Form No: HCJD/C-121
ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 293 of 2025

Tehreem Fatimah Khan

Vs

Gulfam Khan and another.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	06.02.2025	Ms. Shehla Rafiq, Advocate for the petitioner. Dr. Muhammad Zubair Sarfraz, Advocate for Respondent No.1

MUHAMMAD AZAM KHAN, J. The Petitioner/Minor has filed the instant Writ Petition through her mother namely Arooj Malik challenging the Order dated 12.12.2024 **("Impugned Order")** passed by the learned Judge Family Court, East-Islamabad **("Family Court")** whereby the Petitioner/Minor's right of evidence has been closed.

2. Brief facts leading to the institution of instant Constitutional Petition, are that the Petitioner/Minor filed a Suit for recovery of past and future maintenance against her father i.e. Respondent No. 1. The Respondent No. 1/Father contested the case by filing written statement. The Respondent No. 1/Father also filed petition under Sections 25 and 12 of the Guardian and Wards Act, 1980 for the custody of the Petitioner/Minor against the Petitioner/Minor's mother. Both the cases were consolidated by the learned Family Court on 17.04.2024 and interim maintenance of the Petitioner/Minor was fixed whereas visitation schedule of the Petitioner/Minor with the Respondent No. 1/Father was allowed subject to payment of interim maintenance. Consolidated issues were framed and the case was fixed for evidence. The learned Family Court struck of the right of the

Petitioner/Minor to produce evidence vide order dated 16.09.2024. Feeling aggrieved from the said order, the Petitioner/Minor challenged it before the learned District Judge, Islamabad-East, which was entrusted to the Court of learned Additional District Judge-I, Islamabad-East **("Appellate Court")** and after hearing both the parties the Petitioner/Minor's Appeal was accepted. The learned Appellate Court directed the Petitioner/Minor to appear before the learned Family Court on 12.12.2024 for production of evidence. On 12.12.2024 Petitioner/Minor appeared before the learned Family Court and submitted mediation consent form with the plea that the Petitioner/Minor intends to go for mediation. On the said date the learned Family Court directed the Respondent No. 1/Father for assistance of the Court upon the matter of mediation. In addition to this the learned Family Court in the same order held that since the Petitioner/Minor failed to produce evidence therefore, the Court closed the Petitioner/Minor's right to produce evidence and directed the Respondent No. 1/Father to produce his evidence and assist on the point of mediation. The case was fixed for 14.12.2024. Feeling aggrieved of the Impugned Order dated 12.12.2024 the Petitioner/Minor has filed the instant Petition.

3. The counsel on behalf of the Petitioner/Minor argued that the learned Family Court has violated Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 which guarantees the right of fair trial; that the learned Family Court has not adopted the due process of law and has committed serious procedural irregularities in the handling of the matter; that the Petitioner/Minor had specifically filed the application for mediation and in this regard assistance was sought by the Court from the Respondent No. 1/Father towards the offer of mediation and after that the Court could have closed the right of evidence if the Respondent No. 1/Father refused to mediate.

4. On the other hand, the learned counsel on behalf of the Respondent No. 1/Father argued that the opportunity was

afforded to the Petitioner/Minor by the learned Appellate Court while accepting her Appeal and the learned Family Court fixed the date i.e. 12.12.2024 for production of evidence on that date, whereas the Petitioner/Minor failed to produce evidence in support of her claim; that the learned Family Court has rightly closed the Petitioner/Minor's right to produce evidence; and that there is no error in the Impugned Order.

5. Arguments heard and available record perused.

6. The learned Family Court on 12.12.2024 not only sought the assistance of the Respondent No. 1/Father upon the mediation put forward by the Petitioner/Minor but also closed the Petitioner/Minor's right to produce evidence without affording a specific opportunity in this regard. Since, it is a matter of past and future maintenance of the Petitioner/Minor, therefore, the learned Family Court should have given at least one specific opportunity in the interest of justice and fair play so that the matter should have been decided on merits after recording of evidence produced by both the sides.

7. The learned Family Court considered the request for mediation by seeking assistance from the Respondent No. 1/Father and at the same time closed the Petitioner/Minor's right of production of evidence. The learned Family Court should have first decided that as to whether the matter was to be referred to mediation or not and after that if Petitioner/Minor failed to produce evidence then in that case the Petitioner/Minor's right to produce evidence should have been closed. The learned Family Court has passed the Impugned Order in a mechanical manner without applying its judicial mind.

8. With these observations, the instant Writ Petition is **allowed** and the Petitioner/Minor is directed to appear before the learned Family Court and produce her entire evidence on 15.02.2025, positively. It is made clear that no further adjournment shall be granted and if the Petitioner/Minor fails to

comply due to her own fault or that of her counsel the Impugned Order passed by learned Family Court dated 12.12.2024 shall be deemed to be intact.

(MUHAMMAD AZAM KHAN)
JUDGE

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