IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.290 of 2026
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Shagufta Yasmin aged about 25 Years W/O Md. Amir Khan, D/O Md. Zubair Khan, R/O - Millat Colony, Bahu Bazar, Near Bishap School, P.O. & P.S. - Lower Bazar, District - Ranchi (Jharkhand) **... ... Appellant**

Versus

Md. Amir Khan aged about 31 Years S/O Irfan Khan, R/O - Warsi Chowk, Manitola, Doranda, P.O. & P.S. - Doranda, District - Ranchi (Jharkhand). **... ... Respondent**

P R E S E N T
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

.....

For the Appellant : Mr. Kripa Shankar Nanda, Advocate
For the Respondent : Mr. A.K.Sahani, Advocate
: Ms. Trishna Sagar, Advocate

.....

C.A.V. on 07.08.2026 Pronounced on 07/09/2026

Per Sujit Narayan Prasad, J.

Prayer:

1. The instant appeal, under Section 19(1) of the Family Court Act, 1984, is directed against the judgment dated 19.05.2026 passed by learned Additional Principal Judge, Additional Family Court-II, Ranchi in Original Suit (Guardianship) No. 312 of 2025, whereby and whereunder the petition filed by the respondent under Sections 7 and 25 of the Guardians and Wards Act, 1890 for custody of minor children has been allowed *ex parte* and the appellant has been directed to hand over the custody of the minor girl aged about 4 years to the father, respondent herein within a week.

Factual Matrix

2. The case of the petitioner (respondent herein) as narrated in the petition before the learned family court in brief is that the petitioner Md. Amir Khan (respondent herein) is father and the natural guardian of her daughter namely Insha Amir.

It has been stated that marriage of the petitioner was solemnized with respondent (appellant herein) on 06.09.2020 according to Muslim Rites and Customs at Ranchi. Out of the wedlock one female child has been born on 11.01.2022 namely Insha Amir. After the birth of female child, the wife (appellant herein) of the petitioner, left the matrimonial house on 02.03.2022 with her infant daughter.

It has further been stated petitioner's daughter is currently residing at her maternal Grandfather's house without any proper care.

It has further been alleged that his daughter's eye was injured as a result of being beaten by the opposing party, and that the maternal uncle, Mahmood Alam Khan, who had previously murdered his wife.

It has been stated that the petitioner several times approached his wife and requested her to return to her matrimonial house with his daughter but opposite party and her maternal uncle refused to send her to sasural.

It has further been stated that the petitioner after being fully harassed submitted a written report to the S.S.P. Ranchi and stated apprehension of implication in false and fabricated case punishable under Section 498 A of the I.P.C. since the petitioner heard the conversation going on in between the respondent and her family members mainly of snatching the house of mother of the petitioner on the threat of implicating his family in a dowry case.

It has been stated that petitioner lodged an informatory petition and mentioned all the acts and behaviours of the opposite party and her family members.

It has been alleged that opposite party/wife ran away with a boy just one week of the marriage of the petitioner. After leaving the house of the petitioner the respondent was seen roaming with different boys all the times.

It has been stated that maternal uncle of the opposite party is criminal type where the wife and daughter of the petitioner is residing. The maternal uncle of the opposite party runs a mobile repair shop and has income of Rs.10,000/- to 12,000/- per month. A married sister of the maternal uncle of the opposite party is also residing with them.

In the given factual matrix, the petitioner (who is the respondent herein) instituted Original Suit (Guardianship) No. 312 of 2025, wherein a categorical prayer was advanced

that custody of the minor child, namely, Insha Amir, be entrusted to him, being the natural father, on the premise that such custody would best serve the welfare, care, and future upbringing of the child.

3. Notice was issued to the respondent (appellant herein) but she failed to appear and, therefore, the matter was heard *ex-parte.*

4. The learned family court, on the basis of the claim of the petitioner, framed the following issues: -

(i) Whether the petitioner has valid cause of action to file this suit and is maintainable in its present form?

(ii) Whether the petitioner is entitled to be declared guardian of the minor child?

(iii) Whether the petitioner is entitled to get the custody of minor children as prayed for?

(iv) Whether the petitioner is entitled to get any other relief, in fact and circumstances of the case?

5. In order to prove its case, the petitioner/respondent herein has examined four witnesses including himself, namely -

P.W. 1 Md. Amir Khan, the petitioner himself.

P.W. 2 Md. Irfan Khan.

P.W. 3 Kashish Khan.

P.W. 4 Sarwary Kausar

6. The learned family court, based upon consideration of principle of handing over the children, and the evidence led on behalf of petitioner, has allowed the suit directing the respondent (appellant herein) to handover the custody of minor girl to the petitioner-father (respondent herein) within a week, against which the present appeal has been preferred by the appellant - mother.

Submission of learned counsel for the appellant:

7. The learned counsel for the appellant has submitted that the judgement passed by the learned Additional Principal Judge, Additional Family Court-II, Ranchi, is perverse without application of judicial mind and against the record of the case and, therefore, fit to be set aside.

8. The learned counsel for the appellant has further submitted that the judgement passed by the learned Additional Principal Judge, Additional Family Court-II, Ranchi, is based on conjecture and surmises and without any legal evidence and, therefore, not sustainable in the eye of law and fit to be set aside.

9. Learned counsel has submitted that the learned Additional Principal Judge, Additional Family Court-II, Ranchi, has failed to appreciate that no proper opportunity of being heard has been given to her before declaring ex-parte.

10. It has been submitted that there is no evidence on record to show that any notice has been served to the present

appellant in connection with Original Suit (Guardianship) No.312/2025.

11. It has further been submitted that learned Additional Principal Judge, Additional Family Court-II, Ranchi, has further failed to appreciate that the appellant is regularly appearing before Family Court for realisation of maintenance amount as ordered in Original Maintenance Case No.391/2023, which is evident from the order-sheet of Original Maintenance Case No.391/2023.

12. Learned counsel for appellant has further contended that the learned Additional Principal Judge, Additional Family Court-II, Ranchi, has failed to appreciate that the appellant was regularly appearing to collect some of the amount paid by the respondent/hsband in his court but the petitioner (respondent herein) has never informed with respect to the pendency of present case though there are several conciliations between the parties.

13. It has further been contended that learned Additional Principal Judge, Additional Family Court-II, Ranchi, has further failed to appreciate age of the victim girl which is below 6 Years and, therefore, as settled position of law no custody of child below 6 Years can be given to father.

14. It has been submitted that the learned Family Court has further failed to consider the fact that no proper opportunity has been given to appellant nor any service

report has been received by the court with respect to the service of the notice.

15. It has also not been taken into consideration that the appellant has ever received any notice and even there is no proper order has been passed to declared him ex-party and there is no evidence in which newspaper the notice was published.

16. The learned counsel based upon the aforesaid grounds has submitted that the impugned order, therefore, is perverse and not sustainable in the eyes of law which requires interference by this Court.

Submission of learned counsel for the respondent:

17. *Per contra* the learned counsel appearing for the respondent-husband while defending the impugned judgment has submitted that there is no perversity in the impugned judgment as the learned Family Judge has rightly considered the entire issue for better upbringings of the minor child and has passed the order impugned and, as such, the same may not be interfered with.

18. It has further been contended that it is evident from perusal of order-sheet, that despite service of notice through post and paper publication, having full knowledge about the pendency of the suit, the appellant did not choose to appear and contest the petition, therefore the contention of the appellant that she had not received any notice and that the

case was fixed ex-parte hurriedly, is apparently false and baseless, as would be evident from the entire order sheet.

19. Further it has been contended that in spite of full knowledge about the pendency of Original Suit (Guardian) No. 312 of 2025, no step was taken by appellant and therefore, the case was taken up for ex-parte hearing as such the plea of appellant about non-adherence of the principle of natural justice is not fit to be accepted.

20. It has been contended that the issue of welfare is well to be looked into by the respondent, who is biological father of the minor child and under his guardianship the minor child is being looked after properly.

21. Learned counsel has submitted that the learned Family Judge on consideration of the aforesaid fact has allowed the custody of the minor to be given in favour of the petitioner/father (respondent herein), hence, the impugned judgment needs no interference.

Analysis

22. We have heard the learned counsel appearing for the parties, gone through the impugned judgment/order as well as the Trial Court Records.

23. It is evident from factual aspect that the petitioner Md. Amir Khan (respondent herein) asserted before the learned Family Court that he is the father and natural guardian of his minor daughter, Insha Amir, born on 11.01.2022 out of his marriage solemnized with the appellant on 06.09.2020 at

Ranchi according to Muslim rites. He alleged that soon after the child's birth, on 02.03.2022, the appellant left the matrimonial home with the infant and has since been residing at her maternal grandfather's house. The petitioner claimed that the child is not receiving proper care there, and further alleged that the child suffered an eye injury due to being beaten by the opposite party. He also accused the maternal uncle, Mahmood Alam Khan, of having a criminal background, including the alleged murder of his own wife, and expressed concern about the environment in which his daughter is being raised.

24. The petitioner further stated that the maternal uncle, who runs a mobile repair shop with modest income, is of criminal disposition, and that the environment at the maternal grandfather's house is unsuitable for the welfare of his daughter. On this basis, he instituted Original Suit (Guardianship) No. 312 of 2025, praying for custody of Insha Amir, contending that as her natural father, entrusting her to him would best serve her welfare, care, and future upbringing.

25. Pursuant to the institution of Original Suit (Guardianship) No. 312 of 2025, since the appellant had not entered appearance before the learned Family Court, consequently, the matter proceeded ex parte and was heard in the absence of the respondent.

26. The learned Family Court, upon consideration of the evidence adduced by the petitioner, proceeded to allow the guardianship suit. By the impugned order, the Court directed the respondent (appellant herein) to hand over custody of the minor female child Insha Amir, to the petitioner-father (respondent herein) within a period of one week.

27. Aggrieved thereby, the present appeal has been instituted by the appellant-mother assailing the said judgment and direction.

28. The appellant's counsel has assailed the impugned judgment of the learned Additional Principal Judge, Family Court-II, Ranchi, as being perverse, and was rendered ***ex parte*** without affording proper opportunity of hearing. The learned Counsel for the appellant has emphatically contended that no proof of service of notice exists, nor any valid mode of publication of notice has been established. It is contended that the appellant was regularly appearing in Original Maintenance Case No. 391/2023, as evident from the order-sheet, and was attending conciliations, yet was never informed of the pendency of the guardianship suit. The appellant emphasizes that the minor girl, being below six years of age, could not legally be entrusted to the father, as settled law accords preferential custody to the mother in such cases.

29. *Per contra* the learned counsel for respondent has defended the impugned judgment by submitting that the

Family Court rightly considered the welfare and future upbringing of the minor child and, therefore, no perversity can be attributed to the order. It is urged that the order-sheet clearly reflects service of notice upon the appellant both by post and paper publication, and despite full knowledge of the proceedings she chose not to contest, rendering her plea of non-service and violation of natural justice baseless. Learned Counsel further contends that the appellant deliberately abstained from participating in the guardianship suit, and hence the *ex parte* hearing was justified and the Family Court's direction to hand over custody to the petitioner-father was proper and requires no interference.

30. In the backdrop of the aforesaid factual matrix, the pivotal issue that now arises for determination before this Court is *whether the learned Family Court was justified in proceeding ex parte against the appellant in a matter as sensitive and delicate as the custody of a minor female child, aged about four years, thereby depriving the appellant of an effective opportunity of hearing.*

31. The principal ground urged by the appellant-wife is that the impugned judgment and decree have been rendered *ex parte,* and accordingly this Court has refrained from entering into the merits of the case. The focus of our scrutiny is confined to the question whether, in a matter as sensitive as the custody of a minor female child aged about four years, wherein the welfare of the child is the paramount

consideration the passing of an ex-parte judgment can be said to advance the cause of substantial justice.

32. It is admitted fact that the aforesaid Original Suit (Guardianship) No.312/2025, was filed on 19/04/2025, under Section 7 and 25 of Guardian and Wards Act, 1890 for custody of minor girl child Insha Amir aged about 4 years. From order sheet it is evident that thereafter the said suit was admitted on 22/04/2025, by the learned Principal Judge Family Court Ranchi and, thereafter, same was transferred to the Additional Principal Judge, Additional Family Court-II, Ranchi vide an order 22/04/2025, and, thereafter, the direction was passed to filed requisite of notice and office was directed to issue the notice.

33. The notices were filed on 29/04/2025 and, thereafter, case was fixed on 05/05/2025 and, thereafter, the petitioner (respondent herein) has filed a track report on 05/05/2025, informing that the notices were served and filed postal receipt however the court has directed to issue notice through court and case was fixed on 09/06/2025, for service report and next date was 09/06/2025, and, thereafter, an application was filed on 09/07/2025, for paper publication and case was fixed on 11/08/2025 and on 11.09.2025 copy of publication of notice was filed and thereafter, case was fixed for *ex-parte* on 13/10/2025.

34. From the aforesaid factual aspect, it appears that in a hurried manner the case was declared Ex-parte without following the mandate of Civil Procedure Code 1908.

35. In the aforesaid context it needs to refer herein that the fact remains that the court of law can proceed by setting the proceeding *ex parte* but before doing that the effective steps to secure the appearance of the contesting party (s) is mandatorily to be taken which is lacking in the present case which is to be based upon the procedure as laid down in the Code of Civil Procedure. But without following the mandate of the procedure as laid down in the Code of Civil Procedure in entirety, the proceeding has been set *ex parte* vide order dated 13.10.2025 and thereafter the impugned judgment has been passed on 19.05.2026.

36. Further, it needs to refer herein that the present appellant has filed Original Maintenance Case No.391/2023, in which the final order of the maintenance was passed on 23rd April, 2025 and during the pendency of the Original Maintenance Case No.391/2023, the Original Suit (Guardianship) No.312/2025 was filed by petitioner/respondent, even then she had not been informed with respect to the pendency of said suit i.e. the Original Suit (Guardianship) No.312/2025 though she was regularly attending the court along with her child.

37. It is pertinent to record that the petitioner/respondent has not been making regular payment of the maintenance

amount awarded in favour of the appellant, which compelled her to file an application dated 28.07.2025 for realization of the arrears. In that proceeding, notices were duly issued and the appellant has been regularly attending the court, even collecting certain sums tendered in cash by the petitioner/respondent. It is the case of the appellant that despite such regular attendance; she was never informed about the pendency of the guardianship suit which reflects the ulterior motive of the petitioner/respondent.

38. Thus, from perusal of entire factual aspect, it is apparent that no adequate and proper opportunity was afforded to the appellant to appear, in such a sensitive issue of custody of minor girl child aged about 4 years.

39. It needs to refer herein that Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of **Sugandhi v. P. Rajkumar, (2020) 10 SCC 706.**

40. In the case of ***Jasraj Inder Singh v. Hemraj Multanchand, (1977) 2 SCC 155*** **the** Hon'ble Apex court has observed that "Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and

harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution".

41. Justice is nothing but a manifestation of the truth. It is truth which transcends every other action and when procedural law stands in the way of the truth, the Court must find a way to circumvent it. Similarly, when substantive law, as it appears, does not facilitate the emergence of the truth, it is the paramount duty of the Court to interpret the law in light of its teleos. Such an exercise is warranted in a higher degree, particularly while considering a social welfare legislation, reference in this regard be made to the judgment passed by the Hon'ble Apex Court in the case of ***Om Prakash @ Israel @ Raju @ Raju das Vs. Union of India & Anr. 2025 INSC 43.***

42. At this juncture it needs to refer herein that the word 'perverse' has been interpreted by the Hon'ble Apex Court which means that there is no evidence or erroneous consideration of the evidence. The Hon'ble Apex Court in ***Arulvelu and Anr. vs. State [Represented by the Public Prosecutor] and Anr., (2009) 10 SCC 206*** while elaborately discussing the word perverse has held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration

irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> **"24.** The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.
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> **25.** In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.
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> **26.** In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.
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> **27.** The expression "perverse" has been defined by various dictionaries in the following manner:
>
> 1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn.

> "Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."
>
> 2. Longman Dictionary of Contemporary English, International Edn.
>
> Perverse.—Deliberately departing from what is normal and reasonable.
>
> 3. The New Oxford Dictionary of English, 1998 Edn.
>
> Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.
>
> 4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.)
>
> Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.
>
> 5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn.
>
> "Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.""

43. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

44. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

45. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

46. This Court, upon due consideration of the legal connotation of the term *"perversity"* and in light of the foregoing discussion, is of the considered view that the impugned judgment fall squarely within the ambit of perversity.

47. The learned counsel for the appellant has further contended that the learned Family Judge has deviated from the settled position of law which unequivocally provides that custody of a child below six years of age ordinarily cannot be entrusted to the father. It is urged that even on this fundamental ground, the impugned judgment suffers from a patent error, rendering it perverse and unsustainable in the eye of law.

48. Since this Court has consciously restrained itself from delving into the merits of the controversy and has confined its scrutiny to the propriety of the impugned judgment having been passed *ex parte,* yet, inasmuch as the plea of perversity has been raised on the ground of deviation from the settled

legal position, this Court deems it fit and proper to advert, by way of passing remarks, to certain authoritative pronouncements and established principles of law governing custody of minor children.

49. In the Modern Text Books on the Muslim law, such as Mulla's principles of Mahomedan Law, Chapter 18, headed as Guardianship of Person and Property is divided into three parts: A.—Appointment of Guardians: B.—*Guardians of the Person of a Minor*: and C.—*Guardian of the Property of a minor*.

50. Part B is sub-divided into three parts 8(i) *Custody of boys under seven and of girls under the age of puberty*, (ii) *Custody of boys over seven and of girls who have attained puberty and* (iii) *Custody of illegitimate Children*.

51. Under the first of these, paragraph 352 defines and describes the mother's right to custody of infant children, called *Hizanat*. Thus, the entire chapter relating to guardianship of person of a minor speaks of *Hizanat*.

52. The term “Guardianship” (Wilayat) connotes the guardianship of a minor. Guardianship of a minor person means an overall supervision of the minor's personality. It means care and welfare of the child including the liability to maintain it. It is more than simply custody of the child upon a certain age. Under Muslim law, it is called HIZANAT. Although mother is not the natural guardian of the child but she is entitled (1) in Hanafi law to the custody (hizanat) of her male child until he has completed the age of seven years and of her

female child until she has attained puberty and (2) According to Shiah Ithna Ashari Law, the mother has the right to the custody of a male child until he attain the age of two years and of a female child until she attains the age of seven years. In Shiah Ithna Ashari law after the child attains the age, as stated above, the father has the right to the custody of the child.

53. The mother has a preferential right to the custody of her children, known as Hizanat. For a male child, the mother's right to custody extends until the child completes seven years of age. For a female child, the mother's right continues until the daughter attains puberty. This right is not absolute and is subject to the paramount consideration of welfare of the child.

54. It is settled position of law mother can exercise guardianship of the person of a minor daughter (Hizanat) till the girl attains puberty after which the guardianship of the person is that of the father if the girl is unmarried and that of the husband if she is married' and has gone to her husband, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Valia Peedikakkandi Kutheessa Ummaand Others Vs. Pathakkalan Naravanath Kumhamuand Others 1964 SCR (4) 549.***

55. But this right is not absolute and is subject to the paramount consideration of welfare of the child as per the mandate of Section 17 of the Guardians and Wards Act,

1890. In matters of custody, the welfare of the children is the sole and single yardstick by which the court shall assess the comparative merit of the parties contesting for custody. Stability and consistency in the affairs and routines of children is also an important consideration for the courts while deciding the custody of the child.

56. On the basis of the discussion made hereinabove, this Court is of the considered view that the issue of custody of a minor child cannot be adjudicated in the absence of participation by both parties. In matters where the paramount consideration is the welfare of the child, determination cannot be undertaken ex parte, for without hearing one of the stakeholders, the Court concerned is deprived of the necessary perspective to render a just and equitable decision.

57. Since this Court has already recorded in the preceding paragraphs, the impugned judgment, having been passed ex parte, suffers from perversity owing to non-adherence to the mandate of the Code of Civil Procedure, particularly Order V, inasmuch as the proper course was not followed to secure the appearance of the appellant-mother, therefore this Court is of the view that such a decree cannot be permitted to stand and exercising appellate jurisdiction, and having found sufficient cause to interfere, this Court deems it just and proper to set aside the impugned judgment.

58. Accordingly, the judgment dated 19.05.2026 passed by learned Additional Principal Judge, Additional Family Court-II, Ranchi in Original Suit (Guardianship) No. 312 of 2025 is hereby quashed and set aside.

59. Consequently, the Original Suit (Guardianship) No. 312 of 2025 decided by the learned Additional Principal Judge, Additional Family Court-II, Ranchi is hereby revived from the stage of notice, so that the dispute may be adjudicated afresh on its own merits in accordance with law.

60. The appellant is present being represented through her counsel has undertaken before this Court that she will put her appearance before the learned Family Judge within 4 weeks.

61. The learned Family Judge is to issue notice upon the respondent herein, who was petitioner to the original suit and thereafter proceed to decide the matter on merit in accordance with law, as expeditiously as possible.

62. It is made clear that the learned Additional Principal Judge, Additional Family Court-II, Ranchi, while adjudicating the issue will not be prejudiced by any observation contained in this order.

63. Before parting with this order, it is necessary to reiterate that it is the statutory duty of this Court, while exercising appellate jurisdiction, to scrutinize the legality and propriety of the findings recorded by the Family Court. Where infirmities are found in the impugned judgment, it becomes

incumbent upon the appellate Court to correct the same and to restore the position of the parties in accordance with law, thereby ensuring that justice is duly served.

64. It is hereby directed that, in the event the appellant-wife has already handed over custody of the minor child to the respondent-father in compliance with the directions contained in the impugned judgment of the learned Family Court, such custody shall forthwith stand restored to the appellant-wife. This direction is necessitated to ensure that the appellant is not prejudiced by compliance with an order which now stands set aside, and further, to safeguard the paramount consideration of the welfare of the minor child pending fresh adjudication.

65. Accordingly, the instant appeal is hereby disposed of with aforesaid direction and observation

66. Pending I. A(s), if any, stand disposed of.

(Sujit Narayan Prasad, J.)

I agree.

(Sanjay Prasad, J.) **(Sanjay Prasad, J.)**

Dated : 07/09/2026

Birendra /**A.F.R.**

Uploaded on 07/09/2026