

**SUPREME COURT OF AZAD JAMMU & KASHMIR**

[Shariat Appellate Jurisdiction]

**PRESENT:**

Raja Saeed Akram Khan, C.J.

Kh. Muhammad Nasim, J.

Raza Ali Khan, J.

**CIVIL APPEAL NO. 88 OF 2022**

(Against the judgment of the Sh. Appellate Bench of the High Court dated 18.10.2022 in Family Appeal 203/2022)

Aqeel Hassan Kazmi & another

.... Appellant(s)

VERSUS

Beenish Kazmi and others

.... Respondent(s)

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For the Petitioner:

Miss Sumera Naureen,  
Advocate.

For the Respondent:

Mr. Mehmood Hussain  
Chaudhary, Advocate.

Date of hearing: 26.05.2023

**JUDGMENT**

**Raja Saeed Akram Khan, C.J.-** The appeal (supra) by our leave has been preferred against the judgment of the Shariat Appellate Bench of the High Court (High Court) dated 18.10.2022, whereby, the

appeal filed by the appellant, herein, has been dismissed.

2. The dispute relates to the guardianship of the minor, Ayat Zainab Kazmi (daughter of Raheel Kazmi and Beenish Kazmi) who was allegedly brought up by Aqeel Hassan Kazmi and Sehrish Kazmi (real sister of Beenish Kazmi). A guardianship certificate was issued in favour of Aqeel Hassan and Sehrish Kazmi on 04.09.2019. The appellants, herein, (Aqeel Hassan Kazmi and Raheel Kazmi) filed an application for cancellation of certificate before the trial Court on the ground that the same was obtained fraudulently on the basis of bogus signatures, whereas the appellants have neither signed any *Wakalatnama* nor appeared before the Court for recording their statements in this regard. The learned Guardian Judge after hearing the parties rejected the application on the ground that the minor at present is abroad, hence, the Court has no jurisdiction to entertain the lis. The order passed by the trial Court has been maintained by the High Court.

3. The learned counsel for the appellants contended that the respondents deceitfully obtained the guardianship certificate of the minor from the Guardian

Judge/Judge Family Court Mirpur on 04.09.2019, through fraudulent means. Upon discovery of this situation, the appellants filed an application seeking the cancellation of the aforementioned guardianship certificate, however, the Guardian Judge, without duly considering the merits of the case unlawfully rejected the application for want of jurisdiction on the ground that the minor was residing abroad. She further alleged that the trial Court having initially assumed the jurisdiction as the Guardian Judge and issued the disputed guardianship certificate, was not empowered to subsequently reject the application on the ground of jurisdictional limitations. She emphasized that the guardians of the minor had previously obtained Court permission to travel abroad for a period of six months, which necessitated the trial Court to summon the ward and render a decision on the application in accordance with law. The learned High Court also failed to understand the matter in its true perspective, hence, while accepting this appeal the orders rendered by the Courts below may be set aside while remanding the case for decision on merits. She placed reliance on the cases reported as *Liaqat Ali vs. Mst. Jannat Bibi* [1996 SCR 37], *Anne Zahra vs. Tahir Ali Khilji & others* [2001 SCMR

2000] and *Mst. Irshad Bibi vs. Muhammad Zulfiqar & another* [1993 CLC 1625].

4. Conversely, Mr. Mehmood Hussain Chaudhary, the learned Advocate, representing the respondents, opposed the arguments advanced on behalf of the appellants with full vehemence. He submitted that under section 9 of the Guardians and Wards Act, 1890 an application for guardianship of the certificate shall be made to the Court having jurisdiction in the place where the minor ordinarily resides. In the present case, the minor is residing abroad, hence, the Guardian Judge, Mirpur had no jurisdiction over the matter and the application filed by the appellants has rightly been rejected. He further submitted that the Courts below have recorded concurrent findings which are immune from interference by this Court. Furthermore, due to pendency of cases in United Kingdom the respondents cannot travel to Pakistan. He also raised some other grounds pertaining to the merits of the application filed by the appellants for cancellation of guardianship certificate, however, in view of the proposed decision, we are not inclined to incorporate the same here.

5. We have heard the learned counsel for the parties and gone through the record. The only proposition involved in this case is whether in the instant case the trial Court had the jurisdiction to entertain the application for cancellation of the Guardianship or not. The record shows that earlier the trial Court entertained the application, allegedly filed by Aqeel Hassan Kazmi and Sehrish Kazmi (guardians), and issued the guardianship certificate in their favour on 04.09.2019. The certificate lays down that:-

*“You shall be responsible for the better welfare and education and you shall not, without the prior permission of this Court remove the ward from the limits of the jurisdiction of this Court.”*

Subsequently, the guardians of the minor filed an application for permission to take the minor out of the Court jurisdiction. In paragraph 3 of the application, they contended that the minor wants to travel abroad for a period of six months and thereafter the applicants would be liable to bring the minor back to the jurisdiction of Court, if Court asks as such. The permission was granted on 14.09.2019 in the following manner:-

*“Hence, this permission letter to bring the minor to foreign country (United Kingdom) is issued in the favour of applicants with the conditions that the applicants will be responsible for the welfare, well*

*education, maintenance and look after the said minor during the period of residence in foreign country (United Kingdom). When you will come back after six months from foreign country (United Kingdom) you will bring back the said minor along with you and you will be bound to present the minor in the Court.”*

The permission was granted only for a period of six months and according to the Court order the guardians of the minor were bound to bring back and produce the minor before the Court. The application for cancellation of the guardian certificate was filed on 24.08.2022, hence, the proper course for the trial Court was to summon the guardians and thereafter decide the application. The learned counsel for the appellants has rightly argued that after assuming the jurisdiction in earlier application, there was no occasion for the trial Court to reject the application on jurisdictional ground.

6. The High Court of Sindh in the case reported as *Mst. Irshad Bibi vs. M. Zulfiqar & another* [1993 CLC 1625] held that when proceedings are initiated for the appointment of a guardian for the person or property of minors, the Court's authority does not cease upon issuing such an order rather it retains jurisdiction until the minor reaches the age of majority. The relevant portion of the judgment is reproduced as under:-

*“Unlike other causes once the proceedings are initiated either for appointment of guardian of the*

*person or property of minors or indirectly de facto guardianship is confirmed by the order passed by the Court under section 25 of Guardians and Wards Act, the Court passing such order does not become functus officio on passing of such order. It continues to hold jurisdiction till the minor attained the age of majority which in such cases will be 21 years. There can be many instances like the death, insanity or other disability of the guardian to continue to act as guardian of the minor which may need change or modification without resorting to fresh proceedings. It, therefore, follows that the original Court in such cases would be competent to entertain the application for compromise and pass an appropriate order till the ward or the wards attained age of 21 years, It, therefore, cannot be said that order passed in this case and impugned in this petition is passed without lawful authority. Besides, the petitioner has not explained in her petition or otherwise about the delay of 12 months taken by the petitioner to file the present petition.”*

In the present case, the proceedings for appointment of the guardianship were initiated by the Guardian Judge, Mirpur while issuing guardianship certificate on 04.09.2019, hence, the Court retains the jurisdiction until the minor reaches the age of majority.

7. It is noteworthy here that prior to the enactment and enforcement of the Azad Jammu and Kashmir Family Courts Act, 1993, the matter regarding territorial jurisdiction of the Guardian Judge was governed by the Guardian and Wards Act, 1890. However, with the introduction of the Family Courts Act, 1993, section 5 explicitly designates the Family Courts with exclusive jurisdiction to entertain, hear, and decide

upon matters outlined in the schedule to the Act. These matters include dissolution of marriage, dower, maintenance, restitution of conjugal rights, custody of children, guardianship, jactitation of marriage, and dowry. Under section 21 of the Family Courts Act, 1993, a Family Court shall be deemed to be District Court for the purposes of the Guardians and Wards Act, 1890, and notwithstanding anything contained in this Act, shall in dealing with matters specified in that Act, follow the procedure prescribed in that Act. Thus, in the cases relating to the custody of minors, it is the Family Court which has to be approached and the question of territorial jurisdiction shall be decided under the Family Courts Act, 1993 and the rules framed thereunder and not under the Guardians and Wards Act, 1890. This proposition has already been considered by the Supreme Court of Pakistan in the case reported as *Anne Zahra vs. Tahir Ali Khilji & others* [2001 SCMR 2000], wherein, it has been held that:-

*“5. There is no doubt that prior to promulgation and coming into force of West Pakistan Family Courts Act, 1964, the matter regarding territorial jurisdiction of the Guardian Judge constituted under the said Act and the procedure to be followed after entertainment of the applications thereunder as also the filing of appeals and revision petitions against the orders passed by the Guardian Judge were governed and regulated by the Guardians and Wards Act, 1890. The Guardian Judge*



*was the District Court which was to be designated through notification under the said Act. Family Courts under the West Pakistan Family Courts Act, 1964 were created and vested with the exclusive jurisdiction to entertain and decide all the suits and other matters included in the schedule attached to the said Act. A perusal of the said schedule shows that the matters relating to appointment of guardians of the minors and their properties and custody are included in it. Section 5 of the said Act provides that in respect of all matters included in the schedule, the Family Court shall have the exclusive jurisdiction to entertain suits or applications with regard thereto and decide the same. Under section 25 (ibid), a Family Court, thus seized of a matter brought before it in respect of any matter included in the schedule was deemed to be a Court of a District Judge for the purposes of Guardians and Wards Act and notwithstanding anything contained in the Family Courts Act would, in dealing with the matters specified in this Act, follow the procedure prescribed in the Guardians and Wards Act, 1890.*

6. *It is manifestly clear from the express provisions of the Family Courts Act that it is the Family Court under the said Act which has to be approached in the cases relating to custody of minors which Act has overriding effect over the Guardians and Wards Act, therefore, the question of territorial jurisdiction is to be decided under the said Act and the rules framed thereunder and the Guardians and Wards Act for that matter has no relevancy. Rule 6 of the West Pakistan Family Courts Rules, 1965 framed under the West Pakistan Family Courts Act, 1964 provides that the Court which shall have jurisdiction to try a suit will be that within the local limits of which the cause of action wholly or in part has arisen or where the parties reside or last resided together, therefore, it was under the provisions of the said rule that the question of territorial jurisdiction of the Family Court was to be decided under the said Act and not under the provisions of the Guardians and Wards Act. The Guardian Judge as also the learned Additional District Judge, however, decided the question of territorial jurisdiction in this case by applying the provisions of the Guardians and Wards Act and not the West Pakistan Family Courts Act, 1964 and the rules framed thereunder which as held by the High*

*Court in the impugned judgment was not correctly decided.”*

Under Rule 4 of the Azad Jammu and Kashmir Family Courts Procedure Rules, 1998, the Court, which shall have jurisdiction to try a suit, will be that within the local limits of which (a) the cause of action wholly or in part has arisen; or (b) where the parties resided together. The cause of action, in the instant cause arose at Mirpur, hence, the Family Court/Guardian Judge, Mirpur, has got the jurisdiction over the matter and the rejection of the application on jurisdictional ground is not warranted under law.

8. As in the instant case the alleged guardianship certificate has purportedly been obtained by fraudulent means, hence, the possibility cannot be ruled out that the guardians of the minors after fraudulently obtaining the certificate might have taken the minor out of the jurisdictional limits of the Court. This is also the reason due to which we cannot hold in this case that the trial Court had no jurisdiction to entertain the application.

9. So far as the argument of the learned counsel for the respondents that there are concurrent findings of the Courts below which cannot be disturbed by this Court, is concerned, the principle of law laid down by

this Court is pertaining to the concurrent findings recorded on the facts, whereas, the proposition involved in this case is legal in nature.

For the reasons stated, hereinabove, this appeal is accepted and the orders passed by both the Courts below are set aside. Resultantly, the case is remanded to the Guardian Judge, Mirpur, for deciding the same afresh on merits strictly in accordance with law governing the matter.

CHIEF JUSTICE

JUDGE

JUDGE

Muzaffarabad,  
30.05.2023

The judgment has been signed. The parties shall be intimated accordingly.

CHIEF JUSTICE