

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

FAO(MAT)No.6/2026
c/w
FAO(MAT) No. 7/2026

Date of pronouncement: 13.08.2026
Date of uploading: 17.08.2026

Sumit Nanda

.....Appellant

Through:- Mr. Supreet Singh Johal, Advocate

v/s

Riti Mahajan

..... Respondent

Through:- Mr. Pawan K Kundal, Sr. Advocate
with
Ms. Jagdeep Kour, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

14.08.2026

1. The parties to the present appeals were married on 20.07.2015. Out of the wedlock, a son, namely, Master Aadvik Nanda, was born on 22.02.2018. The parties are presently embroiled in a dispute concerning the guardianship and custody of the minor child.

2. The petitioner-husband is stated to be employed in the software industry at Pune, Maharashtra, and is earning sufficiently to meet the financial requirements of the minor child. The respondent-wife was earlier employed with Larsen & Toubro and, in connection with her employment, remained in Denmark from 13.04.2019 to 28.07.2019. Thereafter, in the

year 2021, she was selected to pursue an MBA programme at the University of British Columbia, Canada.

3. According to the respondent-wife, the petitioner-husband extended financial assistance to enable her to pursue the aforesaid course and continued to support her from time to time. She completed her postgraduate course in Canada in July 2022. Thereafter, she was unable to secure suitable employment for some time. The minor child, being of tender age, continued to remain in India.

4. The respondent-wife subsequently obtained permanent resident status in Canada. According to her, the relationship between the parties remained cordial until the year 2022 and, during that period, they had mutually contemplated settling in Canada. She asserts that, with the assistance and support of the petitioner-husband, she purchased a residential property in Canada by raising a substantial loan. According to her, the petitioner thereafter became reluctant to shift to Canada, inter alia, on the ground that the education of the minor child would be adversely affected. Consequently, the respondent continued to travel between India and Canada.

5. In February 2024, the respondent-wife took possession of the house in Canada and returned there on 04.02.2024. In the meantime, the minor child, who had initially been residing with the maternal grandparents at Jammu, was taken by the petitioner-father to Pune sometime in the year 2022. The respondent asserts that on 30.10.2023, the petitioner had agreed to permit her to take the minor child to Canada; however, despite the

requisite visa having been obtained, neither the petitioner nor the child ultimately travelled to Canada.

6. In January 2024, the child was admitted to a school at Pune. According to the respondent-wife, the relationship between the parties deteriorated substantially from August 2024 onwards. She returned to India in the year 2025 and instituted proceedings before the trial Court seeking, inter alia, her appointment as guardian of the person of the minor and an injunction restraining the petitioner-husband from forcibly removing the child from her custody.

7. The petitioner-husband contested the proceedings. His principal contention was that the welfare and best interests of the child would be better secured if the child continued to reside with him in India. It was pleaded that, on account of the respondent having predominantly resided in Canada, she had gradually become disconnected from the petitioner as well as the minor child. It was further contended that the respondent had purchased immovable property in Canada by raising a substantial loan and that a significant part of her income was required to service the corresponding financial liability. According to the petitioner, these circumstances cast doubt upon her ability to independently meet the day-to-day requirements of the minor child in Canada.

8. The petitioner-husband also instituted separate proceedings seeking his appointment as guardian. Both petitions were, accordingly, taken up together by the trial Court.

9. During the pendency of the proceedings, the trial Court disposed of the respective interim applications and permitted the respondent-wife to take the minor child to Canada for a period of **two years**. The petitioner-father was granted liberty to interact with the child through video conferencing on alternate days for a period of at least five to ten minutes. It was further directed that, whenever the petitioner travelled to Canada, the respondent would facilitate his access to and interaction with the minor child for reasonable periods. The respondent was also directed to return to India along with the minor upon completion of the stipulated period of two years, without seeking any further extension.

10. Aggrieved of the aforesaid order dated 26.05.2026, the petitioner-husband has preferred the present appeals, being **FAO(MAT) Nos. 6/2026 and 7/2026**.

11. Heard learned counsel for the parties and perused the record.

12. Vide order dated 07.08.2026, the parties were directed to meet at Falak Restaurant, K.C. Residency, Jammu, and thereafter to appear before this Court along with the minor child on 10.08.2026. On the said date, the child was produced before the Court and was interacted with in Chambers.

13. During the interaction, the child appeared to be intelligent, well-mannered and capable of expressing his preferences. What emerged most prominently was his desire for the company and affection of both parents. When specifically asked whether he wished to go to Canada, the child appeared inclined to continue residing in India rather than relocate to Canada.

14. Learned counsel for the petitioner submits that the matrimonial relationship between the parties has deteriorated to such an extent that the respondent-wife intends to settle permanently in Canada. It is apprehended that the impugned order may effectively enable the respondent to remove the child beyond the territorial jurisdiction of the Indian Courts and that, once the child is taken to Canada, securing meaningful physical access to him may become exceedingly difficult for the petitioner.

15. It is further submitted that the respondent is presently without regular employment. According to the petitioner, she was working from home after returning from Canada in 2025 but has since lost her employment. It is, therefore, contended that she presently has no assured source of income and had herself stated before the trial Court that she intended to sustain herself from rental income generated from the property in Canada.

16. Ld. Sr. Counsel for the respondent-wife, on the other hand, supports the order passed by the trial Court. It is submitted that the arrangement is purely interim and permits the respondent to take the child to Canada only for a limited period of two years. Adequate safeguards have, according to the respondent, been incorporated in the order to preserve the petitioner's access to the child and to secure the return of the respondent and the minor to India upon expiry of the stipulated period.

17. During the course of hearing, learned counsel for the respondent fairly submitted that the respondent does not intend to remain in Canada indefinitely and requires some time to settle her financial affairs and

dispose of the property acquired there, which is subject to substantial financial liabilities. It is her case that the decision to acquire the property and contemplate settlement in Canada had originally been taken with the active financial and other support of the petitioner-husband, who has subsequently resiled from that understanding.

18. Allegations have also been made regarding the petitioner's association with another woman. According to the respondent, continuation of the child exclusively in the petitioner's custody would, in such circumstances, not advance the welfare and best interests of the minor. These allegations, however, are matters which would necessarily require proof during trial and cannot, at this interlocutory stage, be treated as established facts.

19. The proceedings before the trial Court have been instituted under Sections 7, 10, 17 and 25 of the Guardians and Wards Act, 1890, read with Sections 6 and 13 of the Hindu Minority and Guardianship Act, 1956.

20. Both parents are natural guardians of the child and have legitimate claims to his care and companionship. Such claims, however, cannot be adjudicated merely by balancing the competing rights of the parents. In all matters concerning custody and guardianship, the controlling and paramount consideration is the welfare and best interests of the minor child.

21. The Guardians and Wards Act, 1890 is intended not merely to regulate the physical custody of a minor but also to secure the protection of

the minor's health, maintenance, education and overall well-being. Questions of custody cannot, therefore, be determined on considerations of parental entitlement alone. A child is neither property nor a commodity to be divided between contesting parents. Matters affecting a child require sensitivity, compassion and a careful assessment of the child's emotional, educational, physical and psychological welfare.

22. Section 7 of the Guardians and Wards Act empowers the Court, where it is satisfied that the welfare of a minor so requires, to appoint a guardian of the person or property of the minor, or both. Section 4 defines a “guardian” as a person having the care of the person of a minor or of his property, or of both.

23. The provisions of the Guardians and Wards Act are secular in their operation. In *“ABC v. State (NCT of Delhi), (2015) 10 SCC 1”*, the Supreme Court reiterated the centrality of the welfare of the child in guardianship proceedings.

24. The Hindu Minority and Guardianship Act, 1956, on the other hand, governs questions of minority and guardianship amongst Hindus. As explained by the Supreme Court in *“Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228”*, the statutory scheme governing Hindu minority and guardianship has to be understood by reading the applicable enactments harmoniously.

25. Section 2 of the Hindu Minority and Guardianship Act specifically provides that its provisions are supplemental to, and not in derogation of, the Guardians and Wards Act. The two enactments must,

therefore, be read conjointly, always subject to the overriding consideration of the welfare of the minor.

26. Section 6 of the Act of 1956 recognises the father and, after him, the mother as natural guardians of a Hindu minor boy or unmarried girl, while providing that the custody of a child who has not completed the age of five years shall ordinarily be with the mother. The statutory designation of a natural guardian does not, however, confer an indefeasible right to custody. The ultimate inquiry remains as to what arrangement would best promote the welfare of the child.

27. Where both parents are otherwise fit, the Court is required to assess their competing claims in the context of the child's age, emotional bonds, educational needs, stability, existing environment, capacity of each parent to provide care, and, where the child has attained sufficient maturity, his or her preference. No single circumstance can be treated as conclusive.

28. In the present case, the parents of the petitioner-husband are stated to be no more, whereas the parents of the respondent-wife reside in Jammu. During the period when the respondent was pursuing higher studies and thereafter residing in Canada, the child remained with his maternal grandparents at Jammu until 2022, whereafter he was taken to Pune. At present, the child is stated to be residing at the maternal grandparents' house in Jammu and is attending school there.

29. The petitioner is employed at Pune and appears financially capable of bearing the expenses of the child. The respondent, though

presently without regular employment, is well qualified, holds permanent resident status in Canada and owns property there, albeit subject to substantial financial liabilities.

30. Ordinarily, an appellate Court would be slow to interfere with an interlocutory arrangement concerning custody, particularly where the final guardianship proceedings remain pending and the parties are yet to lead their evidence. The impugned order, therefore, requires interference only if the arrangement made by the trial Court is found, on the material presently available, not to advance the welfare of the child.

31. One circumstance assumes considerable significance. The respondent-wife remained in India for more than a year while pursuing the custody proceedings and is stated to have lost her employment during this period. Prior thereto, when she was pursuing her studies and employment in Canada, the child continued to reside in India under the care of his maternal grandparents and father, while the respondent-maintained contact with him through visits and virtual interaction.

32. The existing arrangement, therefore, demonstrates that the respondent has, for a considerable period, been able to maintain her relationship with the child despite residing abroad. Conversely, taking the child to Canada for two years at the present stage would entail removing him from the social, familial and educational environment in which he is presently settled.

33. The preference expressed by the child during interaction with the Court also cannot be altogether ignored. The child is about eight years of

age and appeared capable of articulating his wishes. His preference is not determinative by itself; nevertheless, it constitutes a relevant circumstance in assessing his welfare. He expressed an inclination to remain in India and, more importantly, a desire to enjoy the companionship of both parents.

34. The respondent has permanent resident status in Canada and owns immovable property there. She admittedly requires time to settle the financial liabilities associated with that property and, according to her own case, intends eventually to dispose of the same. In these circumstances, immediately relocating the child to Canada for two years would introduce substantial uncertainty into his present living and educational arrangements.

35. The apprehension expressed by the petitioner that meaningful access to the child may become difficult once the child is taken outside India cannot, in the peculiar facts of the present case, be dismissed as wholly unfounded. The safeguards incorporated by the trial Court undoubtedly seek to protect the petitioner's access; nevertheless, the practical difficulties inherent in enforcing physical access across international borders are also relevant while determining an interim custody arrangement.

36. The respondent may, therefore, first settle her property-related and other affairs in Canada. The question of any subsequent relocation of the child, if sought, can be considered on its own merits, keeping in view

the circumstances then prevailing and, above all, the welfare and best interests of the child.

37. The trial Court appears to have attached insufficient weight to the child's existing environment, his expressed preference, the continuity of his education and family relationships in India, and the uncertainty attendant upon his relocation to Canada for a limited period of two years. These considerations assume particular importance because the order under challenge is only an interim arrangement and the competing claims of the parties to guardianship and permanent custody are yet to be finally adjudicated upon evidence.

38. In the totality of the circumstances, this Court is of the considered view that permitting the respondent-wife, at this stage, to take the minor child to Canada for a period of two years would not advance the welfare and best interests of the child. The impugned arrangement would uproot the child from his presently settled environment despite his expressed inclination to remain in India.

39. It is clarified that the observations made herein are confined to the adjudication of the interim custody arrangement and shall not prejudice either party in the pending guardianship proceedings. The trial Court shall determine their respective claims independently, on the basis of the evidence led before it and uninfluenced by any observation touching upon the merits of the final custody dispute contained in this order. For the reasons recorded above, both appeals are allowed by setting aside the impugned order dated 26.05.2026.

40. The parties shall be at liberty to establish their respective claims regarding guardianship and custody before the trial Court in accordance with law. The trial Court shall endeavour to decide the proceedings expeditiously, bearing in mind that in matters concerning the custody of a minor child, prolonged uncertainty itself may operate to the detriment of the child's welfare.

41. The appeals stand ***disposed of***, along with all connected applications, if any.

(SanjayParihar)
Judge

JAMMU
13.08.2026
Sneha

<i>Whether the order is speaking:</i>	Yes
<i>Whether the order is reportable:</i>	Yes

