

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.
CPLA NO. 67/2015.**

Before:-

1. **Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**
2. **Mr. Justice Muzaffar Ali, Judge.**

Mst. Haseena Widow of Muhammad Abbas R/o Minapin Tehsil
 Sikandarabad District Hunza/Nagar

Petitioner.

VERSUS

Muhammad Shafa S/o Bakhtawar Shah R/o Minapin Tehsil
 Sikandarabad District Hunza/Nagar.

Respondents.

**PETITION FOR LEAVE TO APPEAL INTO APPEAL
 AGAINST THE IMPUGNED JUDGEMENT/ORDER
 DATED 30.06.2015 PASSED BY THE GILGIT-
 BALSTAN CHIEF COURT GILGIT WHEREBY THE
 LEARNED CHIEF COURT ACCEPTED THE APPEAL OF
 THE RESPONDENT.**

**FOR SETTING ASIDE THE SAME AND THE
 RESPONDENT MAY KINDLY BE RESTRAINED TO
 REMOVE THE WARD ARMAN ABBAS FROM THE
CUSTODY OF PETITIONER.**

Present:-

1. Mr. Sharif Ahmed, Advocate for the Petitioner.
2. Mr. Amjad Hussain, Advocate for the respondent.

DATE OF HEARING: - 14-09-2015.

JUDGEMENT.

Dr. Rana Muhammad Shamim, CJ.....The learned counsel for the petitioner submits that Mst.Haseena was married with one Muhammad Abbas S/o Muhammad Shafa. Her husband was serving in Pakistan army who died in April 2013. Out of this wedlock, a male child, Arman Abbas born on 16.10.2012, he is only 02 years and 11 months old at present. Soon after the death of the petitioner's husband, the father of the minor namely

Arman Abbas his grandfather i.e. Muhammad Shafa took the infant into his custody when he was only 10 months old, against the will of his mother/petitioner of the case in hand. Consequently, the petitioner filed a petition under Section 25 of Guardian and Ward Act 1890, in the Court of the Guardian Judge District Hunza/Nagar for recovery and handing over the child to her as the infant/minor was taken into the custody forcibly by the respondent No.1 & two others i.e. Munawar S/o Bakhtawar Shah and Aqleen W/o Muhammad Shafa from the laps of her mother/petitioner. He further submits that upon hearing the learned Guardian Judge directed the present respondent to hand over the child to the petitioner/mother as per Shariat and law till consanguine period, however, the respondent No.1,2 and 03 were allowed to visit the child at the house of his mother on each Sunday but they were not allowed to take the infant with them. Accordingly Civil Misc. No. 46/2014 was disposed of with the above directions. Whereafter, the respondent filed Civil Misc. No.67/2014 under Section 25 of Guardian & Ward Act 1890, for grant of the custody of the infant/minor namely Arman Abass S/o late Muhammad Abass. The petitioner/mother in pursuance of the notice of the Court joined the proceedings and finally the case was heard on 23.02.2015. Since, Arman Abass S/o late Muhammad Abass has crossed the age of two years, consequently, the respondent was entitled to take the minor into their care and custody under Shia Muslim

Personal Laws. He further argued that petitioner/mother of the infant even did not allow the grandparents of the child to meet with him. He further submitted that the mother of the child has also failed him to get vaccinated timely. The learned counsel for the respondents stated before the learned Guardian Judge that although under the Shia Muslim Personal Law, the son of predeceased son is not entitled to get inheritance yet he intends to give share in inheritance to the minor. He submits that the welfare of the minor lies with the respondent /grandfather, who is financially sound and can arrange good education and better brought up in his care and custody.

The learned counsel for the petitioner on the other hand submits that the respondent/grandfather of the child after the death of her husband forcibly taken into his custody of the minor, when he was only 10 months old without the consent and will of the petitioner/real mother. The learned counsel further submits that the petitioner is still unmarried and taking good care of minor as she is receiving handsome amount in shape of pension of her late husband, which is enough to maintain both, the mother and infant/minor. He further submits that the welfare of the minor lies with the petitioner/mother and not with the grandfather. In support of the claim of the petitioner reliance is made on the cases of Walayat Ali Versus Mst. Khalid Bibi (1992 CLC), Mst. Zubaid Bibi versus Mst. Rabia NLR 2004 Civil 19, Mst. Fozia Begum Versus Amin Saddruddin Jamal Gonji

CLC 2007 Page 1403, Syed Ali Mehdi versus Additional District Judge Baqir Ali Rana MLD 1998, 1003.

After hearing of the learned counsel for the appellant the learned Guardian Judge Hunza/Nagar dismissed the application of the respondent/grandfather and held it devoid of merits, however, the mother was directed to produce the minor for his meeting with the grandparents and its family at the place of anyone of the common relatives of the parties namely Qasim and Muhammad Ali on every Sunday and the notables will ensure that the order of the learned Guardian Court is complied with in its letters and spirits.

The respondents/grandfather of the minor being aggrieved by and dissatisfied with the order dated 23.02.2015 passed by the learned Guardian/District Judge, District Hunza/Nagar, filed Civil First Appeal No. 09/2015 in the learned Chief Court, Gilgit-Baltistan Gilgit, which was heard on 30.06.2015 and upon hearing the appeal of the respondent No.1 was accepted. The order of the impugned judgment passed by the learned District Judge dated 23.02.2015 was set aside with the directions that the learned Guardian/District Judge would arrange transfer of the custody of the minor to his grandfather, however, the petitioner was allowed to visit the minor once in a week if so she wishes. Furthermore, the parties were directed to appear before the learned Guardian Judge on 06.07.2015 for further directions.

The present petitioner being aggrieved by and dissatisfied with the order dated 23.06.2015 passed by the learned Division Bench Chief Court Gilgit-Baltistan in CFA. No. 09/2015, filed the instant petition for leave to appeal and this Court vide order dated 18.08.2015 issued notices to the respondents, meanwhile, the minor/infant shall remain in the custody of her mother /petitioner of the case in hand.

The learned counsel for the petitioner further contends that the order passed by the learned Chief Court Gilgit-Baltistan is not sustainable and the same is liable to set-aside as the welfare of the minor/ infant (Arman Abass) is a paramount consideration and his welfare is attached with his mother being his natural guardian. He further contends that after the death of the father of the minor/infant/husband of the petitioner the maternal love, affection and care is with the mother and which cannot be equated with any other relation than mother and removal of the child from his mother's lap would tantamount to the height of cruelty. He further states that the welfare of the child is the only paramount consideration while deciding custody matters. In present case the welfare of child lies with the mother not with grandfather or grandmother.

On the other hand, the learned counsel for the respondent submitted that it is not a dispute that the parties of the case belong to Shia Sect. The law of the said sect is relevant which supports the plea of the respondent, for care and custody of the

child with his grandfather and grandmother as the child is above 02 years old. The respondent/grandfather can better take care of the child as compared to the petitioner. The respondent/grandfather not only can better take care of the minor but also shall arrange good facilities for his education in a renowned schools and colleges for his bright future. He further contended that the learned Chief Court has rightly held that Guardian Judge omitted to elaborate the circumstances in which the welfare of the minor lies with the mother/petitioner. The Guardian Judge did not record any evidence of the parties at the said issue, therefore, the said judgment has accurately been set-aside by the learned Chief Court. The Guardian Judge admittedly has not recorded any evidence showing the welfare of the child lies with the petitioner or with the respondent. He further submits that the welfare of the child can only be determined after recording of evidence. As such the appeal of the grandfather was accepted on well founded grounds by the learned Chief Court and interference in the impugned judgment is not warranted. He relied in his support of the cases of Mst. Ghullam Sakina Versus Nasim Haider 1979 CLC 4, Lahore, Asma Versus District Judge Sialkote and another PLD 1987 Lahore 263, Mst. Ayesha Bibi V/s Safdar Ali Shah and other 2005 CLC 894, Mst. Bisma Safdar Versus Additional District Judge 2010 YLR1309.

We heard both the learned counsels for the respective parties perused the material available in the case file

and have gone through the case laws. We feel that the custody of the infant/minor may not be allowed blindly and it must be decided objectively. The welfare of the minor was always a paramount consideration while determining the custody of the minor. The mother's love and affection for her child cannot be matched/compared/equated with any others as the laps of mother would have God's own cradle for a child. While deciding the custody of the child is extremely a conscious one and keeping in view, the age of the minor, environment and circumstances and giving paramount considerations to the welfare of the child. The case laws referred by the learned counsel for the petitioner supports the claim of the mother/petitioner and the case laws referred by the counsel for the respondent are distinguishable.

In our considered opinion the welfare of the child lies with the mother/petitioner as mother laps is the first place of education where the infant/minor learns and knows his mother even otherwise , the affiliation of the child with the mother is more than that of respondents i.e. grandfather and grandmother.

In view of the above discussion, we convert this petition into an appeal and the same is allowed. The impugned judgment/order dated 30.06.2015 passed by the learned Chief Court Gilgit-Baltistan in CFA. NO. 09/2015 is set aside and the judgment/order dated 23.02.2015 in Civil Miscellaneous No. 67/2014 passed by the learned Guardian Judge Hunza/Nagar is

upheld. However, the respondent and his other family members are allowed to meet with the minor (Arman Abbas) on every alternate Sunday (after 15 days) at the residence of the petitioner causing no inconvenience to the petitioner/mother.

The appeal is allowed.

Announced on: - 18.09.2015.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?