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JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 49905 of 2026.

Kashif Mehmood

Versus

Saadia Fida & others

JUDGMENT

Date of hearing: 13.10.2026.

Petitioner by: Mr. Zafar Abbas Khan, Advocate.

Respondents by: Mr. Umer Farooq, Advocate.

SHIREEN IMRAN, J: Through this constitutional petition, the petitioner has challenged the judgments and decrees dated 30.09.2025 and 14.04.2026 passed by the learned Judge Family Court (trial court) and learned Additional District Judge, Lahore, respectively, whereby his petition seeking custody of the minors was dismissed and his appeal was partially allowed to the extent of reduction in their maintenance allowance.

2. Briefly stated, the petitioner/father instituted a petition under Section 25 of the Guardians and Wards Act, 1890, on 09.09.2020, seeking custody of minors/respondents No.2 and 3. During the pendency of the said petition, the respondents instituted a suit for recovery of maintenance allowance and regularization of custody of

the minors on 01.10.2020. Both matters were consolidated and after recording evidence, the learned trial court, *vide* judgment and decree dated 30.09.2025, awarded maintenance allowance to respondent No.1 @ Rs.25,000/- per month for the *Iddat* period, amounting to Rs.75,000/- and to each minor @ Rs.50,000/- per month from the institution of the suit, with 10% annual increase. The petition filed by the petitioner under Section 25 of the Guardians and Wards Act, 1890, seeking custody of the minors was dismissed, while their custody was retained with their mother, subject to the visitation rights of the petitioner. The learned appellate court, *vide* judgment and decree dated 14.04.2026 partially allowed the appeal of the petitioner by reducing the maintenance allowance of each minor to Rs.35,000/- per month, with 10% annual increase, while maintaining the award of maintenance for the *Iddat* period and upholding the dismissal of the petition seeking custody of the minors.

3. Learned counsel for the petitioner contends that the maintenance allowance has been determined without proper appreciation of the petitioner's financial resources and obligations towards his other family members. It is further contended that the courts below failed to properly appreciate the evidence relating to the custody of the minors and their welfare. Placed reliance in *Ms. Shazia Akbar Ghalzai and another v. Additional District Judge, Islamabad (East) and 2 others* (**2021 MLD 817**).

4. Conversely, learned counsel for respondents No.1 to 3 supports the impugned judgments and decrees and contends that the

courts below have passed well-reasoned decisions after proper appraisal of the evidence available on record. It is argued that the maintenance allowance awarded to the minors is commensurate with their reasonable needs and that the learned appellate court has already reduced the amount after taking into consideration the financial position of the petitioner and other family responsibilities. It is further contended that the welfare of the minors lies in continuing their custody with their mother, particularly when they have expressed their preference to reside with her through statements before the learned trial court. Placed reliance in *Raja Muhammad Owais v. Mst. Nazia Jabeen and others* (**2022 SCMR 2123**), *Khan Muhammad v. Mst. Surayya Bib and others* (**2008 SCMR 480**) and *Saeed Khan v. Mst. Rozina Bibi and others* (**2026 CLC 1052**).

5. Arguments heard. Record perused.

6. The obligation of a father to maintain his minor children is a legal obligation which cannot be avoided merely by asserting financial difficulties or unemployment. While determining the quantum of maintenance, the financial capacity of the father, his social standing, the reasonable needs of the minors, their educational expenses and other relevant circumstances are to be considered. In the present case, the learned appellate court has examined these aspects and has specifically taken into consideration other family responsibilities of the petitioner. Consequently, the maintenance allowance awarded by the learned trial court was reduced from Rs.50,000/- to Rs.35,000/- per month for each minor. The appellate determination thus reflects

consideration of the material circumstances and cannot be termed arbitrary or excessive merely on the basis of assertion of the petitioner that he has limited financial resources. No material misreading or non-reading of evidence warranting interference has been pointed out.

7. As regards the custody of the minors, it is settled that the welfare of the minors is the paramount consideration, which overrides the preferential rights of either parent. The record reveals that both minors have been residing with their mother, who has been looking after their upbringing and educational requirements. Their educational records and related documents were also brought on record. They are studying at Beaconhouse School, a well-reputed educational institution. More importantly, the minors were interviewed by the courts below and expressed their preference to continue residing with their mother. Their preference, considered in conjunction with the other circumstances, was rightly accorded due weight. The petitioner has failed to establish any circumstance suggesting that their continued custody with their mother would be detrimental to their welfare. The courts below have also protected the petitioner's right of access by providing a visitation schedule. Thus, the findings concerning custody are based upon relevant considerations and do not call for interference.

8. The legal framework governing the question of custody is contained in Section 17 of the Guardians and Wards Act, 1890, which requires the Court, while appointing or declaring a guardian of a

minor, to be guided by what, consistently with the law applicable to the minor, the relevant provision reads as follows: -

> **"17. Matters to be considered by the Court in appointing guardian**.---(1) In appointing or declaring the guardian of the minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.
> (2) In considering what will be for the welfare of the minor the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.
> (3) If the minor is old enough to form an intelligent preference, the Court may consider that preference."

9. The Hon'ble Supreme Court, in *Gul Sadem Khan v. Mst. Halima and others* (**PLD 2025 Supreme Court 47**), reiterated that the right to custody of a minor is not absolute but remains subject to the paramount consideration of the welfare of minor. The relevant principle, as reproduced in the said judgment, is as follows: -

> *"The right of custody of minor is not an absolute right rather it is always subject to the welfare of the minor. The Court in the light of law, on the subject and facts and circumstances of each case considers the question of custody on the basis of welfare of minors and there can be no deviation to the settled principle of law that in the matter of custody of minor the paramount consideration is always the welfare of minor. No doubt general principle of Muhammadan Law is that a Muslim father being the natural guardian of the minor, has the preferential right of custody of minor but this rule is always subject to the welfare of the minor which is the prime consideration in determination of the question of custody."*

The Hon'ble Supreme Court further referred to the principle enunciated by a five-member Bench of the Court in the following terms: -

> *"It is axiomatic that in the matter of appointment of a guardian the welfare of the minor coupled with his own wish, particularly when he can make a reasonable preference on account of his age, is the primary consideration for a Court of law for the decision of such cases."*

The aforesaid principles make it abundantly clear that the question of custody cannot be decided merely on the basis of the preferential right of either parent. Rather, the Court is required to undertake an objective assessment of all relevant circumstances, including the welfare of the minor, the capacity of the proposed custodian to provide appropriate care and preference of minor where he/she is sufficiently mature to express an intelligent choice.

10. The concept of welfare has also been elaborated by the Hon'ble Supreme Court in *Dr. Muhammad Asif v. Dr. Sana Sattar and others* (**PLD 2026 Supreme Court 238**), operative portion of which reads as: -

> *"4***** The 'welfare' standard is thus not static, it is a living standard that encompasses a child's emotional, psychological, cultural, and developmental needs, extending far beyond material well-being or parental preference. Moreover, the right of the child to be heard, as guaranteed by Article 12 of the CRC, must also be read into the application of Section 17. Any genuine assessment of the child's welfare or best interests is incomplete without ensuring the child's meaningful participation in the proceedings, appropriate to their age and maturity. By interpreting Section 17 in this harmonized manner, consistent with both international obligations and constitutional values, courts affirm that the provision requires not only an objective inquiry into what serves the child's welfare*

> *but also a procedural obligation to hear the child and give due consideration to their voice. This interpretive approach ensures that even a law as old as the Act remains a relevant and effective tool for delivering justice that is sensitive to the rights and realities of children today. To interpret it otherwise would be to render the statute obsolete, unfit for the constitutional and child-rights-informed present."*

Voice of the Child

> *"5. We underline that a child must be heard so that her best interests can be properly understood and protected. The participation of a child in legal proceedings is not a formality; it is fundamental to a justice system that respects the dignity and agency of the child. Listening to the voice of a child gives them a sense of worth, inclusion, and trust in the judicial process. As clarified in the UN General Comment No. 12, the views of the child must be seriously considered, not merely acknowledged. Listening to a child does not mean obeying them, but rather understanding their perspective deeply enough to act in their best interests."*

11. The above pronouncements establish that the views of a minor who is capable of forming an intelligent preference are an important component of the welfare assessment. The Court must determine whether the expressed preference is consistent with the overall welfare of the child, rather than treating it as either a mere formality or the sole determining factor.

12. In the present case, the learned Additional District Judge, Lahore, while deciding the appeal *vide* judgment and decree dated 14.04.2026, also considered the welfare of the minors and their expressed preference. The relevant findings recorded in paragraph No.16 of the appellate judgment are reproduced below: -

> *"16.*****The child is able to express his or her wish intelligently. The appellant/defendant has not produced any evidence from which it could be inferred that proper care of the minor is not being*

> *taken by the plaintiff No.1/petitioner. None can take care of minors more than his real mother for being his first institution and depriving minor of their mother would create deprivation in his life which cannot be restored back. Court is of the considered view that it would not be in the interest and welfare of the minors to hand over their custody to father rather, the welfare of minors would lie in their custody with their mother. So, in these circumstances, learned trial court has rightly dismissed the petition u/s 25 of Guardian and Wards Act, 1890 and framed visitation schedule in favour of the father."*

A perusal of the above findings, read in conjunction with the material available on record, shows that the learned appellate court considered the ability of minor to express an intelligent preference, the absence of evidence demonstrating any deficiency in the care provided by their mother and the arrangements made to preserve the access of petitioner to them. These considerations are consistent with the principles embodied in Section 17 of the Guardians and Wards Act, 1890, as explained by the Hon'ble Supreme Court in the above-referred judgments. The preference expressed by the minors was not considered in isolation but was assessed alongside their existing living arrangements, educational circumstances and the evidence concerning their upbringing. The petitioner has failed to establish any circumstance demonstrating that their continued custody with their mother would be contrary to their welfare. Accordingly, the concurrent findings of the courts below regarding custody do not suffer from any illegality or material misreading or non-reading of evidence warranting interference in constitutional jurisdiction.

13. The award of maintenance allowance to respondent No.1 for the *Iddat* period is also consistent with legal obligation of the

petitioner arising from the marital relationship and its dissolution. No illegality in the concurrent findings on this aspect has been demonstrated.

14. It is well settled that constitutional jurisdiction is not intended to provide another forum of appeal for reappraisal of evidence. Interference with findings recorded by the courts below is justified only where such findings suffer from a jurisdictional defect, patent illegality, perversity or material misreading or non-reading of evidence. The petitioner has failed to establish any such infirmity in the impugned judgments. The learned appellate court has already afforded appropriate relief to the petitioner by reducing the maintenance allowance of the minors after considering his financial circumstances and has upheld the judgment of the learned trial court dismissing the petition under Section 25 of the Guardians and Wards Act, 1890, while maintaining the visitation schedule in favour of the petitioner in accordance with law. No further interference is warranted.

15. For the foregoing reasons, this constitutional petition, being devoid of merit, is hereby **dismissed**.

(SHIREEN IMRAN)
JUDGE

Approved for reporting.

JUDGE

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