

# **HIGH COURT OF AZAD JAMMU & KASHMIR**

[SHARIAT APPELLATE BENCH]

Family Appeal No.69/2023.

Date of institution 28.03.2023.

Date of decision 12.12.2025.

1. Tania Kousar wife of Sufyan d/o Ghazanfar Ali;
2. Naseem Bibi wife of Ghazanfar Ali r/o Tonain Tehsil Samahni District Bhimber.

Appellants

VERSUS

Mohammad Nadeem s/o Mohammad Rafique Caste Rajpoot r/o Rahlwa Tehsil Samahni District Bhimber (presently residing in Dubai).

Respondent

## **FAMILY APPEAL**

***Before:- Justice Syed Shahid Bahar, J.***

### **PRESENT:**

Sh. Ayaz Naseem, Advocate for the Appellants.

Ch. Mohammad Junaid Malik, Advocate for the Respondent.

### **JUDGMENT:**

The captioned appeal has been directed against the decision passed by the learned Additional District Judge/Guardian Judge Samahni dated 28.02.2023, whereby, the application filed by the respondent, herein, for custody of the minor was accepted and the custody of the minor Amna Nadeem was ordered to be handed over to the applicant/respondent, herein.

2. Respondent , herein, Mohammad Nadeem moved an application pertaining to custody of the minor Amna Nadeem before the Guardian Judge Samahni stating therein that his marriage with defendant No.1, therein, Tania Kousar was solemnized on 29.08.2011

however, the defendant got divorced on 08.02.2019 on the basis of "Khulla" since, that time the minor is residing with her father as the defendant has got 2<sup>nd</sup> marriage and she is living with her husband. It has been averred that for the better welfare of the minor, her custody may be handed over to the plaintiff/applicant. The suit/application was resisted by the other side. The learned trial Court after necessary proceedings handed over the custody of the minor to the applicant/father of the minor through the decision impugned, herein.

3. Heard, record perused. It is well settled proposition of law that in all the matters pertaining to the custody of a minor, the paramount and overriding consideration is the welfare of the child. The rights of the father or the mother, or any other guardian, are secondary to this fundamental principle. The Court is required to assesses all attending circumstances, including the moral, intellectual, physical, social and educational well-being of the minor, in order to determine where the welfare of the child would be better served. In the case at hand, the minor Amna Nadeem appeared before the Court in person and when she was asked alongwith she is ready to go? she at once replied that she is residing with her grand maternal mother since her birth and she doesn't know her grand paternal mother as well as her father, so, she will not go with them. In the Court's query she was repeatedly asked the same question but her reply was only to live and go with her grand maternal mother.

well as verification of the relevant school wherein, she is studying, the same shows that she is the student of 7<sup>th</sup> Class and studying in Kashmir College Samahni Azad Kashmir and she got 80% marks in Class 6<sup>th</sup>. She appeared to be very happy alongwith her grand maternal mother, so, in such like eventualities, when the minor is happy with her grand maternal mother and has totally refused to go with her father or grand paternal mother, then how she can be forcibly asked to go and live with her father's house that too, she is attached with her grand maternal mother since her birth, therefore, the learned trial Court illegally ordered to handover her custody to the father despite the fact that he is not in the country who seemingly stated to be in abroad (Dubai).

4. Ostensibly she is looking in a good health and safeguard under the umbrella of guardianship of his maternal grandmother. It is an admitted position that father of the minor is living abroad. Tug of war over guardianship is practically between grandmother and paternal grandmother. Be that as it may, there is no automatic preference between maternal grandmother and paternal grandmother, the Law i.e. 'Guardians and Wards Act' does not rank maternal or paternal grandmother above the other, both are considered close blood relatives and may be appointed as guardian depending on welfare, not lineage.

(emphasis supplied)



5. Keeping in view the peculiar facts of the case at hand, it is not out of place to mention that maternal grandmother should be preferred when put to selection:

- (i) If she has already been caring for the minor;
- (ii) The child is very young. The atmosphere in paternal home is unsuitable (dispels, neglect etc.).

Welfare overrides strict rules of "Hizanat" and maternal relatives can be preferred <sup>1</sup>

In the light of what has been stated above, the instant appeal is accepted and the decision impugned herein, is hereby set-aside. Keeping in view the welfare of the minor, her custody is ordered to be given to her grand maternal mother with whom she has been associated for a long time. However, her meetings with her grand paternal mother and father shall be ordered to be arranged thrice a month.

Circuit Mirpur.

12.12.2025 (Saleem)

JUDGE

Note. Judgment is written and duly signed. The parties shall be intimated accordingly.