

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, ACJ.

Civil PLA No.142 of 2020

(Filed on 18.06.2020)

Sonia Faryad

.... PETITIONER

VERSUS

Usman-ul-Haq

..... RESPONDENT

(On appeal from the order of the Shariat Appellate
Bench of the High Court dated 26.08.2020 in Family
Appeal No.133 of 2018)

FOR THE PETITIONER: Mr. Yasir Hussain,
Advocate.

FOR THE RESPONDENT: Raja Waseem
Younas, Advocate.

Date of hearing: 25.11.2020.

ORDER:

RAJA SAEED AKRAM KHAN, ACJ—

The titled petition for leave to appeal has been directed
against the judgment of the Shariat Appellate Bench of
the High Court dated 26.08.2020, passed in family

appeal No.133 of 2020, whereby family appeal filed by the petitioner, herein, has been dismissed.

2. The facts necessary for disposal of the petition for leave to appeal are that the parties are contesting the case for appointment of guardian of the minor before the Guardian Judge Kotli. During the proceeding before the trial Court parties entered into compromise that respondent will bring the minor on 1st and 3rd Friday of every month at 2:00pm for his meeting with the appellant, who shall return the minor on Sunday at 2:00pm, resultantly, the application for custody of the minor was disposed off. On 02.04.2019, the minor was handed over to the petitioner, herein, for meeting as already scheduled, however, the petitioner instead of complying with the agreement did not return the minor to respondent and also filed another application before Judge Family Court Hajira, for guardianship. Thereafter, the respondent, herein, filed an application before the Guardian Judge, Kotli. The learned Guardian Judge, Kotli vide order dated 17.08.2020, ordered that as the appellant had deviated from the agreement as such the minor was handed over

to respondent and she was directed to file fresh application for guardianship and custody. The petitioner, herein, challenged the said order before the learned Shariat Appellate Bench of the High Court, which was disposed of, hence, instant petition for leave to appeal.

3. Mr. Yasir Hussain, Advocate, the learned counsel for the petitioner submitted that the order dated 17.08.2020, passed by the Guardian Judge Kotli is against law and the facts, hence, not maintainable. He further submitted that the findings of the learned Shariat Appellate Bench of the High Court are contrary to law and the facts of the case, which are liable to be recalled. He further submitted that the learned Shariat Appellate Bench of the High Court wrongly appreciated the principle of law that no appeal lies against the interim order, as the order dated 17.08.2020 of the Guardian Judge Kotli, is not an interim order, but is a final order, therefore, the conclusion drawn by the 1st Appellate Court is not sustainable under law. He requested for grant of leave to appeal.

4. While, controverting the arguments Raja Waseem Younas, Advocate, learned counsel for the respondent, submitted that the appeal is not maintainable, because the same has been filed against the interlocutory order of the Family Court-Guardian Judge, which is not appealable. He further submitted that the petitioner has violated the terms and schedule of the meeting fixed by the trial Court. He further submitted that the petitioner, herein, herself surrendered the custody of minor boy in pursuance of an agreement dated 04.05.2018, therefore, the appeal before the first Appellate Court as well as before this Court is not maintainable. He requested for dismissal of the petition for leave to appeal.

4. I have heard the learned counsel for the parties and gone through the record made available.

5. The learned counsel for the parties have raised important legal questions of public importance, which can only be resolved in a regular appeal. Leave to appeal is, therefore, granted to consider the same. The learned counsel for the petitioner is directed to

deposit the amount of security Rs.1000/- within one month, failing which leave granted order shall automatically stands rescinded. The office is directed to proceed further according to law and place the file before me for constitution of bench after its completion.

ACTING CHIEF JUSTICE

Mirpur.
25.11.2020.