

**[Peshawar]**

**Before Mazhar Alam Khan Miankhel and Sardar Shaukat Hayat, JJ**

**RASHID IQBAL---Petitioner**

**Versus**

**Mst. UZMA KHAN and 2 others---Respondents**

Writ Petition No. 2194 of 2010, decided on 18th August, 2010.

**West Pakistan Family Courts Act (XXXV of 1964)---**

---S. 5, Sched. & S.14---Constitution of Pakistan (1973), Art.199---Constitutional petition---Suit for custody of minor---Record had revealed that minor had become victim of the strained relations of his parents as he was suffering because of egocentric attitude portrayed by father of the minor---Last desertion of the spouses resulted into registration of criminal case by wife against her husband, the defendant, for causing hurts and other torture at her person---Plaintiff lady was forcibly deprived of the lawful custody of her minor son---Mother was a natural guardian and lap of the mother was the basic need of a minor; if a person being father of minor knowing such reality and just in the garb of his love and affection towards his child, it would deny the warmth of the lap of the mother to his child it would be nothing, but an egocentric behaviour having no love and affection towards his child in reality---Financial status of the defendant father, could in no way be a substitute to warmth of the lap of mother and the minor of five plus was badly in need of the same---Findings of the two courts below, were well-reasoned and within the sphere of law regulating the custody of minor---High Court, in exercise of constitutional jurisdiction, could not enter to reappraise the evidence, when there was no misreading, error of jurisdiction or law.

Javed A. Khan for Petitioner.

Riaz Ahmad Khan for Respondents.

Date of hearing: 18th August, 2010.

## JUDGMENT

**MAZHAR ALAM KHAN MIANKHEL, J.**---Through instant Writ Petition, the petitioner herein (respondent in the main application for the custody of minor) has asked for issuance of appropriate writ by declaring the judgments/orders of the two courts below, the respondents Nos. 2 and 3, as illegal, null and void, without jurisdiction and in alternate has requested for the custody of minor son who is five plus at present and in the custody of the present petitioner being father of the minor.

2. Learned counsel for the petitioner vehemently argued that the findings of the two courts below are against law and evidence on the record and are not liable to be maintained. He further submitted that the welfare of the minor being the paramount consideration lies with the petitioner and in support of the same his main stress was on the better financial status of the petitioner.

3. As against that, the learned counsel for respondent (mother and applicant in the main application for custody) while supporting the findings of the two forums below to be well reasoned, based on proper appraisal of evidence and in accordance with law, submitted that the custody of the minor was rightly given to the mother, who being the natural guardian of the minor and the present age of the minor is the main factor to be considered for the custody of minor as in such an age, there could be no substitute of the lap of the mother. He further submitted that in the circumstances of the case, the present Writ Petition is not maintainable and is liable to dismissal.

4. We have considered the submissions made at the Bar by the learned counsel for the parties and have gone through the record of the case. The record of the case would reveal that the minor has become victim of the strained relations of his parents and he is suffering because of the egocentric attitude portrayed by the father of the minor as the record reveals that the last desertion of the spouses resulted into registration of criminal case by the wife/respondent against her husband/ the petitioner for causing hurts and other torture at her person and in the circumstance one can understand that the lady was forcibly deprived of the lawful custody of her minor son, who is in search of her lawful right since October', 2008. There is no doubt that the mother is a natural guardian and lap of the mother is the basic need of a minor. If a person being father of minor knowing this reality and just in the garb of his love and affection towards his child, denies the warmth of the lap of the mother to his child would be nothing but an egocentric behaviour having no love and affection towards his child in reality and basis his claim to retain the custody of minor only on his financial status and that too, of the parents of respondent/mother has not been denied by him. Financial status of the petitioner can in no way be a substitute to warmth of the lap of a mother and the minor of five plus is badly in need of the same.

5. The findings of the two courts below would reflect that the same are well-reasoned and within the sphere of law regulating the custody of minors. Each and every aspect has been considered by the forums below. This court in exercise of constitutional jurisdiction cannot enter to reappraise the evidence when there is no misreading, error of jurisdiction or law. Hence this Writ Petition being meritless is dismissed with no order as to costs.

6. However, before parting with the judgment, both the parents who are still tied in the martial bond are supposed to behave wisely just in the interest and welfare of the minor. Custody of

minor to the mother does not mean that there would be no visitation chances for the father and father will also not be absolved of his moral and legal duty to maintain his minor son in the custody of his mother. The Executing Court should keep in mind all the above facts while handing over the custody to the respondent/mother.

H.B.T./286/P

Petition dismissed.