

A.F.R.

Neutral Citation No.-2025:AHC:116159-DB

Court No. - 39

Case :- FIRST APPEAL No. - 285 of 2025

Appellant :- Dr. Prakhar Kumar

Respondent :- Dr. Aditi Dhaundiyal

Counsel for Appellant :- Hemant Kumar

**Counsel for Respondent :- Piyush Shukla, Suresh Kumar
Gupta, Vashishtha Narayan Tripathi**

with

Case :- FIRST APPEAL No. - 249 of 2025

Appellant :- Dr. Aditi Dhaundiyal

Respondent :- Dr. Prakhar Kumar

**Counsel for Appellant :- Suresh Kumar Gupta, Vashishtha
Narayan Tripathi**

Counsel for Respondent :- Hemant Kumar

Hon'ble Arindam Sinha, J.

Hon'ble Dr. Yogendra Kumar Srivastava, J.

(Per : Arindam Sinha, J.)

1. Two appeals have been listed together. In both stand impugned order dated 19th February, 2025 made by the Family Court directing visitation, three times a month, for the father to have physical contact with the children in presence of the mother and also video conferencing with conditions. Father of the children has preferred First Appeal no.285 of 2025 and the mother, First Appeal no.249 of 2025. We note that the mother's appeal was filed prior in time. English Translation made by the father, of impugned order dated 19th February, 2025, is reproduced below.

"The said file is fixed for order. Both the parties have been heard on the application for interim custody 6C. I also spoke to the minor children Khwaish and Praditya separately in my chamber. After talking to the minor

children, it was found that they have no knowledge of any dispute going on between their parents and they are well connected with their parents, maternal and paternal grandparents. Both the children are young at present and they need the company of both parents. Therefore, the opposite party Mrs. Aditi is ordered to ensure that the minor children meet the petition for 2 hours on the second, third and fourth Sunday of every month at any public place or any place of the children's choice where CCTV cameras are present. During the meeting, the paternal grandparents of the minor children will also be free to meet them. Mrs. Aditi is free to be present at the said place by maintaining proper distance. Mrs. Aditi is also ordered to ensure that the minor children talk to their father and paternal grandparents on video call every Tuesday and Thursday of the week between 7:00 pm and 8:00 pm. Both the parties are ordered not to say any negative thing in front of the minor children during the meeting and conversation. Accordingly, the interim custody application 6c is disposed of. The file may be presented on 29.03.2025 for reply.”

(emphasis supplied)

2. Section 12(1) in Guardians and Wards Act, 1890 is reproduced below.

"Section 12(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper"

3. An earlier Bench, to which one of us was party (Arindam Sinha, J.) had made order dated 16th April, 2025 on the husband's appeal moved. Text of the order is reproduced below.

"1. Mr. Mishra, learned advocate appears on behalf of appellant, who is father of two children, a little boy and girl. He submits, his client had filed for custody of the children, as against the mother. On query he submits, there has not yet been any matrimonial litigation.

2. His client made application under section 12 in Guardians and Wards Act, 1890 for visitation including overnight stay by the children, with him. By impugned order dated 19.02.2025, the Family Court directed visitation, three times a month for physical contact in presence of the mother and video conferencing with conditions. There is no mention regarding his client's claim for overnight stay with the children. Respondent no.2 (the mother) has also filed appeal against said order.

3. He relies on view taken by a Division Bench of the High Court of Karnataka in Savitha Seetharam versus Rajiv Vijayasathya Rathnam, available at 2020 SCC OnLine Kar 2747, inter alia, paragraph 16. He seeks direction in modification of impugned order for his client to have substantial visitation and contact rights.

4. Mr. Shukla, learned advocate appears on behalf of respondent, whose client has filed First Appeal no.249 of 2025 (Dr. Aditi Dhaundiyal versus Dr. Prakhar Kumar) and submits, welfare of the children lies in total custody of his client. He relies on judgment of the Supreme Court in Yashita Sahu versus State of Rajasthan, reported in (2020) 3 SCC 67, paragraph no.20.

5. On query, Mr. Shukla submits, his client is ready to reconcile with appellant. Mr. Mishra submits likewise.

6. It is unfortunate that the children are deprived of having both their parents. In view of submission at the Bar regarding reconciliation, list as fresh on 02.05.2025 marked at 02:00 p.m. The parties (husband and wife) may be present in Court, for us to ascertain if reconciliation or otherwise agreement between them for purpose of the appeal, is possible. Till then direction made in impugned order be complied with. Respondent might allow some further contact, if she will."

Appellant father filed special leave to appeal petition (SLP) in the Supreme Court against above order dated 16th April, 2025, disposed of by said Court on order dated 29th May, 2025. Text of the order is reproduced below.

"We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek appropriate orders with regard to interim custody of the minor children for the purpose of exercising interim custody

during summer vacation.

It is needless to observe that if such a prayer is made by the petitioner herein before the concerned Family Court, the same shall be considered expeditiously and in accordance with law having regard to the fact that presently summer vacation is on.

The aforesaid order has been made being mindful of the fact that the matter is pending before the High Court and bearing in mind that presently the summer vacation is on.

Pending application(s), if any, shall stand disposed of"

4. This Court re-opened after its summer vacation, on 1st July, 2025. We passed order dated 8th July, 2025. Reproduced below are few paragraphs from our said order.

"Pursuant to aforesaid order of the Supreme Court, appellant approached the Family Court. Said Court passed order dated 30th May, 2025, directing interim custody of the children to be with appellant between 1st and 16th June, 2025, during their summer vacation. Dr. Mishra submits, the order was not complied with by respondent. His client again applied to the Family Court. There was modification on direction for interim custody between 20th and 30th June, 2025. This direction was also not complied with by respondent, who also applied for modification. Ultimately, there was order dated 23rd June, 2025 by the Family Court on consent of the parties, to have day custody for ten days thereafter.

Dr. Mishra submits further, in the meantime, respondent had filed for special leave to appeal (SLP) before the Supreme Court against order dated 30th May, 2025, by which interim custody of fifteen days had been initially directed. Respondent's SLP was dismissed as withdrawn on order dated 30th June, 2025 of the Supreme Court. Text of said order dated 30th June, 2025 is reproduced below.

"The Special Leave Petition is filed questioning the order of the Family Court dated 30.05.2025.

Learned counsel for the petitioner does not press the Special Leave Petition seeks liberty to withdraw and workout the available remedies either before the High Court or before the Family Court.

By granting liberty as prayed for, the Special Leave

Petition stands dismissed as withdrawn.

Pending application(s), if any, shall stand disposed of.

xxx xxx xxx”

(emphasis supplied)

5. Impugned order was made under section 12. There is no doubt it is an interlocutory order because appellant husband's prayer in his petition was for custody, in which he had applied for interim custody, dealt with by impugned order. The main prayer is reproduced below.

"A. Declare/appoint the petitioner who is the natural Guardian/Father of the minor children as the legal guardian of the minor children.

B. Direct custody of the minor child i.e. Praditya Gupta and Khwahish be given permanently with the petitioner/father.

C. Pass any further order(s) as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.”

(emphasis supplied)

6. It will also appear from aforesaid order dated 29th May, 2025 of the Supreme Court that said Court granted liberty to appellant's father to approach the Family Court with further prayer for purpose of exercising interim custody during the summer vacation. Dr. Mishra laid extra emphasis on ‘summer vacation’ happening after impugned order was passed on 19th February, 2025. The Family Court had, in impugned order, recorded that interaction with the children revealed they were not aware of any dispute between their parents.

7. Interim orders can be varied. It is also trite that an interim order cannot contain or direct such as to amount to

the final relief. Order XXXIX in Code of Civil Procedure, 1908 bears heading, 'Temporary injunctions and interlocutory orders'. It is noteworthy that rule 4 provides for order of injunction as may be discharged, varied or set aside. The Legislature used word 'interlocutory' in the heading of said order. Order XLIII in the Code, by clause (r) under rule 1 provides for appeals from orders made under rules 1, 2, 2A, 4 or rule 10 in order XXXIX. By the Code, interlocutory orders were provided with statutory right of appeal therefrom. Section 12 in Guardian and Wards Act, 1890 bears heading, 'Power to make interlocutory order for production of minor and interim protection of person and property'. Family Courts Act, 1984 by section 19 provides for appeal. The provision is clear in restricting appeals to all orders passed by said Court, except 'interlocutory orders'.

8. An exception was carved out by section 19(4) in the Act of 1984, on amendment, to provide for the High Court to exercise power of revision in respect of orders made under chapter IX in Code of Criminal Procedure, 1973, such order 'not being an interlocutory order'. Chapter IX in said Code provides by section 125, power to the Magistrate to direct maintenance and, during pendency of the proceeding, interim maintenance. Section 127 in said Code provides for alteration in the allowance to be made, on proof of change of circumstances. Amendment to the Act of 1984, to section 19, was necessitated because by sub-section (3) in section 1 of said Act, it was kept open for the States to appoint different dates for commencement of it. Those States, who did not appoint the commencement continued to have their Court's

exercise revisional jurisdiction over orders made under chapter IX in the Code of 1973. It is clear, under amended section 19(4) in the Act of 1984, revision from order of maintenance is maintainable but not from order of interim maintenance, awaiting determination on the claim for maintenance.

9. The spouses have preferred their respective appeals, wherein both seek exclusive custody. The children have said to the Family Court, they are happy with both. Impugned order is interlocutory in nature and, as such, no appeal lies therefrom under section 19 in Family Courts Act, 1984. On query Mr. Shukla submits, his client is ready to approach the Family Court. Dr. Mishra relies on view taken by a Full Bench of the Delhi High Court on **judgment dated 16th October, 2024 in MAT. APP. (FC) 126/2019 (X vs. Y)**, paragraphs 34 and 35. Paragraph 34 is reproduced below.

"As we have already held hereinabove that the powers exercisable under the FC Act, could not be controlled by the provisions of other statutes, we are of the view that the criteria prescribed under the GW Act, could not be applied to test whether an order should be treated as an interlocutory order for the purposes of the FC Act. The mere fact that an order under Section 12 of the GW Act has been labelled as an interlocutory order under the said Act, cannot, therefore, be a ground to hold the same as an interlocutory order under the FC Act, which Act was enacted 94 years later and was intended to provide a much wider window for appeal. In our view, in every case, when an order passed by the Family Court, is taken in appeal before the High Court, it would be incumbent upon the Court to examine the nature of the impugned order in its entirety to determine whether the same is in the nature of an adjudicatory order which decides valuable rights of the parties. Whenever the Court finds that an order touches upon the vital rights of the parties in contradistinction to an

order which is merely a procedural order, an appeal ought to be entertained, irrespective of the fact that the order was passed during the pendency of the proceedings before the learned Family Court.”

(emphasis supplied)

Reasons for my above view is on examination of nature of the order impugned in the appeals. There is no impediment for me to take the view in spite of answer in the reference on **judgment dated 16th October, 2024** (supra), as law declared by the Supreme Court in **Valliamma Champaka Pillai v. Sivathanu Pillai** reported in **(1979) 4 SCC 429** is that judgment of a High Court has only persuasive value before other High Courts.

10. Guardians and Wards Act, 1890, as aforesaid, has section 12 providing for power to make ‘interlocutory order’. Then came legislation by the Act of 1984. Parliament in the 35th year of the Republic of India acted upon the bill bearing statement of objects and reasons saying, *inter alia*, the need was, therefore, felt, in the public interest, to establish Family Courts for speedy settlement of family disputes. By clause 2(i) in the statement of objects and reasons it was said, the bill sought to, *inter alia*, provide for only one right of appeal, which shall lie to the High Court. It was one of the objects of the bill, enacted by Parliament. Section 19 as amended stands in the statute by the Act of 1984. To say section 12 in the Act of 1890 cannot control section 19 in the Act of 1984 would lead to presumption that the Legislature attached different meanings for word ‘interlocutory’ as appearing in the Act of 1890, the Code of 1908 and the Act of 1984.

11. The appeals are **dismissed** as not maintainable.

12. It is to be noted, I had dictated the judgment in Court on impression I was speaking for the Bench and Court Master had accordingly marked the appeals as dismissed on 17th July, 2025, for purpose of the disposal record. Subsequently, my learned brother said he will give his separate view. Hence, in the meantime, I modified the transcription to be my reasoning for appreciating impugned order to be an interlocutory/interim order.

(Per : Dr. Yogendra Kumar Srivastava, J.)

1. While concurring with the view taken by my esteemed brother (Hon'ble Arindam Sinha, J.) regarding the dismissal of the two appeals, I consider it appropriate to record my opinion in the following manner.

2. The two appeals have arisen out of a common order dated 19.02.2025 made by the Family Court exercising powers under Section 12 of the Guardian and Wards Act, 1890¹, in terms of which there was a direction granting visitation rights three times a month for the father to have physical contact with the children in presence of the mother and also video conferencing, with certain conditions.

3. The father of the children is the appellant in First Appeal No. 285 of 2025, and the mother is the appellant in First Appeal No. 259 of 2025. The order under Section 12 of the GW Act, has been made in the main proceedings of Case No. GW. No.159/2024 which had been filed before the

¹ GW Act

Family Court, by the father, under Sections 7, 8, 9 and 10 of the GW Act for appointment as guardian of two minor children.

4. We have heard Dr. Anagh Mishra, learned counsel appearing for the father of the children, and Sri Piyush Shukla, learned counsel appearing for the mother.

5. The impugned order granting interim custody has been passed under Section 12 of the GW Act, wherein an order of this nature is described as interlocutory order. The question of maintainability of the two appeals under Section 19 of the Family Court Act, in terms of which an interlocutory order is not amenable to appeal, has been addressed by the counsel appearing for the appellant in First Appeal No. 285 of 2025 by referring to a Full Bench judgment of the High Court of Delhi, in **Dr. Geetanjali Aggarwal Vs. Dr. Manoj Aggarwal**². The reference to the Full Bench was on the question as to whether an order passed by the Family Court under Section 12 of the GW Act, granting or refusing visitation/interim custody would be appealable under Section 19 of the Family Court Act³. The reference was answered by holding that orders passed under Section 12 of the GW Act would be appealable under Section 19 of the FC Act.

6. Counsel appearing for the appellant mother in First Appeal No. 249 of 2025 has not disputed the enunciation of the law laid down by the Full Bench of the High Court of Delhi.

7. Counsel for the parties have submitted that the question

² 2024 SCC Online Del 7220

³ FC Act

of maintainability of the appeals had been addressed earlier also, when the appeals were first moved, by referring to the aforesaid Full Bench judgment. The order sheet indicates that the appeals have thereafter been heard on number of occasions.

8. The father's appeal (First Appeal No. 285 of 2025) was moved on 16.04.2025, on which date counsel for the parties expressed their readiness for reconciliation, and in view thereof an order was passed directing listing of the case on 02.05.2025 to ascertain if reconciliation or otherwise agreement between the parties was possible. The order dated 16.04.2025 is extracted below:

“1. Mr. Mishra, learned advocate appears on behalf of appellant, who is father of two children, a little boy and girl. He submits, his client had filed for custody of the children, as against the mother. On query he submits, there has not yet been any matrimonial litigation.

2. His client made application under section 12 in Guardians and Wards Act, 1890 for visitation including overnight stay by the children, with him. By impugned order dated 19.02.2025, the Family Court directed visitation, three times a month for physical contact in presence of the mother and video conferencing with conditions. There is no mention regarding his client's claim for overnight stay with the children. Respondent no.2 (the mother) has also filed appeal against said order.

*3. He relies on view taken by a Division Bench of the High Court of Karnataka in **Savitha Seetharam versus Rajiv Vijayasarathy Rathnam**, available at **2020 SCC OnLine Kar 2747**, inter alia, paragraph 16. He seeks direction in modification of impugned order for his client to have substantial visitation and contact rights.*

4. Mr. Shukla, learned advocate appears on behalf of respondent, whose client has filed First Appeal no.249 of 2025 (Dr. Aditi Dhaundiyal versus Dr. Prakhar Kumar) and submits, welfare of the

*children lies in total custody of his client. He relies on judgment of the Supreme Court in **Yashita Sahu versus State of Rajasthan**, reported in (2020) 3 SCC 67, paragraph no.20.*

5. On query, Mr. Shukla submits, his client is ready to reconcile with appellant. Mr. Mishra submits likewise.

6. It is unfortunate that the children are deprived of having both their parents. In view of submission at the Bar regarding reconciliation, list as fresh on 02.05.2025 marked at 02:00 p.m. The parties (husband and wife) may be present in Court, for us to ascertain if reconciliation or otherwise agreement between them for purpose of the appeal, is possible. Till then direction made in impugned order be complied with. Respondent might allow some further contact, if she will.”

9. Subsequently, on 19.05.2025, when the appeal was taken up, the Court, after interacting with the parties, passed the following order:

“1. Mr. Hemant Kumar, learned advocate appears on behalf of petitioner. Mr. Piyush Shukla, learned advocate appears on behalf of respondent. There are two children, of whom appellant is the father and respondent, mother.

2. Submission at the Bar is with reference to order dated 16th April, 2025 that both parties are present in Court. We are told further that they had appeared before co-ordinate Bench on 2nd May, 2025. Perused order made that day.

3. We have interacted with the parties. We request them to attempt a fresh beginning. For the purpose, this is all that we record.

4. We are hopeful of being able to dispose of the appeal without adjudication. Whatever be, parties will convey their respective positions through their learned advocates. They need not be present in Court.

5. List on 8th July, 2025 as fresh.”

10. The appellant-father filed a Special Leave to Appeal (SLP), against the aforesaid order dated 19.05.2025, and as pointed out by Dr. Mishra, learned counsel for the appellant-

father, the SLP was disposed of by the Supreme Court by an order dated 29.05.2025 reserving liberty to the petitioner therein to seek appropriate orders for the purpose of exercising interim custody during the summer vacations. The order is reproduced below:

“We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to seek appropriate orders with regard to interim custody of the minor children for the purpose of exercising interim custody during summer vacation.

It is needless to observe that if such a prayer is made by the petitioner herein before the concerned Family Court, the same shall be considered expeditiously and in accordance with law having regard to the fact that presently summer vacation is on.

The aforesaid order has been made being mindful of the fact that the matter is pending before the High Court and bearing in mind that presently the summer vacation is on.

Pending applications(s), if any, shall stand disposed of.”

11. In pursuance of the aforesaid order, the appellant approached the Family Court, and an order dated 30.05.2025 was passed by the Family Court directed interim custody of the two children to be with the appellant during their summer vacations i.e. for the period from 01.06.2025 to 15.06.2025.

12. As per counsel for the appellant-father, the said order was not complied by the mother and his client again made application seeking interim custody of the children. The Family Court, on 18.06.2025, passed another order modifying the previous order dated 30.05.2025, and directing interim custody of the children to be given to their father for the period 20.06.2025 to 30.06.2025.

13. Thereafter, an application was moved by the respondent-mother seeking modification of the order dated 18.06.2025, whereupon the Family Court, after obtaining consent of the parties, passed yet another order on 23.06.2025, which again modified the previous order dated 18.06.2025 and directed that custody of the minor children be given to the appellant-father from 9 a.m. to 9 p.m. with a stipulation that the children would be permitted the facility of video call with their mother at any time, as they desired.

14. The respondent-mother, at this stage preferred a first appeal, First Appeal Defective No.625 of 2025, before this Court, challenging the orders dated 30.05.2025 and 18.06.2025 passed by the Family Court. The said appeal was dismissed on 26.06.2025, upon a statement made by learned counsel for the appellant that he did not wish to press the appeal.

15. Counsel for the appellant-father has pointed out that the respondent-mother had also raised a challenge to the order dated 30.05.2025 passed by the Family Court by filing petition for Special Leave to Appeal No.16631/2025. The SLP was not pressed and liberty was sought to withdraw and work out available remedies before the High Court or before the Family Court. The SLP stood dismissed as withdrawn.

16. The main petition bearing G.W.No.159/2024 filed by the appellant-father seeking an order appointing him as guardian of minor children and also for their permanent custody, is pending.

17. The order dated 19.02.2025, passed by the Family

Court on an application made by the appellant-father under Section 12 of the GW Act, which is subject matter of the two appeals before us, had directed visitation rights to the appellant three times a month in the presence of the wife and also video conferencing with certain conditions.

18. Upon the appeal being moved before this Court, on 16.04.2025, counsel for the parties submitted that their clients were ready for reconciliation, and on the basis thereof the case was directed to be listed on 02.05.2025 so that the parties may be present in Court, for ascertaining if reconciliation or otherwise agreement between them was possible.

19. Subsequently, on 19.05.2025, the Court after interacting with the parties, directed the case to be listed on 08.07.2025, and expressed hope of disposing of the appeal without adjudication.

20. It has been brought to our notice that during interregnum, the order dated 19.02.2025, which is subject matter of the two appeals before us, has been modified on multiple occasions, at the behest of the parties.

21. The order of interim custody dated 19.02.2025, was modified by the Family Court by an order dated 30.05.2025 on an application made by the appellant-father. It was modified by the Family Court again on 18.06.2025 on another application made by the father. The respondent-mother also sought modification and upon her application the previous orders were further modified by the Family Court by an order dated 23.06.2025.

22. The aforesaid developments and the orders passed by the Family Court on applications moved by either of the parties from time to time, have been brought before us by means of supplementary affidavit dated 06.07.2025 filed by the appellant-father.

23. These subsequent developments indicate that the order of interim custody dated 19.02.2025, which is sought to be impugned in two appeals has been varied on multiple occasions by the Family Court, on applications moved by either of the parties. This fact is not disputed by the counsel appearing for the parties.

24. On a query Sri Shukla, learned counsel appearing for the respondent-mother (the appellant in First Appeal No.249 of 2025), submits, his client is ready to approach the Family Court.

25. The factual position that has been unfolded before us indicates that the matter relating to interim custody is still being agitated by the parties before the Family Court, and the same has not attained any degree of finality.

26. The main petition for guardianship, and custody also remains pending before the Family Court.

27. The impugned order of interim custody dated 19.02.2025 having been varied on multiple occasions, the same does not stand in its terms.

28. The resultant position is that the order impugned has been rendered ineffective due to the supervening events obviating the need for any intervention by the Court at this

stage. The later developments have changed the circumstances in such a way that any adjudication on the merits of the order impugned would have no meaningful effect on the rights of the parties.

29. In a situation where an appeal has lost its efficacy, the Court is empowered – indeed, often expected – to dismiss the appeal as such. This general principle is applied when, due to later developments, circumstances have changed in such a way that a decision by appeal Court would have no practical effect on the rights of the parties involved.

30. The two appeals, in light of the changed circumstances, have lost their efficacy. Accordingly, the appeals are **dismissed**.

31. The parties are at liberty to pursue their remedies before the Family Court.

Hearing and judgment Date :- 17.7.2025

Ashutosh/Arun K. Singh

[Arindam Sinha J.]

[Dr. Y.K. Srivastava, J.]