

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.2360-2020

Moona Raza Khan

Vs.

Guardian Judge/Senior Civil Judge-I, Islamabad (West) and Another

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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22.01.2021	Ms. Natalya Kamal, Advocate and Mr. Hassan Adnan Ahmed, Advocate for petitioner. Sardar Shabbir Hussain, Advocate, Barrister Adnan Saboor Rohaila, Advocate.
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Respondent No.2 filed an application under section 25 of the Guardian and Wards Act, 1890, against the petitioner, for obtaining custody of his minor child namely Kamil Wahid Abid, which is pending before respondent No.1. In the referred proceedings, an application was filed by the petitioner under section 12 of Guardian and Wards Act, 1890 praying that respondent No.2 be restrained to interfere in the school affairs of aforementioned minor son. Meanwhile, the minor Kamil Wahid Abid was withdrawn from the school due to acrimonious behavior of petitioner and respondent No.2. In this view of the matter, learned trial court directed both the parties to file list of schools of their choice for admission of the minor. The petitioner remained adamant minor's school i.e. Tree House School should not be changed, whereas respondent No.2 submitted list of schools which included Lahore Grammar School, H-8/1, Islamabad, Headstart School, F-6/2, Islamabad and Beacon House School System, F-8/2, Islamabad. On the basis of said list, learned trial court ordered to admit the

child in Lahore Grammar School, H-8/1 Islamabad, which order has been assailed in the instant petition.

2. Learned counsel for the petitioner *inter alia* contended that order impugned is capricious, whimsical and perverse in the facts and circumstances of the case; that learned trial court should have acted in *loco parentis* and passed the order in welfare of the minor; that the minor child is eight years old and is not happy in new set up. When confronted as to the maintainability of instant petition, learned counsel submitted that since order impugned is capricious and whimsical, hence writ petition is maintainable. In support of contentions, learned counsel placed reliance on cases reported as ‘Maliha Hussain Vs. Additional District Judge-V and another (2017 MLD 485), ‘Miss Hina Jilani, Director of A.G.HS Legal Aid Cell Vs. Sohail Butt’ (PLD 1995 Lahore 151), ‘Mst. Nafeesa Vs. Mir Bahadir and 2-others’ (2013 CLC 1784), ‘Mst. Rani Vs. Bilal Ahmad and 2-others’ (2000 MLD 1967), ‘Sardar Muhammad Jahangir Vs. Judge Family Court and 2-others’ (2015 CLC 990), ‘Ali Adnan Dar through Attorney Vs. Judge Family Court and others’ (PLD 2016 Lahore 73), ‘Abrar Hussain Vs. Mehwish Rana and 3-others’ (PLD 2012 Lahore 420), ‘Mst. Maham Shabbir Vs. Salman Haider and others’ (2014 CLC 330), ‘Jaffar Mehmood Malik Vs. Ch. Khalid Hussain and others’ (2006 YLR 1516), ‘Ashiq Hussain Vs. Sikandar Shah and 14-others’ (2011 CLC 373), ‘Messrs Habib Bank Limited through Authorized Officers/Attorneys Vs. Messrs Victor Electronics Appliances Industries Pvt. Ltd. and another’

(2011 CLC 1571), 'Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others Vs. Muhammad Zaman Khan and others' (1997 SCMR 1508).

3. Learned counsel for respondent No.2 objected to the maintainability of the petition and submitted that order impugned is interlocutory in nature hence writ petition is not maintainable unless same is patently illegal and without jurisdiction, which is not the case. It was contended that petitioner invoked the jurisdiction of learned trial court hence cannot term the order as without jurisdiction; he submitted that child is doing well in new school and also placed on record academic report in this regard. In support of contentions, learned counsel placed reliance on cases reported as 'Badrudin Roshan Vs. Mst. Razia Sultana and another' (2002 SCMR 371), 'Mst. Maham Shabbir Vs. Salman Haider and others' (2014 CLC 330), 'Mst. Muniba Raheel Vs. Raheel Taufiq Feroz and another' (2020 CLC 1353) and 'Mujeeb Ur Rehman and 2-others Vs. Mst. Mehroon Nisa alias Tanzil Begum and 4-others' (2019 CLC 1352).

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

5. The facts, leading to filing of instant petition, have been mentioned hereinabove therefore need not be reiterated.

6. It is an admitted position that the order impugned, in the instant petition, does not dispose of entire *lis* and the application/proceedings, out of which, instant

petition has arisen, is still pending. In this behalf, section 14 of Family Courts Act, 1964 provides for right of appeal against final decision and/or judgment and decree. The order impugned, in the instant petition cannot be termed as 'final decision' or 'judgment and decree', hence is an interlocutory order, against which, no appeal lies. In such view of the matter, it is trite law that interim/interlocutory order can be assailed, if same is without jurisdiction and patently illegal or otherwise is perverse. Though learned counsel for the petitioner did argue that the order impugned is final, however, if this argument is accepted, section 14 of Family Courts Act, 1964 would be applicable and writ would not be competent.

7. The case law, cited by both the sides mentioned hereinabove, lays down the trite principle that interim/interlocutory order can only be called in question in an application and not under Article 199 of the Constitution unless same is without jurisdiction, patently illegal or perverse. Admittedly, the order in question is not without jurisdiction or illegal otherwise.

8. The learned trial court, in the facts and circumstances of the case, exercised its jurisdiction by ordering the admission of minor in a new school namely Lahore Grammar School.

9. The fact that minor is not happy or is finding it difficult to adjust in new school does not mean that the discretion exercised by learned trial court is unreasonable or inappropriate in the facts and circumstances. The report card submitted during course of proceedings indicates that the minor is doing well in new school.

10. In view of foregoing, instant petition is without merit and is accordingly dismissed. However, since the matter is still pending with the Guardian Court and it has *loco parentis* jurisdiction, therefore, if any of the party feels that school of minor needs to be changed for any reason otherwise, may file an appropriate application in this behalf.

(AAMER FAROOQ)
JUDGE

