alone who can take care of the minors while father of the minors is on job. Moreover, as per Muhammadan Law, father is the natural guardian of the minor children and has preferential right of custody of minor.

8 In addition to above, both the minors/Respondent Nos. 2 & 3, who also appeared before the learned appellate Court, were called in person. They appeared to be fully conversant with the situation and their attachment with their father was apparent as they showed no attraction towards their mother who was also present in the Court. The minors, on court's question expressed their willingness to live with their father as their mother does not take care of them.

9. Thus, I am of the considered view that, in the facts and circumstances of the case, the learned appellate court has rightly handed over the custody of the minors to Respondent No.1/father, therefore, I am in agreement with the findings of learned ADJ that the welfare of the minors lies in living with their father.

10. In view of the above, no reason to interfere with the judgments and decrees dated 07.01.2020 & 17.11.2020, passed by the learned Courts below has been found, therefore, present petition, being devoid of any merit, is hereby **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the open Court on _____.

JUDGE