

**Before Mrs. Syeda Tahira Safdar and Zaheer ud Din Kakar, JJ**

**ABDUL KHALIQ and others---Petitioners**

**Versus**

**Ms. MAH NOOR and others---Respondents**

Constitutional Petitions Nos.698, 978 of 2016 and 604 of 2017, decided on 22nd November, 2017.

**Guardians and Wards Act (VIII of 1890)---**

---S. 12---Visitation rights of father of minor---Scope---Court premises as meeting place of the minor with the father---Effect---Welfare of minor---Scope---Petitioner/father contended that Family Court had rightly allowed him to take his minor daughter to his house on (certain) special days---Respondent/Mother contended that Appellate Court had rightly set aside schedule arranged by Trial Court as father should meet minor within court premises---Validity---Father might disentitle himself to custody on account of his conduct but father, in the present case, was regularly depositing the maintenance allowance of his minor daughter as fixed by the court---Minor daughter in her tender age required love and care of her parents; deprivation of any of them would have negative effect not only on her mental growth but would also affect her intellectual development---Neither the minor nor the father could be deprived of company of each other---Father being natural guardian was not only required to participate in the upbringing of the minor but should also develop love, bondage and affinity with her, to achieve said purpose---Court was to facilitate a congenial, homely and friendly environment and reasonable visitation schedule---Office of the Guardian Judge or office of Civil Nazir of the Court, for the said purpose, was neither conducive nor effective which lacked proper facilities and arrangements, and was not comparable to a homely environment---Meeting in Court premises could not serve the purpose of meeting, and it was not in the interest or welfare of the minor to hold meeting in the Court premises---Meetings of the minor with the father, were preferably to be held at the residence of the father---High Court set aside the impugned order passed by the Appellate Court and re-scheduled the more flexible arrangements of meeting of minor with the father on special days and on every Saturday of the calendar month with arrangement that Civil Nazir or a bailiff be deputed by the Trial Court to collect the minor from the residence of the mother at 10:00 a.m. along with a representative of the father, take her to residence arranged by the father, and thereafter along with representative of mother collect her from the father on the same day and drop her back at the residence of mother---Such arrangement would remain in vogue till the minor daughter was five years of age or admitted to school---Constitutional Petition was disposed off accordingly.

Petitioners in person.

Date of hearing: 26th October, 2017.

## **JUDGMENT**

**ZAHEER-UD-DIN KAKAR, J.**---Through this single judgment, we intend to decide the above captioned constitutional petitions, as common question of law and facts are involved in all the petitions.

2. Precisely stated facts of the case are that the petitioner (Abdul Khaliq) and the respondent (Mah Noor) were married to each other on 09.2.2013. Out of wedlock one daughter Ambar (the minor), was born on 15.3.2014. The relationship between the petitioner and respondent, however, deteriorated resulting in the petitioner living apart from respondent No.1 and marriage between the parties were dissolved on the basis of Khula on 29.10.2014. Now coming to the gist of present petitions.

### **C.P No.698 of 2016**

The petitioner filed Misc: Application No.4 of 2016 against respondent No.1, before the Court of Family Judge-I, Quetta (the trial Court) for visitation custody of minor namely Ambar for one week. The respondent No.1 contested the application and after hearing the parties, the trial Court allowed the application vide order dated 11.4.2016 in the following manner:

"He is allowed to keep minor girl with him at Khuzdar for one week subject to furnishing surety bonds/personal surety bonds of Rs.500,000/- (five lacs). The respondent is directed to bring minor girl on 17th of this month at 10:00 a.m. to the office of Civil Nazir, so that she may be handed over to applicant/father for taking her with him to Khuzdar. The applicant is bound down to bring minor back on 24th of this month at 10:00 am so that the minor girl is handed back to respondent/mother. Both parties shall abide by the fix schedule and comply the order of this court. The applicant is directed to submit surety bonds within 03 days. A letter shall be issued to Civil Nazir in this regard after furnishing surety bonds, for necessary arrangement and submit his report."

Thereafter, the respondent No.1 filed an application before the trial Court with prayer to exempt minor girl from one week meeting for the time being as she is seriously ill. The trial Court vide order dated 20.4.2016 directed the respondent No.1 to handover the custody of the minor to her father (petitioner) for one week i.e. with effect from 24.4.2016. Feeling aggrieved from orders dated 11.4.2016 and 20.4.2016, the respondent filed Family Appeal No.6 of 2016 before the Court of Additional District Judge-IV, Quetta (the appellate Court). After hearing the parties, the appellate Court set aside both the impugned orders vide order dated 30.6.2016, hence this petition.

### **C.P. No.978 of 2016.**

The petitioner filed Misc: Application No.12 of 2016 against respondent No.1 and others, before the Court of Family Judge-I, Quetta (the trial Court) for grant of interim physical custody of the minor namely Ambar for three days including two overnight stay with the petitioner being real father on account of 5 public holidays on the eve of Eid-ul-Adha. The trial Court allowed the application vide order dated 05.09.2016 in the following manner:

"Therefore, in the light of above discussion, keeping in view of minor age and present circumstance and perusal of previous record, the applicant father is allowed to take minor with him on the second day of Eid-ul-Adha, i.e. 14th September, 2016 at 10-00 a.m. from the office of Civil Nazir and he is bound to hand over the minor child Amber on the same day at 6:00 pm in the evening to Civil Nazir, so that he may hand over the minor girl Amber back to respondent/mother."

Feeling aggrieved the respondent filed Family Appeal No.10 of 2016 before the Court of Additional District Judge-IV, Quetta (the appellate Court). After hearing the parties, the appellate Court accepted the appeal and set aside the impugned order dated 5.9.2016, vide order dated 8.10.2016, hence this petition.

### **C.P. No.604 of 2017**

The petitioner filed Misc: Guardian Petition No.21 of 2016 against the respondent before the Court of Family Judge-I, Quetta (the trial Court) for grant of an-interim annual visitation schedule of meeting with the minor Ambar under the provisions of Section 12 of the Guardians and Wards Act, 1890 read with Sections 12-A and 5 of the Schedule attached with the Family Courts Act, 1964. The respondent contested the application and after hearing the parties, the trial Court passed the following order on 29-12-2016.

"At this stage I am in the view that the earlier chalked out visitation schedule of minor i.e. twice in a month for two hours from 10:00 a.m. to 12:00 p.m. fortnightly is sufficient at this stage. However the applicant is additionally allowed to meet his minor daughter Amber on the second day of Eid-ul-Fitr and Eid-ul-Adha for two hours on the same timings from 10:00 a.m. to 12:00 p.m. in the office of Civil Nazir.

Feeling aggrieved, the petitioner filed Family Appeal No.01 of 2017 before the Additional District Judge-II, Quetta (the appellate Court). After hearing the parties, the appellate Court dismissed the same vide order dated 02.5.2017, hence this petition.

3. The petitioner has mostly relied upon the grounds mentioned in the petitions.

4. We have heard the petitioner in person, perused the impugned orders and have also gone through the material available on record. The petitioner (father) under the Mohammadan Law is the lawful guardian of his minor child and is ordinary entitled to his custody provided it is for the welfare of the minor. The right of the father to claim custody of a minor is not an absolute right, in that, the father may dis-entitle himself to custody on account of his conduct depending upon the facts and circumstances of each case. In the case in hand, the petitioner is regularly depositing the maintenance of the minor as fixed by the trial court. The minor Amber

is in her tender age requires love and care of her parents (respondent and petitioner) deprivation of any of them would have negative effect not only on her mental growth, but also affect her intellectual development. In view of the fact neither the minor nor the petitioner could be deprived of company of each other.

5. In guardianship matters, Courts exercise quasi parental jurisdiction, the supreme consideration, in this context is the welfare of the minor(s), to achieve this purpose Courts have unfettered powers, thus, application under section 12 of the Guardians and Wards Act is required to be decided on this principle. 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 upbringing of the minor(s), 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 reasonable visitation schedule. The Court of the Guardian Judge or the office of Civil Nazir of the Court, 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 minor to hold-meeting in the Court premises, therefore, meetings of the minor with the petitioner should preferably be held at the residence of the petitioner at Quetta, if he has or arranges.

6. Keeping in view the discussion made herein above, the facts and circumstances of the case and also the welfare of the minor, we are inclined to set aside the impugned orders passed by the Courts trial and appellate and allow the petitions in the following manner, by keeping in view the tender age of the minor Amber:

- (i) The interim custody of the minor shall be handed over to the petitioner on every Saturday of the calendar month at 10:00 a.m. and shall return the custody of the minor to respondent (Mah Noor) at 5:00 p.m. on the same day.
- (ii) On the occasion of Eid-ul-Fitr and Eid-ul-Adha, the petitioner (father) shall be entitled for interim custody of the minor on second day of both Eids from 10:00 a.m. and he shall return the interim custody of the minor to the respondent on the same day at 5:00 p.m.
- (iii) On the occasion of birth day of the minor, the petitioner (father) shall be entitled for interim custody of the minor from 10:00 a.m. and he shall return the custody of the minor to the respondent on the same day at 05:00 p.m.
- (iv) On the occasion of the birth day of father (petitioner) of the minor, the petitioner shall be entitled for interim custody of the minor from 10:00 a.m. and the petitioner shall return the interim custody of the minor to respondent on the same day at 5:00 p.m.
- (v) The Civil Nazir or a bailiff be deputed by the trial Court (Family Judge-I, Quetta) to collect the minor from the residence of respondent (Mah Noor) at 10:00 a.m. along with a representative of the petitioner, take her to residence arranged by the petitioner, and thereafter along with representative of respondent (mother) collect her from the petitioner on the same day and drop her back at the residence of respondent (Mah Noor).
- (vi) This arrangement shall remain in vogue till the minor is five (05) years old or admitted in school and thereafter may be reviewed by the Family Judge-I, Quetta, if either party so desires.

7. All the petitions are disposed of in the above terms.

MQ/180/Bal.

Order accordingly.