

IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IX, QUETTA
Family Appeal No.19/2024

Musa S/o Surjan Masih Caste Christian
R/o Police Line Quetta

Appellant

VERSUS

Mst. Rupa wife of Musa
Caste Christian R/o Aziz Street
Meckongy Road Al-Amarat City Flat No.6 Quetta

Respondent

**FAMILY APPEAL U/S 14 OF THE FAMILY COURT ACT 1964
AGAINST THE PART JUDGMENT AND DECREE DATED
30.09.2024 PASSED BY FAMILY JUDGE-I, QUETTA WHEREBY
THE SUIT OF APPELLANT WAS DISMISSED**

Family Appeal No.20/2024

Mst. Rupa (Rubina) wife of Zainullah
R/o Aziz Street Meckongy Road
Al-Amarat City H. No.6, Quetta

Appellant

VERSUS

Musa S/o Surjan Masih, Caste Christian
R/o Police Line Quetta

Respondent

**APPEAL UNDER SECTION 14 OF THE FAMILY COURT ACT
1964 AGAINST THE JUDGMENT DATED 30.09.2024 PASSED BY
FAMILY JUDGMENT-I QUETTA WHEREBY THE SUIT OF
RESPONDENT / PLAINTIFF WAS DISMISSED**

Miss Sonia Parvez Advocate for Appellant
Miss Aster Mehek Advocate for respondent

Consolidated Judgment
4th February 2025

This judgment is meant to dispose of both above titled appeals arising out of same judgment and decree dated 30.09.2024 passed by the learned Family Judge-I, Quetta wherein suit of appellant namely Musa was dismissed but right of visit with minor daughter was acknowledged and schedule of meeting was issued.



2. Appellant / plaintiff being aggrieved on dismissal of his suit for custody of minor filed instant appeal praying for custody of her minor daughter while respondent / mother being aggrieved for issuance of meeting schedule between appellant / father with minor daughter, filed separate appeal No.20.2024 praying for modification in schedule. As both appeals have arisen out of same judgment and decree, so both are disposed of by means of this common judgment. For convenience, Musa / father is called hereinafter as appellant and mother Ropa as respondent.

3. Brief background is as that appellant / father filed suit for custody of his minor daughter Dua aging 9 years 4 months. In his plaint, he mentioned of his marriage with respondent on 12.01.2013 in accordance with Christian law and rules. That, out of wedlock, one baby girl namely Dua was born on 09.05.2015. That, marital relations between them remained strained. He had complaint against respondent to leave house frequently without permission and reason. Appellant initially got judicial separation from respondent vide decree of competent court dated 11.09.2014. However, couple reunited. Again, dispute arose resulting in complaint U/S 107, 150 Cr.P.C. Respondent in 2017, obtained custody of minor Dua from appellant by filing application U/S 491 Cr.P.C before learned Additional District Judge-V Quetta. Appellant alleged that since 09.09.2017 after obtaining custody of minor Dua when she was 2 ½ years of age, disappeared. Appellant despite searching everywhere, could not find whereabouts of respondent and minor Dua. After lapse of six years, appellant came to know conversion of appellant into religion of Islam and of contracting second marriage with one Zainullah. So, appellant being worried of living her daughter aging 9 plus years with stranger Zainullah and of unfavorable conditions for welfare of minor filed suit for custody of minor Dua with following prayers:

It is accordingly respectfully prayed that this Hon'ble court may kindly decree the suit in favour of the plaintiff and against the defendant and further directed the defendant to hand over the custody of minor to the plaintiff forthwith being real father in the interest of justice.



4. Upon notice respondent appeared and contested suit praying for dismissal of suit and seeking maintenance allowance for minor Dua from appellant / father.

5. Out of divergent pleadings learned trial court framed following issues.

1. *Whether it is in the welfare of minor namely Dua that her custody handed over to applicant / real father?*

2. *Since When and at what rate the minor namely Dua is entitled for her maintenance?*

3. *Relief?*

6. After full-fledged trial, recording evidence learned trial court vide impugned judgment and decree dated 30.09.2024 dismissed suit of appellant for custody of minor but granted visiting rights with schedule of meeting i.e. delivery of custody to appellant on every Saturday at 02:00 PM before Civil Nazir and return of custody back to respondent / mother on Sunday at 04:00 PM with travel expenses of Rs.800/- through Civil Nazir. And on occasion of birthday of minor on 9th of May the defendant shall hand over the custody of minor to plaintiff through Civil Nazir, Quetta at 10:00 AM and the father shall return the interim custody of minor to mother on the same day at 04:00 PM through Civil Nazir, Quetta. Appellant was also made liable of payment of maintenance allowance at rate of Rs.7500/- per month from date of judgment announced till date of marriage of minor.

7. Being aggrieved of said impugned judgment and decree, appellant / respondent / mother Rupa also filed appeal against impugned judgment and decree praying as under:

It is, therefore, respectfully prayed that this Hon'ble Court may kindly be please to call for record from the learned trial court and after perusal of the same modify the impugned judgment dated 30.09.2024 and the findings of learned trial court to the extent of setting up the meeting schedule may also be discarded or to revise the same by fixing the meeting schedule in the office of Civil Nazir in the last week of the every month, in the interest of justice, equity and fair play.



8. Arguments were heard and records were perused. I drew following points for my determination:

POINTS FOR DETERMINATION

1. *Whether impugned judgment dated 30.09.2024 is based on misreading and misinterpretation of law and facts. Same is liable to be set aside?*
2. *Whether meeting schedule pronounced by learned trial court is liable to be modified?*
3. *Whether appellant is entitled of relief claimed for?*

9. Appellant mainly sought custody of minor daughter on basis of welfare, well-being and unfavorable conditions for minor with respondent. Counsel for appellant stressed that learned trial court utterly failed to visualize circumstances prevailed between parties which jeopardized the future, mental and physical health and upbringing of minor. So impugned judgment and decree being contrary to fact and law is liable to be set aside. Counsel for respondent opposed the contentions so raised. Counsel for respondent further asserted that temporary custody to appellant from 02:00 PM Saturday to 04:00 PM Sunday affects the education and security of minor girl so same be modified as per prayer.

10. Perusal of record shows that learned trial court while turning down prayer for custody of minor to appellant / father relied on following disclosure of PWs:

PW.2

مدعی نے بچی کے لئے منی آرڈر اور عدالت کے ذریعے کوئی خرچہ نہ بھیجا نہ جمع کیا ہے۔

PW.3

یہ درست ہے کہ بچی کی ولدیت ہمارے ریکارڈ میں زین اللہ درج ہے۔
بچی کی فیس والد جمع کرتا تھا۔

Plaintiff

یہ درست ہے کہ بچی کی پرورش والدہ بہتر طور پر کر سکتی ہے۔



11. But said admission does not reflect true aspect of complexity of issue between parties. Neither such admissions are relevant to welfare of minor baby girl of 9 years nor potential to determine right of custody of minor girl to appellant in circumstances prevailed between parties. Because respondent after delivery of custody of minor to her remained absent from scene. No contact of minor with appellant is established during this. So, failure in payment of maintenance is no fault on part of appellant. Learned trial court completely failed to focus the conduct & condition of respondent/ mother and possible negative physical impact on future of minor girl.

12. There is no denying that education, nourishment, religion age, sex, blood relationship are element to shape the welfare of minor. Appellant produced PW.3 the representative of Universal School who deposed that minor girl has been absent from school for the last six months. School register shows presence of baby girl Dua since April 2023 to August 2023 only. Learned trial court did not evaluate that minor girl was in custody of respondent since 09.09.2017 when she was 2 ½ years of age implying that after six years, she was in Class-3 with regular absence of six months. Although respondent claimed study of minor girl in another school namely Shah English Medium School. Respondent produced school record through DW.III. Record again shows deposit of fee from April 2024 to August 2024. Such record seems highly dubious as there were 8 students only in fee register. Representative admitted that school was not registered. Such facts show very reckless attitude of respondent towards education of minor Dua.

13. It was not only apathy of respondent towards educational progress of minor, rather respondent attempted to change identity of minor by removing name of father / appellant from school record. Such act would not only cause to create complications in future academic carrier but would also result in social disorder for minor with wrong parentage name. Besides, it was admitted by respondent, she played with religious faith of minor girl. By birth, minor Dua is Christian. She was brought up by appellant / father from birth till delivery of custody by court on 09.09.2017 to respondent. Father is still Christian. Admittedly mother not only remarried to another person of different religion but she herself also converted. Thus, atmosphere at house of respondent was no longer conducive for her birth religion and psyche. Such aspect was totally ignored by learned trial court. Record also



shows that appellant /father is government servant who has not married while respondent having other three children from new husband and is totally dependent on her new husband and whose source of income could not be established. Rather brother of respondent / DW.1 admitted financial miseries of respondent as under:

یہ درست ہے کہ مدعا علیہ معاشی لحاظ سے غیر مستحکم ہے۔
یہ درست ہے کہ مدعا علیہ کا شوہر بے روزگار ہے

Respondent also admitted that:

میرا شوہر زین 5/3 روز بعد گھر آتا ہے۔

14. Thus, from above position of facts, it is evident that respondent is neither providing standard education to minor nor able to protect identity, religion of minor girl. She seems to deliberately change name of her father. It shows her failure to protect minor daughter. Learned trial court failed to evaluate welfare of minor Dua who is now 10 years old and requires protection, support, friendly atmosphere and education. Her custody with mother with different faith and in company of stranger for minor is not justified. So, impugned judgment and decree dated 30.09.2024 being contrary to facts and law is set aside.

POINT No.2

Whether meeting schedule pronounced by learned trial court is liable to be modified?

15. As point No.1 has been resolved in favour of appellant and against the respondent. It has made order of visiting schedule infructuous. As suit of appellant / father for custody of minor girl has been decreed. So, appeal of respondent for modification of visiting schedule stands dismissed. However, she is at liberty to approach competent court for visiting with minor girl after delivery of custody of minor to appellant / father.

POINT No.3

Whether appellant is entitled of relief claimed for?

16. As point No.1 has been resolved in favour of appellant, so impugned judgment and decree dated 30.09.2024 of learned trial court is set aside. Appeal No.19/2024 is allowed. Appeal No.20/2024 is dismissed. Suit



of appellant is decreed. Respondent / mother is directed to hand over custody of minor Dua to appellant. No order as to cost. Certified copy of this order be sent to the learned trial court for information. Decree sheet be drawn. Record after completion and compilation be consigned to record.

Given under my hand and seal of the court on this 4th day of February 2025.

Announced in open court

~~(GHULAM MUSTAFA ROONJHA)~~
ADDITIONAL DISTRICT JUDGE-IX,
QUETTA

Compared by
Section Writer
M.Ali

[Handwritten signature]
07/02/2025

Certified true copy
07/02/25
07

(DECREE IN APPEAL)
IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IX, QUETTA
Family Appeal No.19/2024

Musa S/o Surjan Masih Caste Christian
R/o Police Line Quetta

Appellant

VERSUS

Mst. Rupa wife of Musa
Caste Christian R/o Aziz Street
Meckongy Road Al-Amarat City Flat No.6 Quetta

Respondent

FAMILY APPEAL U/S 14 OF THE FAMILY COURT ACT 1964
AGAINST THE PART JUDGMENT AND DECREE DATED
30.09.2024 PASSED BY FAMILY JUDGE-I, QUETTA WHEREBY
THE SUIT OF APPELLANT WAS DISMISSED

This appeal has come for hearing and finally disposed of on this 4th day of February 2025 in presence of Miss Aster Mehek Advocate for appellant Musa and Miss Sonia Parvez Advocate for respondent Rupa. Hence it is ordered that:

“Appeal No.19/2024 is allowed. Impugned judgment and decree dated 30.09.2024 is set aside. Suit of appellant Musa is decreed. Respondent / mother namely Rupa is directed to hand over custody of minor Dua to appellant. No order as to cost.”

Given under my hand and seal of the court on this 4th February

2025.

(Signature)
(GHULAM MUSTAFA ROONJHA)
ADDITIONAL DISTRICT JUDGE-IX,
QUETTA

COSTS OF APPEAL IN APPEAL No.19/2024

Appellant		Amount	Respondent		Amount
1.	Stamp for memo of appeal	Rs.10/-	1.	Stamp for Memo of appeal	Nil
2.	Stamp for power	Rs.03/-	2.	Stamp for power	Rs.05/-
3.	Services of Process	Nil	3.	Services of Process	Nil
4.	Miscellaneous	Nil	4.	Miscellaneous	Nil
Grand Total		Rs.13/-	Grand Total		Rs.05/-

(Signature)
Certified to be true copy
District & Sessions Judge Quetta.
Article 83 of the Constitution of Pakistan Order 1984

(Signature)
(GHULAM MUSTAFA ROONJHA)
ADDITIONAL DISTRICT JUDGE-IX,
QUETTA

(DECREE IN APPEAL)
IN THE COURT OF ADDITIONAL DISTRICT JUDGE-IX, QUETTA
 * Family Appeal No.20/2024

Mst. Rupa (Rubina) wife of Zainullah
 R/o Aziz Street Meckongy Road
 Al-Amarat City H. No.6, Quetta

Appellant

VERSUS

Musa S/o Surjan Masih, Caste Christian
 R/o Police Line Quetta

Respondent

APPEAL UNDER SECTION 14 OF THE FAMILY COURT ACT
 1964 AGAINST THE JUDGMENT DATED 30.09.2024 PASSED BY
 FAMILY JUDGMENT-I QUETTA WHEREBY THE SUIT OF
 RESPONDENT / PLAINTIFF WAS DISMISSED

This appeal has come for hearing and finally disposed of on this 4th day of February 2025 in presence of Miss Sonia Parvez Advocate for appellant Rupa and Miss Aster Mehek Advocate for respondent Musa. Hence it is ordered that:

“Appeal No.20/2024 is dismissed. Impugned judgment & decree dated 30.09.2024 is set aside. Suit of respondent Musa is decreed. Appellant/mother Rupa is directed to hand over custody of minor Dua to respondent Musa. No order as to cost.”

Given under my hand and seal of the court on this 4th February

2025.

(GHULAM MUSTAFA ROONJHA)
 ADDITIONAL DISTRICT JUDGE-IX,
 QUETTA

COSTS OF APPEAL IN APPEAL No.20/2024					
Appellant		Amount	Respondent		Amount
1.	Stamp for memo of appeal	Rs.15/-	1.	Stamp for Memo of appeal	Nil
2.	Stamp for power	Rs.02/-	2.	Stamp for power	Nil
3.	Services of Process	Rs.02/-	3.	Services of Process	Nil
4.	Miscellaneous	Rs.05/-	4.	Miscellaneous	Nil
Grand Total		Rs.24/-	Grand Total		Nil

Certified to be true copy
 District & Sessions Judge Quetta.
 Article 107 of the Constitution of Pakistan Order No. 1084

(GHULAM MUSTAFA ROONJHA)
 ADDITIONAL DISTRICT JUDGE-IX,
 QUETTA