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IN THE COURT OF GUARDIAN JUDGE -XXIII KARACHI (EAST)

BEFORE: (MANSOOR AHMED SOOMRO)

G & W Application No. 2753 of 2020

Kashif Kahn
S/o Shamshed Khan
Muslim, Adult, R/o House No. A-204,
Gulshan-e-Iqbal 10-A
KarachiApplicant

VERSUS

Mst. Zainab Jaffar
D/o Malik Ghulam Jaffar
Muslim, Adult, R/o Flat No. C-7,
Plot No. ST-10/1, Block 17,
Erum Apartment Gulshan-e-Iqbal
Karachi.....Respondent

Baby Hareem Khan
D/o Kashif Khan.....Minor/Wards

APPLICATION UNDER SECTION 25 OF GUARDIAN & WARD ACT,1925

Ms.Saba Khan, Advocate for Applicant

Mr.Muhammad Hanif Bhatti, Advocate for Respondent

Dated: 01.04.2021

ORDER

This application is filed by the Applicant (father) against the Respondent (Mother) for the custody of the minor namely Baby Hareem Khan.

- Since after the inception of the Application, the Respondent has filed written statement/objections. As per the procedure, the matter was fixed for the pre-trial proceedings; during the pre-trial proceedings this Court made utmost efforts for reconciliation between the parties. Resultantly, the Applicant through statement has not pressed the Application under section 25 for the permanent custody of the minor and prayed for comprehensive annual schedule. On the other hand, the Respondent side consented for the same.



3. Arguments have been heard and record perused.

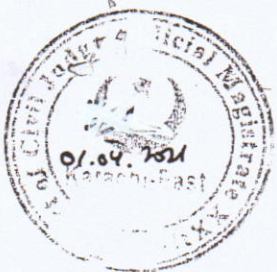
4. Record reveals that the matrimonial tie between the contesting parties has come to an end by way of Khulla and the minor is under the care and custody of the Respondent (Mother) since then and the applicant (Father) has lost access to his minor child aged about one year. Besides, for the sake of welfare, wellbeing of the minor and to avoid further proceedings, he has withdrawn the Application for permanent custody of the minor which reflects good gesture at the part of the Applicant (Father). Even otherwise, being real father and natural guardian of the minor is equally entitled to spend quality time with children and it is also in better interest of the minor to remain familiar with paternal lineage and they must not be deprived from the love and affection/company of father, grandparents and blood relatives as such the separation, conflicts and egos issues are always between the spouses but not the parents and children. Hence estrangements between the father and minor(s) must be avoided and they must not deprive of their right in any manner. In this regard guidance is borrowed from PLD 2008 Lahore 527. The relevant Para is reproduced as under:-

"Contesting parents had inherent right to seek visitation to the minor, especially father, who was the natural guardian -- Father was not only required to participate in up-bringing of minors but should develop love, bondage and affinity with them -- To achieve such purpose, Court should facilitate a congenial homely and friendly environment and a reasonable visitation schedule. Meeting in Court premises did not serve purpose of meeting and was not in the welfare of the minors to hold meetings there -- Meetings of minor with the parents should preferably be held at the premises of contesting parent to familiarize minors with environment there, to strengthen a healthy relationship and dispel fears of future reunion ---"

Additionally, report issued by Department of Applied Psychology University of Punjab, Quaid-e-Azam Campus, Lahore dated 25.03.2013 submitted in connection with writ petition No.2856/2011 is also important to be mentioned here is as under:

"In our society, the custodial parent may intentionally get indulged in child abuse by removing or retaining the child from the other parent, seeking to gain an advantage in the expected pending child custody proceedings, or because that parent fears losing the child in the lengthy pending child custody proceedings. Whatever, the reason of retaining or removing the child may be, it causes irreparable damage to the emotional and psychological wellbeing of the child. However, psychological impact on child is often ignored and remained unaddressed".

5. In order to ensure development of love, bondage and affinity between father and daughter which is fundamental to crave a balanced personality of the minor(s). The element of hatred and desire to take revenge which mostly prevails among separating parents should not be a factor hampering the Guardian Court from



discharging its loco parentis character and quasi parental jurisdiction. Hence disallowing a child to have reasonable homely access with his one biological parent tantamount to infringement of fundamental rights of the minor (s) that are guaranteed under the provisions of the Constitution of Islamic Republic of Pakistan and the principles of natural justice, fair play and equity. Thus, keeping in view the precedents of Hon'ble Superior Courts and welfare, wellbeing and better interest of minors following meeting schedule under the provision of section 12 of the Guardian and Ward Act, 1890 read with section 12-A and 5 of the schedule attached with the Family Court Act, 1964, is formulated which shall be observed for the minors as under:-

PARENTING TIME FOR THE APPLICANT/ FATHER:

- i. The Applicant Father is entitled to the interim custody of the minor; from 04.PM to 07:00 PM at McDonald Malir Cantt on every Sunday, being common nearest spot for both the parties.
- ii. When minor attain the age of three years, the Applicant will be entitled to the custody of the minor from 11:00 PM to 07:00PM at the residence of the Applicant on every Sunday.
- iii. When minor attain the age of five years, the Applicant Father will be entitled to the interim custody of the minor; First, Third & Fifth week, from 11.00 AM Saturday to 07:00 PM. Second and Fourth week from Saturday 11:00 AM to Sunday 07:00 PM.

BIRTHDAYS:

- iv. On second day of birthday of minor, Applicant Father would be entitled to celebrate birthday with the minor from 04:00 PM to 10:00PM.
- v. On Applicant Father's birthday minors would spent time from 04:00 PM to 10:00 PM with the Applicant Father.
- vi. In case on any occasion day is holiday, the Applicant Father would be entitled to meet or has the custody of Minor from 11:00 AM to 09:00 PM.

SUMMER VACATIONS:

- vii. During summer vacations the custody of the minor shall be handed over to Applicant Father on the 1st Sunday of the summer vacations so declared by the School/Government and shall be returned to the



Respondent Mother in evening of the 4th Sunday during the vacation so that minor may have four weeks to spent with his Applicant Father. That such 4 weeks shall constitute half of the summer vacations and if the summer vacations are less than two months then 1st half of the summer vacations of the minors shall be spent with the Applicant Father.

WINTER VACATIONS:

- viii. Winter vacations which are generally due from 21st December to 30th December. 1st half of the winter vacations shall be spent by the minor with the Applicant Father and 2nd half with the Respondent Mother.

Note:- Father will avail the Summer and Winter vacation after the minor attain the age of five years.

EID AL FITR & EID AL AZHA:

- ix. On the occasions of Eid-ul-Fitar and Eid-ul-Azha, the Applicant/Father will be entitled to the interim custody of the minor on second day of both Eids from 11:00 AM to 09:00 PM of second day of Eids.

SCHEDULED / PUBLIC HOLIDAYS:

- x. Scheduled holidays i-e Eid Miladun Nabi (SAW), Pakistan day, Quaid-e-Azam day etc., the minors may spend alternate gazetted holidays of each calendar year with Applicant Father from 11:00 AM to 09:00 PM.

UNSCHEDULED HOLIDAYS:

- xi. On unscheduled holidays, the minor may spend holidays with Applicant Father from 11:00 AM to 09:00 PM in the evening.

FAMILY OCCASSIONS / FUNERAL:

- xii. In case there is any family occasion i.e. marriages or deaths of the blood relatives in which the Applicant Father desire and wish that minor may also attend shall inform the Respondent Mother who shall not unreasonably stop the minor from attending such family events or functions. That the Respondent Mother can ask the same to the Applicant Father, in case of any such family occasion from the Respondent's Mother's side.



PARENTS TEACHER MEETINGS & ANNUAL/ RESULT DAY:

- xiii. The Applicant (Father) will be entitled to attend Parents teacher meetings, Annual/Result day. Besides, Applicant/(Father) may inquire the educational/academic progress once in a month and the Principal or Authorized person of School/Academy must co-operate the Father/Applicant.

TELEPHONIC / MEDIA COMMUNICATION:

- xiv. When the Minors are in care of one Parent, they should be encouraged to have contact by telephone, video call, email; text etc. with the other Parent. Each Parent shall be allowed to exercise reasonable telephonic/media communication with the Minor every day.
- xv. Parents, relatives and/or friends of either Parent, are restrained from unreasonably interfering during such telephonic/media conversation.

GENERAL OBLIGATIONS:

- xvi. Both Parents shall cooperate in ensuring that the Minor receives his routine medical care and dental check-up, counseling and other health care services. The parties shall share the Minor's medical and prescription record. In case of any emergency about health or any other issue of minor, the person who have the custody of minor will inform the non-custodial persons within one hour to the emergency.
- xvii. The Applicant shall be responsible and shall pay for all expenses of the minor/ward at his own for his necessities of life viz food, clothing, educational expenses, stationery, medication, treatments and also conveyance expenses in future without fail
- xviii. None of the parties will be allowed to take the minors abroad. Similarly none of the party could permanently shift the minors beyond the territorial jurisdiction of this court but with permission of the Court.
- xix. Minor is of such an impressionable age and both the parents are expected to be sensible and conscious of their social responsibility shall not do any act that may prejudice their mind towards the other parents.



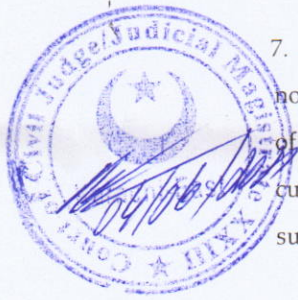
PENAL CLAUSE:

xx. If the Applicant will deviate from the discipline of this schedule, then after being proved, Applicant (Father) would be declared to have dis-entitled to have its benefits. Similarly, if two consecutive complaints arise against the Respondent (Mother) to violate this schedule, then after being proved, the custody of the minor would be shifted to Applicant (Father) for the next one month.

6. In order to avoid untoward situation the Bailiff is appointed to supervise the handing and taking over of the minors as scheduled. The Applicant will enjoy the meeting schedule subject to furnishing CNIC or original Passport and P.R bond in sum of Rs.5,000,000/- and the travelling expenses will be borne by the Applicant. In case of need, Bailiff may avail police aid from concerned Police station. However, protective measures and SOP's in wake of third wave of COVID-19 pandemic be strictly followed.

7. Application under section 25 of Guardian & Wards Act is hereby disposed of as not pressed and Application under section 12 of Guardian & Wards Act stands disposed of in view of above terms. The parties may, however, seek modification of interim custody/visitation schedule to cater for their mutual convenience, could be varied at any subsequent stage subject to the consent of both the parties. With no order as to costs.

8. Office of this Court is directed to communicate copy of this order to the Head Bailiff District, East so that the scheduled meetings be arranged timely.



Announced in open Court.

Given under my hand and seal of this Court

This the 01st day of April 2021



Date of Application 03/04/21
Date of Estimation 03/06/21
Date of Deposit 04/06/21
Copy Ready on 04/06/21
Copy Certified on on 04/06/21
Copy Delevered on
Stamp Supplied on
Copying Charges
Comparing Charges
Paper Charges
Compare by/ Prepared by
4/6/2021
Certified to be true Copy

01.04.2021
(MANSOOR AHMED SOOMRO)
Guardian Judge XXIII - Karachi (East)
Civil Judge/
Judicial Magistrate XXIII,
Karachi-East

COC / Reader
Civil Judge/Judicial
Magistrate XXIII Karachi-East