

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Irfan Saadat Khan
Justice Naeem Akhtar Afghan

CIVIL PETITION NOs.1708-L/2022. 3435-L/2022, 2672-L/2023, 3152-L/2023, 219-L/2024 AND 303-L/2024

(On appeal against the orders dated 04.03.2022 in WP No.67705/2021, 31.08.2022 in WP.46078/2022, 16.05.2023 in ICA.31988/2023, 23.05.2023 in WP No.27299/2023, 23.10.223 in WP.No.69300/2023 and 05.12.2023 in WP. No.52736/2023, respectively, passed by the Lahore High Court, Lahore)

Khawaja Adnan Zafar	(in all cases)	Petitioner
Versus				
Hina Bashir and others	(in all cases)	Respondents

For the petitioner	:	In person
For the respondent	:	Not represented.
Date of hearing	:	27.03.2024

JUDGMENT

Naeem Akhtar Afghan, J. This common judgment disposes of CPLA Nos.1708-L/2022. 3435-L/2022, 2672-L/2023, 3152-L/2023, 219-L/2024 and 303-L/2024.

2. After hearing the petitioner in person, we have perused the record which reveals that out of the wedlock between petitioner and Mst. Hina Bashir-respondent No.1 (**respondent**), daughter Romaisa Adnan (having date of birth 17.07.2012), son Arham Adnan (having date of birth 14.08.2014) and daughter Rahima Adnan (having date of birth 10.10.2016), were born.

3. Due to strained relations between the parties, separation took place on 10.04.2020. At that time the custody of three minors was with the petitioner. On 14.04.2020 the respondent filed petition under section 491 of the Code of Criminal Procedure (**Cr.P.C.**) against the petitioner for recovery of the minors. The said application was decided by the learned

Additional Sessions Judge, Lahore vide order dated 21.04.2020 in favour of the respondent and custody of minors was handed over to the respondent.

4. Apart from challenging the above order by filing Writ Petition No.19774/2020 before the Lahore High Court, the petitioner also filed a Guardianship Petition under section 25 of the Guardian and Wards Act 1890 (**Act of 1890**) on 07.05.2020 before the Guardian Judge Lahore (**Guardian Judge**) for permanent custody of minors wherein, on the basis of statements on Oath of the petitioner and the respondent, it was agreed that the custody of minors shall be given unconditionally to the petitioner for wellbeing of the minors with agreement that the respondent shall have reasonable access to the minors at the residence of the petitioner. The custody of minors was returned to the petitioner by the respondent and the petitioner withdrew his Guardianship Petition on 10.08.2020. Writ Petition No.19774/2020 was also withdrawn by the petitioner from Lahore High Court on 04.10.2021.

5. Due to differences between the parties, divorce was pronounced by the petitioner on 12.06.2021. The petitioner again filed a Guardianship Petition before the Guardian Judge for permanent custody of the minors. The Guardianship Petition was accompanied by an application under section 12 of the Act of 1890 for interim custody of the minors. Meanwhile, the respondent again filed a petition under section 491 Cr.P.C. on 18.06.2021 for recovery of the minors. The said petition was accepted by the learned Addl. Sessions Judge, Lahore vide order dated 22.06.2021 with direction to the petitioner to handover custody of the minors to the respondent. The respondent was also directed to produce the minors before the Guardian Judge on 28.06.2021 where the Guardianship Petition of the petitioner seeking permanent custody of the minors was pending.

6. The above order dated 22.06.2021, passed by the learned Addl. Sessions Judge Lahore was challenged by the petitioner before the Lahore High Court by filing Writ Petition No.67705/2021 which has been dismissed vide order dated 04.03.2022, operating para whereof reads as follows:

"However, in the present case, the minors are two girls and a boy between 05 years to 09 years, therefore, the guardian court will have ultimate powers to pass a final order which regard to permanent custody of the minors in

accordance with law. It is appropriate to mention that the learned guardian court shall ensure that the minors are allowed to meet the petitioner as per law and the guardianship petition for permanent custody shall be decided within a period of six months."

Feeling aggrieved of the above order passed by the Lahore High Court in Writ Petition No.67705/2021, the petitioner has filed CPLA No.1708-L/2022.

7. On 26.05.2022 the petitioner submitted an application to the Guardian Judge for visitation of minors during summer vacations and on Eid-ul-Adha. With consent of parties, the Guardian Judge issued an interim schedule on 01.06.2022, for interim custody of minors with the petitioner in the 1st and 3rd week of the month during summer vacations and for custody of minors with respondent in 2nd and last week of the month of summer vacations. The petitioner was bound to furnish surety bond in the sum of Rs.1,00,000/-. The petitioner took the custody of minors according to the interim schedule on 01.06.2022 but neither submitted the requisite surety bond nor returned the custody of minors to the respondent on 08.06.2022 and instead, the petitioner challenged the interim order dated 01.06.2022 of the Guardian Judge by filing appeal before Addl. District Judge, Lahore.

8. Vide order dated 08.06.2022, the Appellate Court extended the custody period of the minors with the petitioner till 30.06.2022 but subsequently the appeal of the petitioner was dismissed on 22.07.2022 with special cost of Rs.25000/-.

9. On 06.07.2022 the Guardian Judge also re-called its earlier order dated 01.06.2022 due to non-submission of the requisite surety bond by the petitioner and ordered the police authorities to initiate proceedings against the petitioner. The respondent, with bailiff of the Guardian Court and area police, visited the house of the petitioner but the petitioner and minors were not found.

10. In view of the above circumstances, the respondent filed Writ Petition No.46078/2022 in the Lahore High Court for recovery and custody of the minors. During pendency of Writ Petition No.46078/2022, the petitioner failed to produce the minors before the Lahore High Court despite repeated notices and ultimately on the direction of the Lahore High Court, the CCPO

Lahore with his team succeeded to recover the minors from the petitioner and produced them before the Lahore High Court. The custody of minors was handed over to the respondent by the Lahore High Court and Writ Petition No.46078/2022 was disposed of vide order dated 31.08.2022 in the following terms:

"It is noticed that application under section 12 of the Guardian and Wards Act 1890, regarding grant of temporary custody of minors is still pending and fixed for arguments before the learned trial Court on 03.09.2022, therefore, it is appropriate to direct the parties to appear before the said Court for arguments on the said application, which shall be decided in any case on the same day. It is further observed that the learned trial Court vide order dated 01.06.2022 in Para No.6 made some observations regarding the stance taken by respondent No.5 (applicant before the learned trial Court), which are hereby set aside with the direction to decide the application under section 12 of the Act (ibid), on merits, without being prejudiced by the observation made in the said order. However, the observations of this Court reflecting from today's order are tentative in nature. Till then, the custody of minors shall remain with the petitioner and if the learned trial Court fails to decide the matter on the said date, she shall submit her explanation alongwith minors to this Court on 03.09.2022."

Feeling aggrieved of the above order dated 31.08.2022, passed by the Lahore High Court in Writ Petition No.46078/2022, the petitioner has filed CPLA No.3435-L/2022.

11. According to the petitioner during his meeting with the minors on 24.11.2022, son Arham Adnan informed that he has been physically tortured by the respondent. The petitioner submitted an application to the Guardian Judge for medico legal examination of his son Arham Adnan. The application of the petitioner was taken up by the Guardian Judge on 10.02.2023. On the said date, the Guardian Judge issued notice of the application to the respondent and fixed the matter for 18.02.2023. The petitioner challenged the order dated 10.02.2023 of the Guardian Judge before the Lahore High Court by filing Writ Petition No.10835/2023.

12. During pendency of Writ Petition No.10835/2023, counsel for the respondent conceded for medico legal examination of minor Arham Adnan and for recording statements of the minors with regard to their preference but the petitioner informed the Lahore High Court that he had withdrawn his application for medico legal examination of minor son Arham Adnan from the Guardian Court due to lack of confidence in the presiding officer.

13. In view of the above, in the order dated 19.04.2023, the Lahore High Court held that the Writ Petition to the extent of setting aside the order dated 10.02.2023 has become infructuous but observed that in the interest

of justice and for welfare of the minors the petitioner may approach the Guardian Court with fresh application. By that time the petitioner had already submitted a fresh application before the Guardian Court which was fixed for 06.05.2023. The Lahore High Court directed the parties to appear before the Guardian Judge on 26.04.2023 with direction to the Guardian Judge to proceed in accordance with law for recording statements of the minors and for medico-legal examination of minor Arham Adnan if so required after recording of the fresh statements. The respondent undertook to produce the minors on the said date before the Guardian Judge.

It was clarified in the order dated 19.04.2023 by the Lahore High Court that the Guardian Judge shall not be influenced by the observation made by the Courts below in the earlier round of litigation or by any interim or final order passed by the Lahore High Court in Writ Petition No.10835/2023.

14. The following observations were also made by the Lahore High Court in its order dated 19.04.2023 in Writ Petition No.10835/2023:

"It is imperative to observe that this case is classical example where parents after their separation/divorce in order to satisfy their self-nurtured ego, make the minors a shuttlecock, which act in general is required to be deprecated in our society."

15. According to the petitioner the order dated 19.04.2023 passed by Lahore High Court was not complied with in letter and spirit by the Guardian Judge.

16. The petitioner challenged the order dated 19.04.2023 passed by Single Bench of the Lahore High Court in Writ Petition No.10835/2023 by filing Intra Court Appeal (ICA) No.31988/2023 which was dismissed vide order dated 16.05.2023 holding the petitioner at liberty to raise his grievance before the Guardian Judge who shall determine the factual controversy and decide the same within a period of ninety days from the date of receipt of certified copy of the order dated 16.05.2023.

Feeling aggrieved of the above two orders passed by the Single Bench and Division Bench of the Lahore High Court, the petitioner has filed CPLA No.2672-L/2023.

17. For deciding the pending application of the petitioner under section 12 of the Act of 1890 for interim custody of the minors, the Guardian Judge

observed the minors in camera and after hearing learned counsel for the parties, the application of the petitioner under section 12 of the Act of 1890 was dismissed by the Guardian Judge vide order dated 03.09.2022 with the following visitation schedule of the petitioner with the minors till final decision of the Guardianship Petition of the petitioner:

"....the petitioner being real father of the minors is held entitled to have visitation with his minors for 2-hours on the first and third Saturday of every calendar month from 11:00 AM to 01:00 PM before this Court subject to submission of surety bond valuing 10,00,000/-, with one local surety for the satisfaction of this court. The petitioner is bound to pay the travelling expenses of the minors Rs.1000/- per head for their each meeting to the respondent. Meeting of minors with the petitioner shall be subject to payment of complete maintenance allowance if any fixed by the court. It is hereby held that for implementation of above said schedule there shall be no need to move any separate miscellaneous application as court shall issue Robkar for implementation on verbal request of the party concerned, which shall be made well in time and the same shall be incorporated in interim order."

18. The above order was challenged by the petitioner by filing appeal before Addl. District Judge Lahore, which was dismissed vide order dated 02.11.2022 against which the petitioner filed Writ Petition No.27229/2023 with the contention that the order dated 19.04.2023 passed by the Lahore High Court in Writ Petition No.10835/2023 has not been complied with in letter and spirit by the Guardian Judge causing prejudice to the petitioner.

19. During pendency of Writ Petition No. 27229/2023, vide order dated 17.05.2023, the Lahore High Court directed for production of the minors before the Guardian Judge on 20.05.2023 for their thorough interview and for recording their statements after affording opportunity of meeting of the petitioner with the minors on the same day. It was further ordered that record of Guardian Judge be summoned after recording statement of the minors.

20. Subsequently Writ Petition No.27229/2023 was disposed of by the Lahore high Court vide order dated 23.05.2023 in the following terms with the observations that the petitioner has made the matter complicated by filing multiple applications/petitions without allowing the Guardian Judge to comprehensively re-hear and decide the matter with further observations that the Guardian Judge has not complied with the directions of the Lahore High Court recorded in its order dated 17.05.2023.

"....Therefore, this Court is inclined to dispose of the present petition with the direction that parties shall appear before the learned trial Court on 03.06.2023 at 11:00 a.m. i.e., the date for which the matter is already fixed and the minors will be free after taking their ongoing annual examinations. The learned trial Court shall allow the petitioner to have an exclusive meeting with the minors without intervention

of any third person including respondent No.3/mother, for at least one hour. Once the said meeting ends, on the same day, the minors shall be interviewed thoroughly and their views shall be recorded in verbatim where after the learned trial court is expected to conclusively decide the matter in accordance with law, after extending an opportunity of hearing to the parties and/or their learned counsel, preferably within a period of one week."

21. Feeling aggrieved of the above order passed by the Lahore High Court in Writ Petition No.27229/2023, the petitioner has filed CPLA No.3152-L/2023.

22. The petitioner submitted an application before the Guardian Judge for conducting the interviews of the minors in camera before the parties or their counsel due to apprehension that earlier the actual statements of the minors were not made part of the record. The said application of the petitioner was dismissed by the Guardian Judge vide order dated 19.07.2023 with the observation that in its order dated 23.05.2023 passed in Writ Petition No.27229/2023 Lahore High Court had directed that the minors should be interviewed thoroughly and their views shall be recorded in verbatim with expectation of conclusive decision of matter by the Guardian Judge after hearing the parties.

While dismissing the application of the petitioner for interview of the minors through video camera, the Guardian Judge observed that the minors are regularly appearing before the Court due to which there is no need to interview the minors through video camera.

23. The above order passed by Guardian Judge was challenged by the petitioner before the Lahore High Court by filing Writ Petition No.52736/2023 which has been dismissed with cost of Rs.25,000/- vide order dated 05.12.2023 against which the petitioner has filed CPLA No.303-L/2023.

24. On 18.09.2023 the petitioner submitted an application to the Guardian Judge to review the material to help with proper risk assessment and conduct proper interviews of the minors considering the delay of about two months and reports about the attempt of respondent to coerce and dissuade the minors from reporting the truth to affect the quality of inquiry and investigation.

25. According to the petitioner, the Guardian Judge was in haste to schedule the interview of the minors while dis-regarding the above

application of the petitioner due to which the petitioner filed Writ Petition No.69330/2023 before the Lahore High Court soliciting directions to the Guardian Judge to decide the application of the petitioner regarding risk assessment material ahead of the interview of the minors and for chance custody of the minors for their safety and security based on existing material, inter alia, statements of the minors dated 22.06.2022 before the Magistrate (in a Criminal Complaint lodged by the petitioner against respondent) or provide equitable access to the minors at the petitioner's home till factual controversy is addressed.

26. Writ Petition No.69300/2023 was dismissed by the Lahore High Court vide order dated 23.10.2023 against which the petitioner has filed CPLA No.219-L/2024.

27. It is observed that the application of the petitioner under section 25 of the Act of 1890 for permanent custody of minors is still pending decision before the Guardian Judge. The orders of the Courts below assailed by the petitioner in the instant petitions are interim in nature. According to the established practice, settled principles of law and policy of this Court, ordinarily interim orders passed by the high Court are not interfered under Article 185(3) of the Constitution of the Islamic Republic of Pakistan 1973 and such intervention is warranted only in exceptional circumstances involving flagrant violation of law, wrongful exercise of jurisdiction or a manifest grave injustice. Reference in this regard is made to the cases of *"Multan Development Authority v. Muhammad Ramzan"*¹, *"Salah-ud-din v. Zia Farhat"*², *"Dossani Travels Pvt. Ltd v. Travels Shop (Pvt.) Ltd."*³, *"Federation of Pakistan v. Shafiq ul Hassan"*⁴, *"Abdul Baqi v. Khan Muhammad"*⁵, *"Province of Sindh v. Sartaj Hyder"*⁶ and *"Attiq ur Rehman v. Tahir Mehmood"*⁷.

28. In view of the above, all these petitions arising out of interim orders passed by the Courts below are held not maintainable. Moreover, the impugned interim orders passed by the Courts below are in accordance with law and have not caused any injustice to the petitioner or prejudice to

¹ PLD 1989 SC 629

² 1996 SCMR 1528

³ PLD 2014 SC 1

⁴ 2020 SCMR 2119

⁵ PLD 2022 SC 546

⁶ 2023 SCMR 459

⁷ 2023 SCMR 501

the application of the petitioner for permanent custody of minors which is pending decision before the Guardian Judge.

For the above reasons leave to appeal is refused and consequently all the petitions are dismissed. However, the Guardian Judge should decide the pending application of the petitioner for permanent custody of the minors at the earliest in accordance with law. Copy of this order be sent to the respondents.

Chief Justice

Judge

Judge

Islamabad:
27.03.2024
(M. Saad)

NOT APPROVED FOR REPORTING.

Announced in open Court on 16th April, 2024 at Islamabad.

Judge