



RESEARCH CENTRE HIGH COURT OF BALUCHISTAN

COURT: ZAHOOR KAKAR, JUDICIAL MAGISTRATE

SUBJECT: *SUBSEQUENT APPLICATION FOR CUSTODY OF MINOR*

DATE: QUERY RECEIVING DATE: 13TH APRIL 2026

QUERY RESPONDING DATE: 16TH APRIL 2026

BY: RESEARCH CENTRE

PROPOSED QUERY

Where custody of a minor has already been granted to the mother by a competent court, whether a subsequent application by the father, based on the mother's remarriage and alleged neglect, is barred by Res Judicata under Section 11 of the Code of Civil Procedure, 1908, or is maintainable on the ground of change in circumstances?

A subsequent suit for custody of a minor is not automatically barred by the principle of Res Judicata, even if an earlier suit between the same parties was decided by a competent court. Although the principle technically applies to family proceedings, its application in custody matters is limited because such cases are governed primarily by the welfare of the minor, which is a continuing and changing consideration. A custody decree is not final in the strict sense. It is subject to modification if circumstances change after the decision. The court retains jurisdiction to revisit the issue whenever it is shown that the conditions affecting the child's welfare are no longer the same as they were at the time of the earlier order.

In the present case, the father has filed a fresh application on the grounds that the mother has contracted a second marriage and is allegedly neglecting the child. These allegations constitute new facts which were not before the court in the earlier proceedings and, therefore, give rise to a fresh cause of action. In this regard, reliance is placed on **2020 YLR 2095**, wherein it was held:

“If when the applicant shows that he is no longer a stranger to the boy, that he had taken an interest in the welfare of the boy, and is a fit and proper person to be appointed guardian of the boy, he can apply to the Court again. These cases bring out the principle that normally there should be a change in the circumstances or capacity of the guardian for a change in the custody of a minor to be ordered by a Court in the interest of the welfare of the minor.

16. To summarize the above discussion:

(i) In custody cases, the welfare of the child is of paramount consideration.

(ii) An order of custody of a child is not one of a permanent nature. Change in circumstances or new grounds that may have arisen with the passage of time may necessitate re-visiting an earlier order for custody. A second application is not barred in such circumstances. An earlier order for custody however must be given due weight and importance while deciding the second application.

(iii) A child's physical, emotional and psychological growth may be considered as a change of circumstances...

(iv) In the present case new grounds... necessitate that the court examines these issues based on evidence...”

Furthermore, it is a settled principle that questions relating to the custody of a minor are not of a final or immutable nature, and the court is primarily guided by the **paramount consideration of the welfare of the minor**, which may vary with passage of time and change in circumstances. Even where a previous order regarding custody exists, the matter can be re-agitated if new facts emerge which materially affect the child’s welfare. In such eventuality, the earlier decision does not operate as an absolute bar, as custody matters are inherently progressive and subject to judicial reconsideration. The court is empowered to reassess the situation in light of altered circumstances such as remarriage of a parent, living conditions, and overall emotional and psychological welfare of the minor, and to modify or vary the earlier arrangement accordingly in **2020 CLC 2099**, the Court observed:

“11. At this juncture, it is relevant to observe that order relating to custody of child is by its very nature not final but is interlocutory in nature and subject to modification at any future time upon proof of change of circumstances requiring change of custody but such change in custody must be proved to be in the paramount interest of the child.”

Thus, it is well-settled that a subsequent petition for custody is maintainable where it is based on new grounds or a change in circumstances affecting the welfare of the minor.

As regards the contention of the mother’s remarriage, it is equally settled that remarriage, by itself, does not disentitle the mother from retaining custody of the minor. The decisive factor remains the welfare and best interests of the child. Custody cannot be altered solely on the basis of remarriage unless it is shown that such remarriage has adversely affected the physical,

emotional, or psychological well-being of the minor. This principle has been affirmed in **PLD 2025 Supreme Court 541**.

In view of the settled legal position, it is respectfully submitted that the present subsequent custody petition is competent and maintainable in law, as it is based on fresh grounds and changed circumstances materially affecting the welfare of the minor. The principle of res judicata does not operate as an absolute bar in custody matters, and the earlier order cannot preclude a fresh determination where the interests of the child require reconsideration.
