JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD, JUDICIAL DEPARTMENT

W.P. No. 1252 – 2026

Imran Saeed

Vs.

Senior Civil Judge / Judge Family Court, West, Islamabad and another.

Petitioner by:	Mr. Muhammad Wajid Hussain Mughal & Mr. Ghulam Qasim Bhatti, Advocates alongwith petitioner.
Respondents by:	Mr. Sheheryar Shams & Mr. S.M. Hassan Jaffery, Advocates alongwith respondent No.2, in person with her son and daughter.
Date of Hearing:	25.03.2026.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner has assailed order dated 24.02.2026 passed by learned Judge Family Court / Guardian Judge-West, Islamabad, whereby an application filed by respondent No.2 / mother seeking permission to take the minor abroad and to process the immigration formalities has been allowed.

2. Brief facts referred in the instant writ petition are that petitioner and respondent No.2 were married to each other and from this wedlock, children namely Imaan Saeed, Sarim Saeed and Minnah Saeed were born. Subsequently, due to matrimonial discord, the parties separated and thereafter their marriage stood dissolved. Respondent No.2 / mother instituted a petition under Sections 7, 10 and 17 of the Guardians and Wards Act, 1890, seeking her appointment as guardian of the minors. The petitioner / father has

also filed petition under section 12 / 25 of the Guardians and Wards Act, 1890, which has not been consolidated, issues were framed, and the case is at evidence stage. During pendency of the said proceedings, respondent No.2 also filed an application seeking permission to take the children abroad, particularly in relation to minor Minnah Saeed, for educational / immigration purposes. The learned Guardian Court, vide order dated 24.02.2026, accepted the said application subject to certain conditions. The petitioner / father, being aggrieved, has assailed the said order through the instant constitutional petition.

3. Learned counsel for the petitioner contends that the impugned order has been passed illegally and without lawful authority while the main guardianship proceedings are admittedly still pending before the learned trial Court. He contends that the petitioner, being the real father, is the natural guardian of the minor and unless he is declared unfit by a competent Court, respondent No.2 could not have been granted any such relief which, infact, curtails or prejudices the petitioner's lawful guardianship rights. He further contends that the issue as to whether respondent No.2 could at all be appointed guardian in the presence of the petitioner was already sub-judice before the learned trial Court and, without deciding such foundational issue, the learned Guardian Judge could not have granted substantive relief permitting the minor to be taken abroad. He further submits that such permission has serious implications for the petitioner's visitation rights, access and

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constructive supervision over the minor. Learned counsel has also placed reliance upon ***2021 MLD [Islamabad] 817 (Shazia Akbar Ghalzai and another Vs. Additional District Judge, East, Islamabad and others.)*** and contend that custody and guardianship are distinct legal concepts, and mere physical custody of the child with the mother does not divest the father of his status as natural guardian.

4. Conversely, learned counsel for the respondent contends that the impugned order does not suffer from any illegality, jurisdictional defect or material irregularity, as the same has been passed by the learned Guardian Court while exercising welfare jurisdiction in relation to the minor. He submits that respondent No.2 has remained in actual care and custody of the children for a considerable period and the educational and future prospects of minor Minnah Saeed required facilitation of immigration / visa processing. He further submits that the petitioner is not taking meaningful interest in the upbringing and welfare of the minor and that his own visitation conduct on record does not reflect sustained paternal involvement. Learned counsel further contends that in guardianship matters the welfare of the minor is always the paramount consideration, and in this regard reliance has been placed upon ***PLD 2012 [Sindh] 166 (Dr. Aisha Yousaf Vs. Khalid Muneer and others), PLD 2018 [Sindh] 377 (Scherazade Jamali Vs. Hisham Ghillani and others)*** and ***2025 CLC [Lahore] 478 (Saadia Khalil Vs. Additional District Judge, Lahore and others)***, with the contention that permission to travel abroad may be granted where the welfare of the minor so demands, subject to appropriate safeguards.

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5. Arguments heard, record perused.

6. Perusal of record reflects that the main guardianship proceedings under Sections 7, 10 and 17 of the Guardians and Wards Act, 1890 are admittedly still pending before the learned Guardian Court and have not yet attained final adjudication. It further reflects that the controversy between the parties has substantially been narrowed down to the extent of minor Minnah Saeed (DOB: 15.12.2009), who is admittedly still under the age of majority, though approximately 16 years old. It also appears that there are parallel and collateral disputes between the parties, including a separate civil dispute with regard to a residential property in possession of respondent No.2, which background also appears to be contributing to the intensity of the present litigation.

7. At the very outset, learned counsel for the petitioner has been confronted with regard to maintainability of the instant constitutional petition in terms of subsection (3) of section 14 of the Family Courts Act, 1964, whereby the legislature has intentionally excluded the concept of appeal or revision against an interim order passed by the Family Court. As such, this concept has been explained with reference to ***1996 SCMR 1165 (Saghir Ahmad Naqvi Vs. Government of Sindh)***, wherein it has been held that a statute excluding the right of appeal from an interim order could not be bypassed by bringing under attack such interim orders in constitutional jurisdiction. A similar view has been rendered in ***2017 YLR [Islamabad] 622 (Shahida Fazil Vs. Mst. Hina Tahir), 2017 YLR***

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[Islamabad] 870 (Minhaj Saqib v. Najm us Saqib), and ***2014 CLC [Islamabad] 330 (Mst. Maham Shabbir Vs. Salma Haider)***. However, learned counsel for the petitioner is unable to controvert this legal position. Even otherwise, the impugned order is certainly an interim arrangement passed during pendency of the main guardianship *lis* and, *prima facie*, appears to have been passed to regulate the immediate affairs of the minor in the background of her educational / immigration requirements. Such interim welfare arrangements, unless shown to be patently without jurisdiction, perverse, or suffering from gross illegality, ordinarily do not warrant interference in constitutional jurisdiction, particularly where the main controversy is still pending before the Guardian Court for final determination on the basis of evidence.

8. No doubt, there is no cavil with the proposition that father is the natural guardian of the minor and that custody and guardianship are distinct legal concepts. Mere physical custody of the child with the mother does not *ipso facto* extinguish the father's legal incidents of guardianship. However, at the same time, it is equally settled that in matters concerning minors, the Court does not exercise adversarial jurisdiction in the ordinary sense, but rather acts in a parental capacity, where the welfare, comfort, education, emotional security and future prospects of the minor remain the dominant considerations.

9. A significant aspect in the present case is that minor Minnah Saeed is no longer of tender age. Although she is still a minor in the

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eyes of law, not having attained the age of 18 years, yet being approximately 16 years of age, she is certainly old enough to express an intelligent and conscious preference as to the environment in which she feels more secure, comfortable and emotionally settled. Such preference, though not conclusive, is always a relevant factor while assessing welfare of a minor of this age.

10. The record further reflects that despite the existence of visitation rights in favour of the petitioner / father, his practical exercise of such visitation appears to have remained extremely limited. *Prima facie*, the material available on record suggests that the petitioner has visited the minor only once in a year, which does not strengthen his plea of sustained emotional involvement or active paternal attachment. This aspect assumes importance because while a father's legal status as natural guardian is recognized by law, such status must also manifest in practical concern, consistent access, emotional engagement and active participation in the life of the child. A purely technical or strategic invocation of guardianship, divorced from actual emotional involvement, cannot by itself override the welfare matrix of a growing child.

11. This Court has also observed from the overall record that there exists a separate and continuing civil dispute between the parties regarding a house / property in possession of respondent No.2, and in the peculiar circumstances of the case, the apprehension cannot be lightly brushed aside that the present custody / guardianship proceedings may also be getting interwoven

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with such collateral disputes. Welfare jurisdiction in relation to a minor cannot be permitted to become a pressure point for resolution of independent civil/property disputes between former spouses.

12. So far as the judgments relied upon by respondent No.2 are concerned, the same broadly reiterate the settled proposition that welfare of the minor is the paramount consideration and that in an appropriate case, permission to travel abroad may be granted where the educational and developmental interests of the child so require. On the other hand, the reliance placed by the petitioner upon ***2021 MLD [Islamabad] 817 (Shazia Akbar Ghalzai and another Vs. Additional District Judge, East, Islamabad and others.)*** is also not without force to the extent that the father continues to remain the natural guardian unless declared otherwise in accordance with law. However, at this stage, this Court is not called upon to finally determine the rights of the parties in relation to guardianship itself, as the said question is admittedly still sub-judice before the learned Guardian Court. The only question before this Court is whether an interim order of the nature impugned herein warrants interference in constitutional jurisdiction. In the facts and circumstances of the present case, the answer is in negative.

13. This Court, however, is of the view that while the immigration / visa process in relation to the minor may proceed so that her educational and future prospects are not unnecessarily jeopardized, the matter itself should not remain pending before the learned trial

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Court for an indefinite period, as uncertainty in guardianship matters itself becomes detrimental to the welfare of the child.

14. Learned counsel for the petitioner has also raised the objection in terms of section 26 of the Guardian and Wards Act, 1890, and claims that the permission has been granted contrary to the settled restriction provided in section 26, where the permission to remove the ward from the limits of the Guardian Court's jurisdiction can only be sought after a person has been appointed or declared guardian by the Court, which is not the case in hand. Considering this aspect, this Court reverted to the primary question as to what is the paramount consideration at this stage. In this regard, this Court has gone through the main application filed by the respondent, Noushaba Mazhar, in terms of sections 7, 10 and 17 of the Guardian and Wards Act, 1890, in which she has prayed for appointment as a legal guardian of the person. Though she claims to be appointed against all three children, at present the case has been confined to the extent of Minnah Saeed, the only minor child who is less than 18 years of age, and the principal cause to file such application is to provide all the basic necessities of life, education and a better future, to run daily affairs, and for obtaining official documents including CNIC, Form-B, passport, etc., and the need for formal appointment to facilitate legal, educational, health and travel matters. Considering this aspect, I have also attended the application filed by the respondent-mother for grant of permission to take the minor

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abroad, and in this regard detailed reasons have been provided in paragraphs No. 6, 7, 8 and 9, which are as under:

> *"6. That the youngest daughter Minnah Saeed, who is also a US national, doing her O-levels and after her exam, she would also be going to have ample opportunities for continuing her studies abroad. She cannot be left alone in Pakistan when her brother pursues his higher studies abroad, as there would be no one here to properly look after her. It is in her best interest to accompany the family so she can remain under appropriate care and supervision. Moreover, she will also have abundant opportunities abroad to continue her education and develop her talents in an environment that offers broader academic options and greater exposure. Allowing her to go abroad will ensure both her safety and her ability to flourish academically and personally.*
>
> *7. That due to the circumstances mentioned ibid the plaintiff is in untoward situation that two out of her children future rest abroad and she can't leave them alone in a new world. Whereas, her minor daughter can also move with the plaintiff, if the defendant allows her to move abroad for continuation of her studies too.*
>
> *8. That considering the above facts and the plaintiff's limited financial resources, she has chosen to pursue immigration as the most practical and sustainable option for securing a better future for her children. As required under the immigration process, she must obtain formal permission from the defendant, the father, for her son, Sarim Saeed who, being under 21 years of age, is legally considered a dependent of the applicant and for her minor daughter, Minnah Saeed. This permission is essential for proceeding with the*

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application, ensuring that both children can accompany their mother abroad for their education, proper care, and overall well-being. Furthermore, once granted immigrant status, both the son and daughter would no longer be considered international students, which means they would be charged local tuition fees instead of the significantly higher international student fees. This would greatly reduce the financial burden on the plaintiff and make their continued education abroad far more affordable and sustainable within her limited resources.

9. That in case the Defendant is willing to allow the minor daughter Minnah Saeed, then the plaintiff would be in need to have the signatures of the defendant on the documents attached with the application. The defendant also needs to allow Sarim Saeed as per immigration procedure & documentation requirement mentioned ibid."

15. The most important feature is explained in paragraph No. 9, where the mother requires the signature of petitioner/father on the documents of immigration attached to the application and a prayer has been made that direction be issued to the father to sign those documents. Such aspect, if considered in juxtaposition with the principal claim, it appears that the entire background of the case is only for the purposes of the better future of Minnah Saeed, the minor, though she is a US citizen, and her elder sister is already in the United Kingdom and has completed her education and is presently working, as per the stance of the mother, whereas the brother, Sarim Saeed, is also ready to pursue future educational

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prospects abroad. But now the question arises as to whether the immigration application could be processed without the signature of the father. The answer is in negative, and the instant application is to be seen to that extent only for limited purposes, which has nothing to do with the main petition, which is still pending with the competent Guardian Court. Therefore, the order passed by the learned Guardian Judge is within the scope of the prayer, as reflected from the conditions attached to the permission granted vide order dated 24.02.2026, as set out in paragraph No. 10, which are reproduced hereunder:

> *"10. Since, the petitioner is the real mother and natural guardian of minor. Hence, instant application is accepted and necessary permission is granted to the petitioner for applying for visa, immigration abroad of above named minor daughter subject to fulfillment of following conditions:-*
>
> *i) That the petitioner shall furnish surety bond in sum of Rs.5 Million to the satisfaction of this court.*
>
> *ii) The petitioner shall submit the complete documents i.e. passport, visa, ticket or any other necessary document relating to travelling of minor, alongwith surety bond.*
>
> *iii) That the petitioner shall notify before the Court before leaving the place where the minor will have to reside/stay alongwith complete contact details including WhatsApp Number, Skype I.D, E-mail and Land Line number, if any, so that in case of*

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need petitioner could be contacted by the Court.

iv) Petitioner will also submit an undertaking to the effect that the minor shall be brought back to Pakistan as and when it is required by the Court.

v) That the date of departure from Pakistan shall also be brought into the knowledge of the court.

vi) That the petitioner will abide by all the aforementioned terms and conditions in letter and spirit."

16. The above order reflects that all relevant aspects were duly appreciated by the learned Guardian Judge while passing the impugned order. It is also pertinent to note that an observation has been recorded by the learned Guardian Judge in paragraph No. 5 of the impugned order, wherein it has been noted that during the course of proceedings, the petitioner/father was asked to take the custody of minor Minnah Saeed, in case permission was not granted to allow the minor to proceed abroad. In such eventuality, the father declined to take the said custody. Though, during the course of arguments, learned counsel for the petitioner has contended that the observation so recorded by the learned Guardian Judge is beyond the scope of the proceedings, however, in order to verify this aspect, I have also interviewed minor Minnah Saeed in detail in open Court as well as in chambers in the presence of both the parents. Such interaction reflects that the minor is not regularly visited by the father. In this regard, I have also examined the visitation room

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record/register, which reveals that on the majority of occasions, the father remained absent. Such aspect *prima facie* goes against the petitioner. Similarly, it appears that the father is somehow reluctant to take the minor in his custody and is rather more focused upon the property dispute attached with the respondent, which is admittedly pending before the learned civil Court. I have also interviewed both the parents for the purposes of reconciliation on this issue, particularly keeping in view the future and welfare of minor Minnah Saeed. However, they both failed to reconcile their disputes. Though certain cross-offers were exchanged between them, the same are not being reproduced in this order because such observations may prejudice their respective claims before the learned Guardian Judge in the main case. However, this Court is persuaded to observe that minor Minnah Saeed is sufficiently mature to understand the nature of the ongoing dispute between her parents. She appears to be reasonably conscious of her educational aspirations and future prospects. The material available on record, as well as her own interaction before this Court, suggests that she is desirous of pursuing studies abroad and, being a U.S. citizen, appears to possess a degree of legal and practical independence in relation to such future educational planning. The respondent/mother has also been confronted with regard to the immediate necessity of seeking permission, whereupon she has clarified that, at this stage, the minor is not intended to be physically removed from the country. According to her, the present requirement is confined to initiating

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immigration-related processing before the competent authorities in the U.K. and Canada, so that in future the children may be facilitated for educational settlement and may not be burdened with the international student fee structure. It has further been stated that the petitioner/father is not willing to bear the financial burden of international student fee, and, therefore, according to the respondent/mother, the present exercise is being undertaken only to secure such future educational facilitation.

17. Considering all these aspects, this Court is in line with the view rendered by the learned Guardian Judge as reflected in paragraph No. 10 of the impugned order. The permission in terms of Section 26 of the Guardians and Wards Act, 1890, has been granted to the mother only for the limited purpose of facilitating the educational future of minor Minnah Saeed through the immigration process in relation to the U.K. or Canada though the same is still not approved by any foreign country. So far as the objection of the petitioner/father regarding deprivation of visitation rights or serious prejudice to such rights is concerned, the same does not appear to be borne out from the record, particularly in view of the visitation record already discussed above. It is also to be kept in view that the primary object of the Guardian Court, and for that matter even the appellate forum, is to ascertain as to where the welfare of the ward lies and in what manner such welfare may best be secured, preserved and advanced. In that context, this Court is of the view that the discretion vested in the Guardian Court to regulate

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the affairs and movement of a minor is to be exercised in consonance with the paramount consideration of welfare of the child. Any restriction, particularly in matters connected with education and future development, must be reasonable and justified so as not to adversely affect the welfare of the child. A child cannot be made to suffer or be penalized merely on account of the matrimonial discord or continuing disputes between the parents. If a ward has access to better educational opportunities, whether in Pakistan or abroad, there appears to be no justifiable reason to deprive the child of the same merely because the parents are litigating against each other. Visitation rights of either parent, though undoubtedly relevant, cannot alone be treated as the sole measure of the welfare of the child. Similarly, a growing child ought not to be subjected to unnecessary psychological pressure or uncertainty merely because of restrictions flowing from parental rivalry. The conduct of the respondent/mother, at least *prima facie*, also reflects that she has approached the Court through due process and has sought formal permission instead of taking any unilateral step, which indicates that she is not attempting to use the minor as a means to prejudice the interest of the father. The record further reflects that previously, vide order dated 17.06.2025, the learned Guardian Court had also granted permission to the respondent/mother to travel abroad, i.e., to the U.K. and Canada, and after such visit, she admittedly returned to Pakistan along with the minor. Such conduct *prima facie* goes in favour of the respondent/mother and weakens the apprehension

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that she would misuse the present permission. This Court has also confronted the petitioner/father as to whether he has any objection to the higher education of Minnah Saeed in a foreign country. In response, he candidly conceded that he has no objection to her higher education abroad; however, according to him, she should not be allowed to leave the jurisdiction of this Court for at least two years.

18. At this stage, this Court is also of the considered view that Minnah Saeed is sufficiently mature to understand not only her educational interests and future prospects, but also the nature of the dispute prevailing between her parents. In the peculiar facts of the present case, she is to be treated as a person capable of expressing an intelligent and meaningful preference regarding matters affecting her future. This Court is also of the view that main dispute between the parties does not truly revolve around the higher education or welfare of the ward, but appears to be substantially influenced by a separate dispute relating to a house/property, which is admittedly the subject matter of independent proceedings before the learned civil Court.

19. In view of the above, this Court also ascertained the independent preference of minor Minnah Saeed. For this purpose, she was interacted in Court and was seated alongside the Bench. During such interaction, she categorically stated that she is desirous of pursuing her studies abroad and does not wish to be subjected to unnecessary restrictions in that regard. At the same time, she expressed willingness to maintain contact with the petitioner/father,

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while also complaining that the father seldom makes efforts to communicate with her even not contacted on this Eid. In these circumstances, this Court also directed both the father and the minor to interact with each other in an attempt to resolve their differences and improve their relationship.

20. Considering all these aspects, this Court is in agreement with the view rendered by Sindh High Court in *Scherazade Jamali* case supra where it has been held that the welfare of child/ward has to be considered in a broader spectrum and it has been held that "*the child is privileged to have access to any educational institution around the world including Pakistan. An educational institute or an environment for which most of the children could only dream for. Every child has its own peculiar circumstances and welfare demands may vary. The restriction in the movement in the present case circumstances appeared to be a tool to settle score with mother/petitioner but it will not serve as the welfare of the child.*" The restriction envisaged under Section 26 of the Guardians and Wards Act, 1890, is not to be applied in a narrower or inflexible manner; rather, it is to be interpreted in the light of paramount consideration i.e. the welfare of the minor. The learned Guardian Judge has rightly appreciated these aspects and has imposed certain conditions, which have evidently been designed to protect the interest of the ward as well as the lawful concerns of the petitioner/father. As such, the grant of permission to immigrate does not appear, by itself, to cause any irreversible prejudice to the visitation rights of the petitioner, especially, when the application of

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immigration requires approval of foreign country which usually takes longer time period. The petitioner also appears to be a man of means and, as reflected from the previous travel history forming part of the record, is financially and practically capable of visiting the minor, if so required, even abroad. It is also significant that the minor herself has expressed willingness to meet the petitioner/father, whether in Pakistan or elsewhere, during the course of her education as well as after its completion.

21. This Court considers it appropriate to observe that in cases involving permission to relocate a minor or to take a ward abroad, no hard and fast rule can be laid down, and each case must necessarily turn upon its own peculiar facts and circumstances. However following broad considerations may be considered in respect of paramount consideration of welfare of the minor:

i. *The nature and quality of the emotional bond, attachment and relationship of the child with each parent;*
ii. *The likely effect of the proposed relocation upon the child's emotional, psychological and social well-being;*
iii. *The educational, developmental and economic advantages, if any, reasonably expected from the proposed move;*
iv. *The age, maturity and intelligent preference of the minor, where the child is capable of forming and expressing such preference;*
v. *The bona fides of the parent seeking relocation, namely whether the move is founded upon*

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legitimate reasons or is intended to impair the access, contact or lawful interest of the other parent;

vi. *The extent to which meaningful visitation, communication and parental relationship of the non-relocating parent can continue to be preserved through appropriate safeguards and conditions; and*

vii. *Whether collateral or independent disputes between the parents are overshadowing or distorting the true inquiry as to the welfare of the child.*

These factors are neither exhaustive nor to be applied mechanically, but may serve as broad guiding principles while exercising welfare jurisdiction in guardianship and relocation matters. In this regard, persuasive guidance may also be drawn from ***Githa Hariharan v. Reserve Bank of India and another ((1999) 2 SCC 228), Troxel v. Granville (530 U.S. 57 (2000)), Weiss v Weiss, 52 N.Y.2d 170, (N.Y. 1981), K Vs. K (Children) ([2011] EWCA Civ 793),*** and ***Re C (Internal Relocation) ([2015] EWCA Civ 1305).***

22. While going through the international standard in the supra judgments of different jurisdictions, this Court comes to an irresistible conclusion that the Guardian Court has to perform certain acts while considering the relocation application request from the custodial parent of the ward. In this reference, the following aspects have to be considered by the Guardian Court:

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i. *In order to form an acknowledged decision, the Court must interview the ward in camera in order to record his preference.*

ii. *The Court shall decide on the principle of balance between the custodial and non-custodial parent, that a non-custodial parent may not be deprived of the meaningful access previously available to the said parent.*

iii. *The Court must observe, on the basis of the circumstances gathered from the evidence or from the stance taken by the custodial and non-custodial parent, as well as in the interview of the child, that the application for relocation has been filed by a parent either in order to improve his / her own life or in the best interest of the ward.*

iv. *The question of cost, logistics, and charges of relocation and visitation must be answered by the trial Court.*

v. *Age of the ward/child is the most important factor to be evaluated vis-a-vis the timeline already spent by the ward before divorce/separation versus after divorce/separation of parents.*

vi. *The Court shall also consider the expert psychologist view/report prepared after detailed interviews taken by the expert from both parents as well as the ward/child.*

vii. *With regard to the expert psychologist view/report, the expert shall record a two-way meeting with the parents as well as in the presence of the ward and in the absence of the ward, giving his recommendations accordingly to the trial Court.*

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viii. *The Guardian Court must assess the genuine motivation of relocation with reason.*

ix. *In the matter of relocation, the positive consideration factor for the new place of relocation versus the old place, its effect, the family roots as well as the family members which have been left behind vis-a-vis the family members which are abroad, if settled in any other country, as well as the emotional support available to the primary caregiver parent or a custodial parent.*

x. *The child relationship with other sibling, non-custodial parent, as well as the grandparents, if any.*

xi. *The application for relocation filed by the custodial parent, whether father or mother, is to be assessed that the same is genuine in the sense that it is not motivated by some selfish desire to exclude the non-custodial parent from child life.*

xii. *The Court must consider the practical proposal of both parents based upon the research and must investigate the reasons, if so required.*

xiii. *The Court shall also consider the opposition of the non-custodial parent while deciding the application of relocation in order to evaluate the primary motive as to whether the same is in the interest of child's welfare or on some other factor, and what are the effects of the refusal of such application.*

xiv. *The importance of schooling or other ties to the current home area as well as child health and other special needs, if raised during the course of argument.*

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23. While considering all these factors, this Court is of the view that when marriages break up, a situation normally arises when the child of that marriage, instead of being in the joint custody of both parents, must of necessity become one who is in the custody of a single parent. Once that position has arisen and custody is working well, then the Court should not lightly interfere with such reasonable way of life as selected by that parent to whom custody has been given or who has assumed the custody in the welfare of the child. While deciding such application, the Court should adopt the balancing approach while applying the best interest doctrine, with reasonable accommodation of the rights and needs of both parents and the child, ensuring that the custodial parent decision does not materially harm the non-custodial parent ability to maintain a relationship with the child. The above factors are to be considered in adjudicating an application for relocation of any ward, whether permanently or temporarily for educational purposes. At last, the court must exercise its discretion judiciously, reasonably and in accordance with law. It must also bear in mind that visitation is a joint right of the non-custodial parent and the child. Such right cannot be curtailed in the name of welfare or at the expense of a meaningful relationship between the child and the non-custodial parent.

24. In view of above discussion, this Court comes to an irresistible conclusion that the application filed by respondent No.2 /

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Mother, namely Noushaba Mazhar, is only meant for grant of permission to apply for the immigration of Minnah Saeed, the minor, for any foreign country, and the learned Guardian Judge has rightly allowed the application with a limited purpose, if seen in the context of paragraph No.10 of the impugned order, where certain restrictions have been imposed upon respondent No. 2 / mother. Even otherwise, such permission is further subject to approval of that foreign country, which is presently not available on record. Therefore, the principle of section 26 of the Guardian and Wards Act could not be applied in a strict sense in this case, as it is not a case of relocation in a strict sense till the immigration authorities of the foreign country allow such request.

25. For what has been discussed above, instant writ petition is not maintainable and the same is hereby **DISMISSED,** with the observation that the remarks recorded by the learned Judge, Family Court, to the effect that '*the mother is a natural guardian*' carries no legal consequence as it is a settled principle of law that the father is the natural guardian of a minor unless declared unfit by a court of competent jurisdiction, particularly, in the present case where an application under Sections 7, 10 and 17 of the Guardian and Wards Act, 1980, read with Sections 12 and 25 thereof, is already pending before the competent court. In these circumstances, this Court deems it appropriate to direct the learned Guardian Judge to decide the pending guardianship/custody application expeditiously, preferably

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within a period of two (02) months from date of receipt of copy of this order, under intimation to this Court. It is further clarified that, in the event any immigration application filed by the respondent/mother is allowed by the foreign country, the conditions already imposed by the learned Guardian Judge shall remain intact and operative. The future movement of the ward shall remain subject to prior intimation through the Guardian Judge to the petitioner/father, and the respondent/mother shall ensure that no abrupt or undisclosed step is taken which may prejudice the petitioner's rights.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in the open Court on: 07.04.2026

JUDGE

Approved for reporting.

A.Waheed/-

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