

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2827/2019

Mst. Raiya

Versus

Hammad Hussain, etc

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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07.11.2019	Mr. Javed Iqbal Bandey, Advocate for petitioner, Respondent No.1 In Person.
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Through this judgment, I propose to decide Writ Petition No. 2827/2019 and Writ Petition No. 3198/2019 since they entail common questions of law and fact.

2. Through Writ Petition No. 2827/2019 the petitioner (Mst. Raiya) assails the order dated 20.05.2019, passed by the learned Judge Family Court, Islamabad-West. Through the said order dated 20.05.2019 the learned Family Court reviewed its earlier order dated 06.03.2019 to the extent that the venue of meeting between the minors and their father i.e. respondent No.1 was changed from Court precincts to Centuarus Mall, Islamabad.

3. Through Writ Petition No. 3198/2019, the petitioner (Hammad Hussain) also assails the order dated 20.05.2019 which has been assailed in the Writ Petition No. 2827/2019. Mst. Raiya shall be referred to as the “petitioner” whereas Hammad Hussain shall be referred to as “respondent No.1”.

4. The facts essential for the disposal of the instant petition are that the petitioner and respondent No.1 are ex husband and wife. Their divorce took place on 17.04.2018. During the subsistence of the marriage the couple were blessed with two sons namely, Muhammad Affan Butt and Muhammad Abdullah Butt, born on 08.11.2016 and 19.03.3018, respectively.

5. On 13.07.2019 respondent No.1 filed petition under section 25 of the Guardian and Wards Act, 1890 ("the 1890 Act") for the custody of the minors before the learned Judge Family Court. Alongwith the said petition, respondent No.1 also filed an application under section 12 of the 1890 Act for interim custody of the minors and for weekly meetings.

6. Vide order dated 06.03.2009, the learned Judge Family Court dismissed respondent No.1's application under section 12 of the 1890 Act and fixed a schedule of visitation between the minors with respondent No.1 on first and third Saturday of every month from 10:00 a.m. to 02:00 p.m., at the Court premises, in the presence of the bailiff.

7. On 20.05.2019 respondent No.1 moved an application for review of order dated 06.03.2019 to the extent of venue of meeting with the minors. Respondent No.1 in the said application prayed for the change of venue from the Court premises to his house. The said application was disposed of by the learned Judge Family Court vide impugned order dated 20.05.2019, whereby the venue of meeting was changed from the Court premises to the "Centaurus Mall" Islamabad, in presence of bailiff. The said order dated 20.05.2019 has been impugned in these petitions.

8. It appears that both the contesting parties preferred appeals against the impugned order dated 20.05.2019 before the Court of the learned District Judge. Vide order dated 13.07.2019, the said appeals were disposed of by holding that the same were not maintainable against an interim order.

9. Learned counsel for the petitioner after narrating the facts leading to the filing of instant petition, submitted that the learned Judge Family Court erred by not appreciating that a shopping mall is not an appropriate place for meeting between the minors with respondent No.1; that the

Court did not specify any place in the Centaurus Mall as the place of meeting; that a business center is not an appropriate place for meeting with young children; that the learned trial Court did not obtain the consent of the petitioner while fixing the venue for the meetings; that due to the previous conduct of respondent No.1, there was an apprehension that he may take away the minors; that respondent No.1's house is not a suitable place for meeting with the minors as it would expose the children to the hostilities of a step mother; that no opportunity was given to the petitioner to file a reply to respondent No.1's application; that there was no need to change the venue of meeting as previous meetings in the Court premises were calm and secure; and that the impugned order is not sustainable under the law. Learned counsel prayed for the writ petition to be allowed and the impugned order dated 20.05.2019 to be set aside.

10. On the other hand, respondent No.1 appeared in person and contended that the welfare of the minors rests in getting love and affection of their father; that both in religious terms and in legal terms a father is entitled to meet the children more often than the schedule fixed under the order dated 06.03.2019; that the Court premises are not an appropriate place for meeting with the minors; that the petitioner i.e mother of minors did not bring the children on half of the dates scheduled for meetings since visitation order dated 06.03.2019 was passed; that after the passing of the impugned order dated 20.05.2019, the petitioner did not produce the minors for meeting; that a shopping mall being a crowded place would not be a proper venue for meeting; that respondent No.1's house is the most conducive venue for the welfare of minors as they would be able to develop a bond with their father; and that the grounds taken by the petitioner are speculative and based on *mala fide*.

11. I have heard the contentions of the learned counsel for the petitioner as well as respondent No.1 in person and perused the record.

12. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 3 to 7 above, and need not be recapitulated.

13. Although the order dated 20.05.2019 which has been impugned is interim in nature, however, since welfare of minors is basic consideration in guardianship matters, this Court cannot remain unmindful of the objections by both the parties against the said order regarding the venue of meeting.

14. Since the minors are aged less than three years, at this stage, they require the affection of both the parents. The minors are in the petitioner's custody. Despite the divorce between the parents, the minors cannot be deprived of the natural affinity, love and affection of their father. The purpose of respondent No.1's meeting with the minors is to develop a parental bond with the children, and to avoid estrangement between them. This objective cannot be achieved without ensuring that the meeting of the father and children takes place in a suitably congenial and homely environment. In the absence of extraordinary circumstances, the Court premises as venue of meeting with minors, are neither congenial nor appropriate. Law to this effect has been laid down in case of Umar Farooq Vs. Khushbakhat Mirza etc (PLD 2008 Lahore 527), wherein it has been held as follows:-

"It is an inherent right of the contesting parent to seek visitation to the minor, especially a father, who is the natural guardian, he not only is required to participate in the up-bringing of the minors, but should develop love, bondage and affinity with them, to achieve this purpose, the concerned Court should facilitate a congenial, homely and friendly environment and a reasonable

visitation schedule. The Court of the Guardian Judge, for this purpose is neither conducive nor effective, it lacks proper facilities and arrangements, and is not comparable to a homely environment. Thus, meeting in Court premises does not serve the purpose of meeting. It, therefore, is not in the interest or welfare of the minors to hold meetings in Court premises. Thus, meetings of minors with parents should preferably be held at the premises of the contesting parent to familiarize the minors with the environment there, to strengthen a healthy relationship and dispel fears of a future re-union and only in extreme and exceptional cases the Court of the Guardian Judge be chosen as a venue for which detailed reasons should be cited, thus, a mechanical order, in this context is not tenable.’(Emphasis added)

15. Through the impugned order dated 20.05.2019, learned Family Court did not specify any area in the Centaurus Mall to be designated as venue for meeting. It can safely be held that this ambiguity in the impugned order can give rise to variety of complications. Even otherwise, both parties have objected to the venue of meeting to be a shopping mall as the same cannot be considered a suitable and congenial place for meeting with the children of tender age.

16. I am of the view that the meeting place should be congenial and conducive to develop bond between the father and children. The Court premises or the Centaurus Mall, Islamabad are most definitely not the congenial places for the said purpose. Therefore, the impugned order dated 20.05.2019 is set aside whereas the order dated 06.03.2019 is modified in the following manner:-

- I. that venue of the meeting between minors and respondent No.1 is fixed at the house of respondent No.1;
- II. Since respondent No.1 is stated to be residing in DHA, Islamabad, whereas according to petitioner he resides in Satellite Town Rawalpindi, in either case the visitation schedule of four hours should take into

account the transit time. Accordingly respondent No.1 would pick the minors from the residence of the petitioner one hour before starting time of schedule of meeting already fixed by the learned Family Court vide order dated 06.03.2019 and is bound to return them within one hour after the end of meeting time.

- III. The bailiff deputed by the learned Family Court shall accompany respondent No.1 while picking up the minors and would remain with them till their return to the petitioner.
- IV. The parties would submit their addresses and contact numbers in the Family Court within ten days of the receipt of this order.

17. To dispel the petitioner's apprehension that respondent No.1 may not return the minors to her or otherwise violate the conditions of order dated 06.03.2019, respondent No.1 is directed to submit surety bond in the sum of Rs.1 million with ~~one~~ local surety to the satisfaction of learned Family Court seized of the custody petition.

18. In view of above the order dated 20.05.2019 is set aside and order dated 06.03.2019 passed by learned Judge Family Court is modified to the extent of the venue of meeting, in the aforesaid manner. As a natural corollary the present petition as well as writ petition No 3198/2019 are disposed of. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE

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