

PLD 2008 Lahore 527**Before Syed Asghar Haider, J****UMAR FAROOQ---Petitioner****Versus****KHUSHBAKHAT MIRZA and 2 others---Respondents**

Writ Petition No.8827 of 2008, decided on 6th August, 2008.

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

---S. 12-Constitution of Pakistan (1973), Art.199---Constitutional petition---Visitation rights---Meeting with minors---Arrangement---Guardian Judge, powers of---Scope---Petitioner was, father of two minor children and assailed interim arrangement made by Guardian Judge for his meeting with minors---Plea raised by petitioner was that he used to come from foreign country (Dubai) to meet his minor children and there were no proper arrangements of holding a meeting at court premises, therefore, he wanted to meet his children at a five star hotel---Validity---In guardianship matters, courts had to exercise quasi parental jurisdiction, the supreme consideration in such context was welfare of minor, to achieve such purpose, courts had unfettered powers---Application under S.12 of Guardians and Wards Act, 1890, was required to be decided on such principles---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 upbringing 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---Court of Guardian Judge, for such purpose was neither conducive nor effective, it lacked proper facilities and arrangements and was not comparable to a homely environment---Meeting in court premises did not serve the purpose of meeting and was not in the welfare of minors to hold meetings there---Meetings of minors with 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 a future re-union---Only in extreme and exceptional cases, court of Guardian Judge could be chosen as a venue for which detailed reasons should be cited, thus mechanical order in such context was not tenable---Petitioner (father) having no residence at Lahore, therefore, the closest place to home was a hotel---High Court in exercise of constitutional jurisdiction amended the order passed by Guardian Judge and changed venue of meeting from court premises to a five star hotel---Constitutional petition was allowed accordingly.

Raja Qureshi v. Mrs. Yaseen Qureshi PLD 1981 Kar. 61 ref.

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

---S. 12---Constitution of Pakistan (1973), Art.199---Constitutional petition---Visitation rights---Meeting with minors---Duration---Petitioner was father of two minor children and assailed interim arrangement made by Guardian Judge for his meeting with minors---Plea raised by petitioner was that he used to come from foreign country (Dubai) to meet his minor children and two hours time was too short for the purpose---Validity---Father being natural guardian had a right to meet minors for a reasonable time to familiarize with them, so that minors could recognize him and could develop love, bondage and affinity for him---High court, in exercise of constitutional jurisdiction, enhanced meeting time from 2 hours to 5-1/2 hours---Constitutional petition was allowed accordingly.

Muhammad Iqbal v. Mst. Tanveer Asmat and others 2001 CLC 133 distinguished.

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

---S. 12---Constitution of Pakistan (1973), Art.199---Constitutional petition---Visitation rights---Meeting with minors---Arrangements---Apprehensions of parties---Petitioner was father of two minor children and assailed interim arrangement made by Guardian Judge for his meeting with minors---Petitioner sought permission to meet his children at a five star hotel and extension in meeting time---Plea raised by mother of minor was that she had apprehension of removing wards from territorial jurisdiction of the court and wards might be shifted to a foreign country---Validity---To rest the apprehension of mother of minors, High Court placed the minors on Exist Control List and directed the petitioner to execute a surety bond with one surety and an undertaking that minors would not be removed from jurisdiction of courts of Guardian Judge, Lahore---High Court appointed a bailiff of the court, to ensure safety of minors and ward off any altercation between spouses and adherence to time frame by both the parties---High Court directed the bailiff to collect and drop minors from the residence of their mother and to remain present during the meeting outside the room and retain passport of petitioner with him during the currency of the meeting---Constitutional petition was allowed accordingly.

Ch. Muhammad Saleem for Petitioner.

Noman Qureshi and Aamer Saeed Khan for Respondent No. 1.

ORDER

SYED ASGHAR HAIDER, J.---The petitioner filed a petition under section 25 of the Guardians and Wards Act, 1890, for custody of the minors, Zainab and Zunera, aged about 1 year and 1 month. Along with the said petition an application under section 12 of the Guardians and Wards Act was also filed praying for interim custody of the minors. The Guardian Judge without asking for a reply of the application under section 12 of the Guardians and Wards Act proceeded to dispose of the same by chalking out a schedule of meeting of the petitioner with minors, according to this schedule the petitioner was directed to meet the minors from 1-00 p.m. to 2-00 p.m. on first and last Saturday of each calendar month in the court of Guardian Judge. The petitioner aggrieved of this arrangement filed an appeal wherein the schedule was partially modified and the time frame of the meeting was extended from 12 noon to 2 p.m. on first and last Saturday of each calendar month. The Petitioner still is aggrieved of this arrangement, hence the present petition.

2. The learned counsel for the petitioner contended that the father is the guardian of the minors, even if they are in custody of the mother, therefore, he has an inherent right of visiting the minors, the schedule of meeting chalked out by the learned Guardian Judge and the lower appellate Court is inadequate, as the petitioner is working for gain in Dubai and has to travel all the way from Dubai for this meeting, the time of 2 hours for this purpose is, therefore, not sufficient, thus, it be enhanced to a full day. He further submitted that there is no proper arrangement of holding a meeting in the Court premises, the harsh and inclement weather the very young age of the minors, lack of proper and adequate facilities requires that venue of meeting be changed. He also made a statement at the Bar that petitioner was subjected to physical intimidation and threats by the representatives of respondent No.1, so there also is physical danger of harm to the petitioner, thus, on this ground also the venue of the meeting be changed. The learned counsel also stated that the petitioner is willing to give any guarantee to ensure the safety of the minors and also that, they will not be removed from the custody, domain and jurisdiction of the Guardian Judge, Lahore. He prayed that venue of meeting be changed to either Pearl Continental or Avari Hotel, Lahore, and a bailiff of this Court be appointed to oversee this meeting and also collect and drop the

minors, as there is deep acrimony, hostility and distrust amongst the parties, and in case of interaction an ugly situation may develop. Before concluding his arguments counsel for the petitioner emphatically pleaded that respondent No.1 is in the show business, therefore p she has insufficient time to look-after the minor, they are, therefore, at the mercy of the servants, thus, the father be permitted to have custody or enhancement at least in visitation rights. To fortify his contentions the learned counsel relied on *Raja Qureshi v. Mrs. Yaseem Qureshi* PLD 1981 Kar. 61.

3. The learned counsel for respondent No.1 stoutly objected to any modification in the arrangement made by the learned Guardian Judge and stated that the petitioner has daughters from an earlier wedlock, he has threatened, intimidated and subjected respondent No.1 to inhuman treatment, her extended family also has been threatened and intimidated, therefore, she has lost confidence in him, thus, the venue of the meeting be not changed, as the court of Guardian Judge is a very safe place and any arrangement otherwise, will endanger the life of the minors and they would be removed from the custody, domain and jurisdiction of the Guardian Judge, Lahore, and taken to Dubai forthwith. The time frame for the meeting of the minors with the petitioner is adequate and sufficient as the minors are of a very tender age, therefore, they need the care of mother regularly and any enhancement in time frame would be counter productive to their interest, likewise the change of premises would adversely affect their welfare, thus, petition be dismissed. To fortify their contentions learned counsel relied on *Muhammad Iqbal v. Mst. Tanveer Asmat and others* 2001 CLC 133.

4. Heard.

5. The controversy at the moment is limited only to the venue of the meeting, enhancement in the weekly visits and time frame of the meeting. Before venturing further it is necessary to dilate upon the conduct of the parties towards each other. The record of the proceeding conducted by the learned Guardian Judge and the proceedings dated 25-7-2008, when the petitioner and respondent No.1 were present in person gives an insight for this purpose, and it emerges that there is deep acrimony, distrust, hostility and bitterness amongst the spouses (who are still married), suffice it to say, that they were not willing to accommodate each other on any issue. To quote an example an arrangement was made on 25-7-2008, with consent of the parties, that the minors will meet the petitioner on 26-7-2008, from 11 a.m. to 5 p.m. in this Court, but it was not adhered to by respondent No.1. She brought the minors to the Court at 12.30 p.m. instead of agreed time, 11 a.m., the petitioner waited for one and half hour for this meeting, this reflects upon the state of bitterness and hostility amongst them.

8(sic). It is in this backdrop that controversy has to be examined and resolved. Section '12 of the Guardians and Wards Act empowers the Court to pass interlocutory orders for production of minor etc., exercising these powers, the learned Guardian Judge disposed of the petitioner's application under section 12, by chalking out a schedule of meeting between minors and the petitioner. It directed that the meetings be held on the first and last Saturday of each calendar month, from 1 to 2 p.m. in the Court premises. This arrangement was challenged by the petitioner by filing an appeal, it was partially accepted and visitation hours were enhanced from 12 noon to 2 p.m. on the scheduled days.

9. The precise question now for adjudication is whether this time frame is sufficient or not, and is the venue of meeting conducive for this purpose. It is clear from record of proceedings of the Court of learned Guardian Judge, Lahore, that respondent No.1 initially was not amenable to the meeting of the petitioner with the minors, pleading, inter alia, the weather, the venue and the very young age of the minors as defence in this context, but it was overruled and petitioner permitted to meet the minors.

In Guardianship matters Courts exercise quasi parental jurisdiction, the supreme consideration, in this context is the welfare of the minors, 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 up-bringing of the minors, 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 a reasonable visitation schedule. The Court of the Guardian Judge, 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 minors to hold meetings in Court premises. Thus, meetings of minors with parents should preferably be held at the premises of the contesting parent to familiarize the minors with the environment there, to strengthen a healthy relationship and dispel fears of a future re-union and only in extreme and exceptional cases the Court of the Guardian Judge be chosen as a venue for which detailed reasons should be cited, thus, a mechanical order, in this context is not tenable. As the petitioner has no residence in Lahore, therefore, the closest place to a home is a hotel, thus, the request of petitioner for change of venue to Avari Hotel, Lahore, is reasonable and therefore allowed.

10. As far as time frame of the meeting is concerned, it too, is insufficient and inadequate. The petitioner has to travel all the way from Dubai to Lahore to hold this meeting with the minors, the father being natural guardian has a right to meet the minors for a reasonable time to familiarize with them, so that minors recognize him and develop love, bondage and affinity for him. Therefore, the request for enhancement in time span is also allowed. The petitioner shall henceforth meet them for 5-1/2 hours (11-00 a.m. to 4-30 p.m. on the scheduled days chalked out by the Guardian Judge, Lahore).

11. As far as the request for enhancement of visitation rights from the first Saturday and last Saturday currently in vogue, to every Saturday is concerned, the minors are too young and such change, presently will not be conducive at this stage, therefore, the request in this regard is declined.

12. Lastly respondent No.1 has apprehension, that minors may be removed from the jurisdiction of this Court by the petitioner. To rest this apprehension the minors are placed on the Exit Control List, the petitioner shall also execute a surety bond in the sum of Rs.2.5 Million with one surety to the satisfaction of Deputy Registrar (Judicial) of this Court, before the next meeting giving an undertaking that minors shall not be removed from the jurisdiction of the Court of Guardian Judge, Lahore. To ensure the safety of the minors and ward off any altercation between the spouses and adherence to, time frame by both parties, a bailiff of this Court shall collect and drop the minors from respondent No.1's residence, he shall remain present, during the meeting outside the room, and retain the passport of the petitioner with him during the currency of the meeting.

13. The precedent referred to by the learned counsel for the respondent is distinguishable on facts, therefore, inapplicable to the present matter.

14. Resultantly this petition is allowed in the following manner and subject to fulfilment of the following conditions:--

(i) The venue of the meeting shall be changed from the Court of Guardian Judge, Lahore, to Avari Hotel, Lahore on the first and last Saturday of each calendar month, the time span of the meeting shall be 11 a.m. to 4.30 p.m.

(ii) The names of minors Zainab and Zunera are placed on the Exit Control List, a copy of this order be transmitted to the Ministry of Interior forthwith, the Deputy Registrar (Judicial) shall seek a compliance report within one week.

(iii) The petitioner shall furnish a surety bond in the sum of Rs.2.5 Million with one surety to the

satisfaction of the Deputy Registrar (Judicial) of this Court before the next meeting of the petitioner with the minors, giving an undertaking that the minors shall not be removed from the jurisdiction of the Court of the Guardian Judge, Lahore.

(iv) A bailiff of this Court be deputed to collect the minors from the residence of respondent No.1 at 11 a.m. along-with a representative of the petitioner, take them to Avari Hotel, Lahore, handover the custody to the petitioner and thereafter collect them from the petitioner from the hotel at 4.30 p.m. and drop them back at the residence of respondent No.1. The bailiff shall remain present during this meeting outside the room and ensure that the minors are not removed from the hotel premises.

(v) The petitioner shall surrender his passport to the bailiff at the time of collecting the minors and receive it back from the bailiff, on return of custody of the minors, to the bailiff.

(vi) This arrangement shall remain in vogue till the minors are 4 years old and thereafter may be reviewed by the Guardian Judge, if either party so desires.

M.H./U-15/L

Petition allowed.