IN THE COURT OF MS. HASEENA SAQLAIN ADDITIONAL DISTRICT JUDGE-XI (WEST) ISLAMABAD.

Family Appeal No : 281/2025
Date of Institution : 22-09-2025
Date of decision : 09-01-2026

Mst. Saroj Malik D/O Zakir Raza R/O Block No. 14-D, Housing Foundation Society, FLate No. 1, G-11/4, Islamabad.

....APPELLANT

VERSUS

Nosherwan Khawar S/O Muhammad Khawar R/o Munawar Colony, House No. 29, Street No. 12, Mohallah Nai Abadi, Rawalpindi.

....RESPONDENT

APPEAL UNDER SECTION 47 OF THE GUARDIAN AND WARD ACT, 1890 WITH ALL ENABLING PROVISIONS AGAINST THE ORDER DATED 31.07.2025, PASSED BY MISS SANAM BOKHARI, LEARNED GUARDIAN JUDGE, WEST ISLAMABAD

JUDGEMENT
09.01.2026

Through this Judgment, this Court intends to decide the above titled Family appeal against the impugned order dated 31.07.2025 passed by, learned Family Court-West, Islamabad.

02. For the sake of clarity, Mst. Saroj Malik is hereinafter referred to as the "Appellant" whereas Nosherwan Khawar as the "Respondent".

03. Brief facts leading to filing of the captioned appeal are that the appellant/mother, filed an application under section 26 of the Guardian and Ward Act, 1890, wherein she asserted that she was married to the respondent and their Nikah was solemnized on

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26.03.2021 according to Muslim rites and customs. That initially the relationship between the parties was cordial but later the Respondent showed his true colors, however, the Appellant bore all ill attitude for the sake of marital relationship and as a result, from this wedlock, a minor daughter namely Parishy Noor (hear in after called as the Minor) was born on 07.01.2022. However, due to ill and harsh attitude, the appellant instituted proceedings for dissolution of marriage on the basis of Khula which proceeded ex parte. She further averred that since dissolution and before during marriage, the Respondent had no love and affection with the minor being a careless father leaving the Appellant/mother as sole responsible person for the welfare and upbringing, education and care of the minor. The appellant also instituted a guardianship petition under the Guardians and Wards Act, 1890, which was decided in her favour vide order dated 17.12.2024 whereby she was appointed guardian and the permanent custody of the minor was entrusted to her. Subsequently, upon receiving a job offer from Qatar with a handsome salary package, the appellant moved the above referred application before the learned Guardian Judge/Family Judge, West, Islamabad seeking permission to take the minor abroad. The said application was allowed vide order dated 31.07.2025, however subject to certain conditions, including the condition that the appellant shall furnish a surety bond in the sum of Rs. 20 million with one local surety in the like amount to the satisfaction of the Court. Aggrieved, the appellant has assailed the said condition as being exorbitant, impracticable,

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and in effect punitive, contending that it defeats the very permission granted and operates as an indirect refusal to allow travel.

4. The respondent was summoned however upon submission of an affidavit that no known address or WhatsApp number of the Respondent was known to the Appellant, he was served through publication in newspaper "The News". However, despite service through ordinary means as well as registered process and publication, none appeared on behalf of the respondent hence was proceeded against ex-parte. It was disclosed during hearing that the respondent had not appeared even during the guardianship proceedings, nor at the stage of the application under section 26 before the learned trial Court, and he has also remained absent at the appellate stage. It was further stated that there are no known whereabouts of the respondent, that he has not contacted the minor, and that he has not been providing for her. In these circumstances, the appeal was heard with the assistance of learned counsel for the appellant and on perusal of the available record.

5. Learned counsel for the appellant argued that the appellant accepted employment in Qatar solely to provide a better life, education, and future prospects for the minor, and that the relocation is welfare driven. It was contended that the learned trial Court, while rightly allowing the travel, imposed a condition of surety in the sum of Rs. 20 million which is wholly disproportionate

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to the object sought to be achieved, beyond the appellant's financial capacity, and therefore impossible to comply with. It was argued that when a Court grants permission under section 26, the conditions may be framed to ensure that the minor is not permanently removed from the jurisdiction and that the minor can be produced if and when required, but such conditions must remain reasonable, just, and practicable, and cannot be so onerous as to frustrate the order itself. It was further disclosed that the mother of the appellant is a Government employee/teacher, and therefore, in the facts of the case, calling for the personal surety/undertaking of the appellant's mother along with proof of employment would sufficiently meet the ends of justice and would adequately secure compliance without defeating the welfare of the minor.

6. The record shows that the learned trial Court exercised jurisdiction under section 26 of the Guardians and Wards Act, 1890 and granted permission to the appellant to travel abroad with the minor. The power to grant such permission carries with it the discretion to impose regulatory conditions so that the Court retains an effective mechanism to secure the presence of the minor, if required, and to ensure that the permission is not misused to permanently defeat the Court's supervisory jurisdiction. At the same time, the guiding principle in all proceedings relating to custody and guardianship remains the welfare of the minor as contemplated by section 17 of the

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Guardians and Wards Act, 1890, and the discretion regarding conditions is to be exercised judicially in a manner that advances welfare and is proportionate to the legitimate object of securing compliance. A condition which is impossible for the custodian to fulfil, or which in substance nullifies the permission granted, ceases to be a regulatory safeguard and becomes punitive in operation, and such an approach does not serve the welfare of the minor.

7. In the present case, the respondent father has not come forward at any stage to claim custody, to oppose the proposed travel, or even to participate in the proceedings, and there is nothing on record to suggest any existing arrangement of support, contact, or care by him. The appellant, on the other hand, already stands appointed as guardian with lawful custody under the order dated 17.12.2024 and seeks travel for employment with an improved package, which prima facie is intended to secure better maintenance, education and future prospects for the minor. In these peculiar facts, the apprehension that the minor must remain within jurisdiction can be adequately addressed through workable and enforceable safeguards, without insisting upon a surety figure so high that it effectively restrains travel. The amount of Rs. 20 million, on the face of it, appears disproportionate to the stated object and has not been shown to have any rational nexus with the purpose of ensuring production of the minor, particularly when the respondent has remained

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absent and there is no competing custodial claim being actively pursued by him. The Court's concern is not to create a financial barrier, but to secure compliance through conditions that are realistic.

8. Consequently, while maintaining the impugned order dated 31.07.2025 to the extent it grants permission to the appellant to travel abroad with the minor, the appeal is partly allowed to the extent that the condition relating to surety is modified. In substitution of the condition "that the petitioner shall furnish surety bond in sum of Rs. 20 million with one local surety in the like amount," it is directed that the appellant shall furnish (i) her personal bond/undertaking to the satisfaction of the learned Guardian Court to produce the minor before the Court as and when directed, and to return the minor to Pakistan and/or comply with any further order regarding production, (ii) the personal surety/undertaking of the appellant's mother, being a Government employee/teacher, supported by her service card and latest salary slip, to the satisfaction of the learned Guardian Court, and (iii) the appellant shall file before the learned Guardian Court a complete itinerary and full residential and employment particulars in Qatar, including address, contact numbers, and a copy of her employment offer/contract, and shall also keep the learned Guardian Court informed of any change thereof within seven days. It is further observed that upon each visit/return to Pakistan, the appellant shall, if required by the learned Guardian

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Court, produce the minor on a date fixed for that purpose, and the learned Guardian Court shall remain competent to pass any further appropriate directions to secure compliance in accordance with law. No order as to costs. Learned Guardian Court shall modify the permission letter accordingly. The learned trial Court record, along with a copy of this order, be transmitted forthwith for information and compliance. File of this court be consigned by Ahlmad to the Record Room after necessary completion and compilation.

Announced.
09.01.2026

(Ms. Haseena Saqlain)
Addl: District Judge-XI, West,
Islamabad.

C E R T I F I C A T E

Certified that this Judgment consists of 07 pages, each of which have been dictated, read over, corrected and signed by me.

09.01.2026

(Ms. Haseena Saqlain)
Addl: District Judge-XI, West,
Islamabad.

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IN THE COURT OF ADDITIONAL DISTRICT JUDGE-XI, ISLAMABAD-WEST.

Mst. Saroj Malik Vs Nosherwan Khawar

ORDER
09.01.2026
Present: Learned counsel for the Parties.

Vide my separate Judgment of even date recorded in English, it is ordered that the impugned order dated 31.07.2025 to the extent it grants permission to the appellant to travel abroad with the minor, the appeal is partly allowed to the extent that the condition relating to surety is modified. In substitution of the condition "that the petitioner shall furnish surety bond in sum of Rs. 20 million with one local surety in the like amount," it is directed that the appellant shall furnish (i) her personal bond/undertaking to the satisfaction of the learned Guardian Court to produce the minor before the Court as and when directed, and to return the minor to Pakistan and/or comply with any further order regarding production, (ii) the personal surety/undertaking of the appellant's mother, being a Government employee/teacher, supported by her service card and latest salary slip, to the satisfaction of the learned Guardian Court, and (iii) the appellant shall file before the learned Guardian Court a complete itinerary and full residential and employment particulars in Qatar, including address, contact numbers, and a copy of her employment offer/contract, and shall also keep the learned Guardian Court informed of any change thereof within seven days. It is further observed that upon each visit/return to Pakistan, the appellant shall, if required by the learned Guardian Court, produce the minor on a date fixed for that purpose, and the learned Guardian Court shall remain competent to pass any further appropriate directions to secure compliance in accordance with law. No order as to costs. Learned Guardian Court shall modify the permission letter accordingly. The learned trial Court record, along with a copy of this order, be transmitted forthwith for information and compliance. File of this court be consigned by Ahlmad to the Record Room after necessary completion and compilation.

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