

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2821 of 2017

Mst. Fatima Ali and another
Vs
Mst. Rubina Ehtesham and 4 others

DATE OF HEARING: 04-12-2017.

PETITIONERS BY: Mr Muhammad Waqas Malik Advocate.

RESPONDENTS BY: Barrister Afzal Hussain, and Arslan
Binyamin Bhatti Advocate.

ATHAR MINALLAH, J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the "**Constitution**") assailing order, dated 26-07-2017, passed by the learned Guardian Judge, Islamabad (West).

2. The facts, in brief, are that Mst. Fatima Ali and Syed Ali Ehtesham had entered into a marriage contract out of

which Syed Muhammad Mustafa Ali was born on 09-03-2013. The father of the minor namely, Syed Ali Ehtesham passed away on 10-01-2014. Pursuant to a petition filed by Syed Ehtesham Zamir, who was paternal grandfather of the minor, the learned Guardian Judge/Senior Civil Judge, Islamabad (East) vide order, dated 29-04-2014 had appointed the latter as guardian of the person and property of the minor. The paternal grandfather also passed away and thereafter Mst. Fatima Ali, mother of the minor, filed a petition under section 25 of the Guardian and Wards Act, 1890. Likewise, two separate petitions were filed by Mst. Robina Ehtesham, who is the paternal grandmother of the minor. The petitions were consolidated vide order, dated 26-07-2017, passed by the learned Guardian Judge, Islamabad (West). Through the same order, the learned Court fixed an interim schedule of visitation in respect of the paternal grandmother namely, Mst. Robina Ehtesham and the same is as follows:

- *The respondent (Fatima Ali) shall give custody of the minor to the petitioner (Rubina Ehtesham) on first & last Saturday of each month during 11:00 am in the morning of Saturday till 12:00 noon of the following day i.e. Sunday.*
- *In addition to monthly visitation schedule, the petitioner/ paternal grandmother is allowed*

visitation rights during special occasions of Eid-ul-Fitr & Eid-ul-Azha. The respondent shall be bound to hand over custody of the minor to the petitioner on 2nd day of each Eid at 12:00 noon till evening of the 3rd day of each Eid i.e. till 06:00 pm.

- *On the occasion of the birthday of the minor, the petitioner (Robina Ehtesham) shall be extended right of participation in the ceremony.*
- *This order of visitation extended to the petitioner shall take effect from 01-08-2017, subject to furnishing solvent surety bond by the petitioner in the sum of Rs.50,00,000/- (Rupees Fifty Lakh only) with one local surety to the satisfaction of this court. The visit of minor shall take place at the residence of the petitioner situated at House No. 343-B, Street No. 15-A, Phase III, Bahria Town, Islamabad.*

The petitioner has, therefore, assailed order, dated 26-07-2017, whereby an interim arrangement has been made in respect of schedule of visitation in relation to the paternal grandmother.

3. The learned counsel appearing on behalf of Mst. Fatima Ali (hereinafter referred to as the "***petitioner***") has contended that: the learned Guardian Judge, Islamabad was not vested with jurisdiction to pass order, dated 26-07-2017;

the impugned order has been passed without application of mind and taking into consideration the relevant matters; the learned Guardian Judge has failed to protect the interests of the minor; the address given by Mst. Robina Ehtesham (hereinafter referred to as the "**respondent No. 1**") i.e. House No. 343-B, Street No. 15-A, Phase III, Bahria Town, Islamabad does not fall within the territorial jurisdiction of the learned Guardian Judge, Islamabad; the respondent No. 1 has now shifted to a house which is situated in Defense Housing Authority, Islamabad; no maintenance is paid by the paternal grandmother and, therefore, she is not entitled to have visitation rights; the respondent No. 1 normally resides in Dubai and, therefore, there is an apprehension that the minor would be taken out of the jurisdiction of the Guardian Judge, Islamabad.

4. The learned counsel appearing on behalf of the respondent No. 1 has argued that; the impugned order has been passed and an interim arrangement has been ordered in respect of visitation of the minor in respect of her paternal grandmother; the order is reasonable; it is an admitted position that the respondent No. 1 resides in Defense Housing Authority, Islamabad and, therefore, jurisdiction vests in the learned Guardian Judge, Islamabad; the impugned order does

not suffer from any legal infirmity so as to require interference.

5. The learned counsels have been heard and the record perused with their able assistance.

6. The learned Guardian Judge, Islamabad has prescribed a schedule of visitation in respect of the paternal grandmother namely, Mst. Robina Ehtesham i.e. the respondent No. 1. Three separate petitions are pending. It is also an admitted position that the parties live in the same area. The respondent No. 1 is the paternal grandmother of the minor. Her son and father of the minor, namely, Syed Ali Ehtesham had passed away on 10-01-2014. It is obviously not fair to deprive the respondent No. 1 from spending some time with her grandchild, while the custody remains with the petitioner. It also appears from the impugned order that a suggestion was made on behalf of the petitioner that the respondent No. 1 may be given opportunity of visitation within the court premises. The learned counsel for the petitioner had also raised concerns regarding the possibility of the minor being taken out from the jurisdiction of the court. The impugned order is well reasoned and appropriate directions have been given in accordance with law. The

apprehensions, therefore, are misplaced. Moreover, it is an admitted position that the respondent No. 1 now resides in Defense Housing Authority, Islamabad and, therefore, the impugned order does not suffer from jurisdictional error. The learned Guardian Judge while taking the welfare of the minor into consideration has rightly declined the suggestion to allow visitation within the court premises. The court premises is indeed not an appropriate place for visitation nor is it appropriate to expose a child to its environment. There is nothing on record to show that the learned Guardian Judge has exercised discretion contrary to the welfare of the minor. No legal infirmity has been found so as to warrant interference while exercising jurisdiction under Article 199 of the Constitution. Even otherwise, it is settled law that this Court cannot substitute the decision or opinion formed by the learned Guardian Judge unless it can be explicitly shown to be arbitrary or fanciful. This Court had afforded several opportunities to the parties to amicably resolve the dispute. When the case was taken up today, the learned counsels informed that the parties could not reach an amicable settlement.

7. For what has been discussed above, the impugned order does not suffer from jurisdictional error nor the interim

arrangement relating to visitation of the minor in relation to his paternal grandmother has been found to be arbitrary or unreasonable. The petition, therefore, is without merit and accordingly dismissed.

(ATHAR MINALLAH)
JUDGE

Announced in open Court, on 18th December 2017.

JUDGE

Tanveer Ahmed.

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