JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1818 of 2025

Warisha Nasir

Versus
Taha Haroon and another

Petitioner by:	Mr. Ajam Naz Malik, Advocate.
Respondent No.1 by:	Mr. Omer Abbas Chaudhry, Advocate.
Date of Hearing:	**27.05.2025.**

INAAM AMEEN MINHAS, J:- This writ petition has been filed against the order dated 07.03.2025 **("Impugned Order")**, passed by the learned Additional District Judge, Islamabad-East **("Appellate Court")**, whereby the appeal filed by respondent No.1 was allowed and the order of the learned Guardian Judge dated 07.09.2024 was set aside. Vide order dated 07.09.2024 the learned Guardian Judge dismissed the petition u/s 25 of the Guardian and Wards Act, 1890 for minor Hussain Taha for want of evidence.

2. Brief facts are that the petitioner is the mother of minor Hussain Taha. The father (Respondent No. 1) filed a custody petition of his child/son aged 35 days under section 25 of the Guardian and Wards Act, 1890, before the learned Guardian Judge, Lahore on 20.06.2023, which was later on transferred to Islamabad. Both the parties appeared before the learned Guardian Judge. After framing of the issues respondent No. 1 was granted several opportunities to produce his evidence but he failed to produce any evidence and continuously sought adjournments. Despite repeated, strict warnings and clear cautions, respondent No.1 failed to produce evidence in support of his case. Therefore, vide order dated 07.09.2024, the learned Guardian Judge dismissed the custody petition for want of evidence. Against which

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respondent No.1 filed an appeal before the learned Appellant Court, which was allowed vide the Impugned Order, the order of the learned Judge Guardian Court was set aside and the case was remanded, giving respondent No.1 single chance to produce his complete evidence, hence, this writ petition.

3. The learned counsel for the petitioner contended that the Impugned Order is illegal and arbitrary, hence liable to be set aside; that the learned Guardian Judge rightly dismissed the custody petition of respondent No.1 as he failed to produce his evidence despite being given several chances and final warnings; that the learned Appellate Court disregarded misconduct of respondent No.1 and incorrectly granted him another opportunity to produce his evidence, without giving any valid reason or identifying any legal error in the original decision and this is against the law's aim for speedy resolution in family matters and risks harming the minor's welfare by prolonging the case.

4. On the other side, the learned counsel for respondent No.1 contended that he was regularly appearing before the learned Guardian Judge and the proceedings were always taken in maintenance suit filed by the petitioner and the custody petition was neither taken up for hearing nor any warning was given for non-production of evidence and that the Impugned Order has been passed in accordance with law and the instant writ petition merits dismissal.

5. I have heard the arguments and perused the record.

6. Perusal of the record reveals that respondent No.1 initially filed the custody petition under section 25 of the Guardians and Wards Act, 1890 before the learned Guardian Judge Lahore on 20.06.2023 seeking custody of the minor son 35 days old, in which issues were framed on 08.11.2023 and the application filed by respondent No.1 under section 12 of the Guardians and Wards Act, 1890 for interim custody of the minor was dismissed on the ground that there is no reason to change the

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custody of suckling baby from his mother/petitioner to father/respondent No.1 as respondent No.1 is not supposed to take well care of suckling baby during this tender age, however, meeting schedule of respondent No.1 with the minor was settled. The custody petition was later transferred to the learned Guardian Judge Islamabad for 15.02.2024. On 15.02.2024, 29.03.2024, 16.05.2024, 23.05.2024 no proceedings took place and the matter was adjourned to 29.06.2024. On the said date respondent No.1 appeared in person and met with the minor and paid the expenses of meeting and the case was adjourned to 18.07.2024 for evidence of respondent No.1. On the said date, at the request of the learned proxy counsel for respondent No.1, the matter was adjourned to 27.07.2024 with last opportunity to produce evidence. On the said date upon the application of respondent No.1 meeting with minor was conducted against expenses of Rs.2000/- regarding travelling of minor and the learned counsel for respondent No.1 was not available and request for adjournment was made by respondent No.1, which was allowed and the matter was adjourned to 07.09.2024 for evidence of respondent No.1 with one final opportunity coupled with a warning that in case of failure to produce the evidence by the next date of hearing, the right to produce the evidence will be closed and petition will be dismissed for want of evidence. On 07.09.2024, the evidence of respondent No.1 was not present and the learned counsel for respondent No.1 requested for an adjournment, when the Impugned Order was passed.

8. In case of failure of a party to comply with an order of production of evidence, the Court can ask the said party to record its statement and then to proceed with the matter. In such like situation, if the failing party is plaintiff, who records its own statement, then Court can ask the other party/defendant for defence/rebuttal evidence. The detail of the proceedings in the preceding paragraph does not reflect that before invoking provisions of Order XXVII, Rule 3, CPC, respondent No.1 was asked to record his statement and that thereafter evidence of the other side was recorded, went through the record and

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then decided the matter. Reliance is placed upon ***Hashim Khan and others vs. Haroon ur Rashid and others***, (**2022 SCMR 1793).**

9. In the cases relating to the custody of minors, the welfare and best interest of the children is always the primary concern of the Court. Custody disputes are not solely about the rights of the parents but they directly affect the rights and well-being of the minors. In present case, respondent No. 1, the biological father of the child, has been regularly providing financial support through maintenance and has also maintained contact with the minor, offering emotional support and care. These factors are important in assessing the minor's overall welfare. If respondent No.1 is permanently denied the chance to produce his evidence, it could unfairly harm not only his legal position but also the interests of the minor, who may be benefitted from continued relationship with his father. Similarly, depriving respondent No.1 of the opportunity to place his evidence on record will prejudice the learned Guardian judge's ability to make a fully informed and just decision regarding the custody and welfare of the child.

10. Furthermore, the learned Appellate Court while allowing the appeal through the Impugned Order provided only single opportunity to respondent No.1 to produce his entire evidence on a fixed date and if the parties produce their evidence, then matter shall be decided on merits rather on technicalities.

11. In view of the above discussion, the Impugned Order passed by the learned Appellate Court is well-reasoned and in accordance with law. The instant writ petition bears no merits, therefore, the same is ***dismissed.***

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 18.06.2025

JUDGE

R.Anjam

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