



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

FAMILY COURT APPEAL NO. 58 OF 2025

Machindra Kakaji Takle
Age : 53 years, Occ : Agri.,
R/o Rohilagad, Tq. Ambad,
Dist. Jalna.

...APPELLANT

~VERSUS~

Anil Ganeshrao Karhale
Age : 28 years, Occ : Agri.,
R/o Ghetoli,
Tq. & Dist. Jalna.

...RESPONDENT

-
- Mr.Bhushan V. Virdhe, Advocate for appellant
Mr. Kiran D. Jadhav a/w Mr. V.L. Bhange, Advocate
for respondent.
-

**CORAM : SANDIPKUMAR C. MORE &
VAISHALI PATIL-JADHAV, JJ.**

RESERVED ON : SEPTEMBER 29, 2026

PRONOUNCED ON : OCTOBER 16, 2026

J U D G M E N T : [Per Vaishali Patil-Jadhav, J.]

. By way of the present appeal filed under Section 19 of the Family Courts Act, 1984, the appellant-Maternal Grandfather (original respondent) is challenging the judgment and order dated 30.06.2025 passed by the learned Judge, Family Court, Jalna, (hereinafter referred to

as “the Family Court”) in Petition No. D-10/2022, whereby the Family Court allowed the petition filed by the respondent-father (original petitioner) under Section 25 of the Guardians and Wards Act, 1890 read with Section 7(1)(g) of the Family Courts Act, 1984, and directed the appellant to hand over the custody of the minor girl child, Arohi, (hereinafter referred to as “the child”) to the respondent. However, it is a matter of record that as on today the custody of the child is with her maternal grandfather i.e. the present appellant.

2. The appellant has challenged the aforesaid judgment of the Family Court on various grounds.

Before dealing with those grounds, it would be necessary to cull out the circumstances under which the guardianship petition was filed by the respondent – father:-

Appellant is the father-in-law of the respondent and the maternal grandfather of the child. Respondent is the biological father of the child. The marriage between the appellant’s daughter, Nikita, and the respondent was solemnized on 10.03.2021, in accordance with Hindu rites and customs. Out of the said wedlock, the child, Arohi, was born on 06.02.2022. After the marriage, respondent and

Nikita cohabited at the respondent's native place for some time and thereafter shifted to Saraswat Nagar, Gangapur-Jahagir MIDC Shendra, Chh. Sambhajinagar. During this period, they lived together as husband and wife, and Nikita conceived. On 06.02.2022, Nikita gave birth to the child, at the appellant's house. Respondent went to see his wife and the new-born baby on the very second day. The respondent's parents went to see them on 01.03.2022 and also gifted Nikita a gold ring.

3. The marital life between Nikita and the respondent was short-lived. On 04.03.2022, she suffered severe chest pain, and unfortunately passed away due to cardiac arrest. After the death of Nikita, the respondent stayed at Rohilagad, the maternal house of his wife, from 05.03.2022 to 18.03.2022 and performed all post-death ceremonies. After the ceremonies, he wanted to proceed to his house along with the child, but the appellant and his family members requested him to keep the child with them for a few days. On 21.03.2022, the respondent registered the name of the child for obtaining an Aadhaar card and went to take her back. However, the appellant and his

family members refused to hand over the custody of the child.

4. The respondent thereafter made several requests and took necessary steps, including approaching the police authorities and sending legal notices, to secure the custody of the child, but the appellant refused to hand over custody. Ultimately, the respondent filed a petition, bearing Petition No. D-10/2022, before the Family Court at Jalna, seeking custody of the child. The appellant appeared in the said petition and filed his written statement at Exh.18, resisting the petition.

5. The Family Court framed issues at Exh.20 and, after hearing both parties, passed an order dated 30.06.2025 in Petition No. D-10/2022, thereby allowing the application filed by the respondent under Section 25 of the Guardians and Wards Act, 1890, read with Section 7(1)(g) of the Family Courts Act, 1984. The Court directed the present appellant to hand over the custody of the child to the respondent within a period of 60 days from the date of the order. It was further directed that the appellant, his wife, son, and daughter would be entitled to meet the child on every Sunday between 12.00 pm to 04.00 pm at the

place of the respondent, and the respondent was directed to make necessary arrangements for the visitation at his place.

Being aggrieved and dissatisfied with the said judgment and order, the appellant has preferred the present appeal.

6. Learned advocate for the appellant submitted that the learned Family Court has failed to consider the welfare and best interest of the child while granting her custody to the respondent-father. It was submitted that the respondent-father has no independent means of income; he has not produced any documentary evidence to establish his employment or a regular source of income. It was further submitted that the respondent resides separately from his parents, and that there is no responsible person at his house to take care of the child; the respondent is addicted to alcohol and thus, he is incapable of providing proper care, education, emotional support and basic necessities to the minor child.

It was further submitted that the appellant's house provides a stable and secure environment for the

child. The child has been residing with the appellant and his family since her birth and has developed a deep emotional bond with them. The appellant has sufficient means to provide for the upbringing and welfare of the child and is physically fit and emotionally willing to care for the child.

Learned advocate lastly prayed that the impugned judgment and order dated 30.06.2025 be quashed and set aside, and that the custody of the child, Arohi, be restored to the appellant-maternal grandfather.

In support of his submissions, learned advocate has relied upon the judgment of the Karnataka High Court in ***D. Manjunatha Vs. Lakshmana & Ors., Miscellaneous First Appeal No. 100312 of 2024*** dated 12.11.2024.

7. Per-contra, learned advocate for the respondent supported the judgment and order passed by the learned Family Court and submitted that the same has been passed after due appreciation of the evidence on record and is in consonance with the welfare of the child. It was submitted that the respondent is the biological father of the

child and, being the natural guardian, is entitled to her custody.

Learned advocate further submitted that the respondent is earning and is having stable financial income. He is engaged in packaging work at Chhatrapati Sambhajanagar, and earns approximately Rs. 50,000/- to Rs. 60,000/- or more per month. The respondent also has a 1/2 share in the ancestral agricultural land admeasuring approximately 5 acres, situated at Dolhara, Tq. Partur, Dist. Jalna. It was further submitted that the respondent resides in a joint family at Chhatrapati Sambhajanagar, along with his parents, brother, sister-in-law and their children. He is not addicted to alcohol or bad vices as alleged by the appellant.

Learned advocate lastly submitted that the respondent is willing to maintain the child's relationship with her maternal grandparents and relatives, he has no intention of depriving the child of the affection of her maternal family and prayed for dismissal of the appeal.

In support of his submissions, learned advocate has relied upon the judgments in **Gautam Kumar Das Vs. NCT of Delhi & Ors.**, reported in **2024 DGLS (SC) 762**;

and ***Vivek Kumar Chaturvedi & Anr. Vs. State of U.P. & Ors.***, reported in ***2025 INSC 159***.

8. Heard learned advocate Mr. Bhushan V. Virdhe for the appellant and learned advocate Mr. Kiran D. Jadhav a/w advocate Mr. V. L. Bhange for the respondent. We have perused the entire documents on record filed by the parties, the impugned judgment and order dated 30.06.2026 and the various citations upon which the learned counsel for the appellant and respondent have placed reliance.

9. The short question that arises for our consideration is whether the learned Family Court was justified in directing the appellant to hand over the custody of the minor girl child, Arohi, to the respondent-father, and whether the said decision is in the welfare of the child?

10. Before advertng to the merits of the present appeal, it would be apposite to reproduce Section 6 of the Hindu Minority and Guardianship Act, 1956 and Section 17 of the Guardians and Wards Act, 1890 :-

“Section 6 : Natural guardians of a Hindu minor.-

The natural guardians of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her undivided interest in joint family property), are-

(a) in the case of a boy or an unmarried girl-the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b)

(c)"

“Section 17. Matters to be considered by the Court in appointing guardian.- (1) *In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the

minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

*(4) [****]*

(5) The Court shall not appoint or declare any person to be a guardian against his will."

11. Before we proceed further, it is also necessary to understand and dwell upon the doctrine of ***parens patriae*** as, in custody matters, the welfare of the minor is the paramount consideration.

The doctrine of *parens patriae*, which means “**parent of the country**,” is a legal principle that confers upon the State the role of a guardian for those who are unable to protect themselves, particularly minors. In the context of child custody disputes, this doctrine is the foundation upon which courts exercise their jurisdiction to decide the welfare of a child. It empowers the court to look beyond the mere legal rights of the parties and act in the best interests of the child, who is the ultimate beneficiary of

any custody arrangement. The court, as *parens patriae*, is not merely an adjudicator of the claims of competing parties but is required to ensure the overall well-being i.e., physical, emotional, educational, and moral of the minor. This principle is reflected in Section 17 of the Guardians and Wards Act, 1890, which mandates that in appointing a guardian, the court shall be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor. Thus, the doctrine of *parens patriae* is not intended to defeat the rights of a natural guardian; rather, it operates to ensure that those rights are exercised in a manner that serves the paramount interest of the child.

12. It is also important to take note of some of those decisions of the Hon'ble Apex Court which have a bearing on the issue at hand, wherein the legal principles applicable to the custody of a minor child have been laid down.

13. In the land-mark case of ***Rosy Jacob Vs. Jacob A. Chakramakkal*** reported in ***AIR 1973 SC 2090***, the Hon'ble Supreme Court laid down the factors which need to

be considered in custody cases of children, wherein the principal question before the Supreme Court was whether the husband's application for the custody of the children under Section 25 of the Guardians and Wards Act, 1890, was maintainable, and if so, what considerations the Court should bear in mind while exercising its discretion regarding the custody of children.

The Hon'ble Supreme Court, while allowing the appeal, held that the object of the Guardians and Wards Act is not merely the physical custody of the minor, but the protection of the ward's health, maintenance and education, and that the court's paramount duty is to secure the child's welfare. The controlling consideration governing the custody of the children is the welfare of the children concerned and not the right of their parents. The Court, while exercising its discretion, should consider all relevant facts and circumstances so as to ensure the welfare of the children.

14. In the case of ***Gautam Kumar Das Vs. NCT of Delhi and Others***, reported in ***(2024) 10 SCC 588***, the appellant-father, the only surviving biological parent of his minor daughter, had handed over her custody to his sister-

in-law under compelling circumstances as his wife passed away just ten days after the childbirth and shortly thereafter, his father also died due to Covid-19. Subsequently, upon his remarriage, when he sought the custody of his minor daughter, the same was refused.

The Hon'ble Supreme Court, while allowing the appeal observed that in matters of custody of minor children, the paramount welfare of the child is to be seen. It was further observed that merely because, due to unfortunate circumstances, the sister-in-law was given temporary custody of the minor child the same cannot be a ground to deny the custody of the minor child to the appellant, her only natural guardian. It was further observed that the child should live with her natural family and that the father was educated, employed, and capable of providing better care and education. The Court restored the child's custody to the father, while permitting the sister-in-law visiting rights.

15. In the case of ***Tejaswini Gaud and Others Vs. Shekhar Jagdish Prasad Tewari and Others***, reported in **(2019) 7 SCC 42**, the child had gone into the custody of

the appellants (uncle and aunt) in unavoidable circumstances, that is, due to the illness of his mother and father. When the respondent-father filed a petition, the High Court directed the appellants to hand over the custody of the minor child to him.

The Hon'ble Supreme Court, while upholding the order of the High Court, observed that the appellants did not have any authority in law to retain the custody of the minor child. Under Section 6 of the Hindu Minority and Guardianship Act, 1956, the father was the natural guardian of the minor child and had the legal right to claim custody of the child. The father had neither abandoned nor neglected the child. Mere care by relatives for some time could not defeat that right. The Court accordingly, restored the child's custody to the father.

16. Now, adverting to the facts of the present case, it is an admitted position that the respondent is the biological father and natural guardian of the minor child, Arohi, born on 06.02.2022 out of his lawful wedlock with deceased Nikita. The unfortunate demise of Nikita on 04.03.2022, due to cardiac arrest, occurred when the minor child was

hardly one month old and was at her maternal home. It is not the case of the appellant that there was any matrimonial discord between the respondent and the deceased Nikita. On the contrary, the evidence on record shows that the respondent had counselled his wife to stay with him at Chhatrapati Sambhajanagar for childbirth, but she was firm on going to her maternal house. The respondent attended the post-death ceremonies and stayed at the maternal house from 05.03.2022 to 18.03.2022. When he was taking his daughter with him, the appellant and his family members requested him to leave the child with them for a few days, which request was agreed in good faith. However, subsequently, the custody of the daughter was not handed over to him after repeated requests. The respondent thereafter made various efforts to obtain the custody of his own daughter, including approaching the police authorities and issuing legal notices. This conduct clearly demonstrates that the respondent never abandoned his daughter and that the child came into the custody of the appellant only due to compelling and unfortunate circumstances.

17. Respondent – father has filed affidavit-in-reply as well as affidavit of assets and liabilities and has produced on record the bank account statement, documents such as 7/12 extract of agricultural land, copies of complaints filed on 26.05.2022 and 01.06.2022 with the Superintendent of Police and other authorities for seeking custody of the child and photographs of the minor girl child. Upon perusal of the said affidavit, it is clear that he is earning a substantial income of approximately Rs.50,000/- to Rs.60,000/- per month from his packaging job work at Chhatrapati Sambhajanagar. He also has a share in 5 acres ancestral agricultural land bearing Gat No.108 situated at Dolhara, Tq. Partur, Dist. Jalna. The respondent resides in a Row House at Chhatrapati Sambhajanagar with his parents, brother sister-in-law and their children.

18. The appellant-grand father in his cross-examination has admitted that the respondent has 5-6 acres of land. Respondent- father stays along with his brother and brother's wife at Chhatrapati Sambhajanagar and his brother has little children and that the place where the respondent lives has all the necessary facilities.

Moreover, he admitted that he and his wife are aged and that in their house, he resides with his wife and unmarried son and daughter. These admissions clearly support the case of the respondent and demonstrate that the welfare of the minor child lies with the respondent-father.

19. We had interacted with the girl child. She answered preliminary questions such as her name; that she calls her grand-parents as “Aaji” and “Baba” and she stays with her *Mavshi and Mama*. The child looked happy and bright. When asked about her father, she did not answer and when asked with whom she will like to stay, whether grand-parents or father, she did not answer. This might be because she is a 4 year old child and she has never stayed with her father as her mother died few days after her birth, and since then she is staying with her grand parents. Now the question is whether at this tender age, the child is having such maturity so as to make an intelligible preference as regarding the welfare.

20. Being the *parens patriae*, it is for this Court to decide about the welfare of the child. The word “welfare” is to be understood in the widest sense taking within its fold

the physical and mental well being, health, comfort and over all social and moral development of the child. All that is essential for a well balanced upbringing of the child amounts to welfare of the child. What can be in the best interest for the welfare of the minor child, that has to be decided in the background of relevant facts and circumstances of each case.

Though, the Court should keep in mind the relevant statutes and the rights flowing there from, such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. The Court while dealing with custody cases is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting the proper guardian of the minor, the paramount consideration should be the welfare and well being of the child. When the Court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weightage to a child's ordinary comfort, health, education, intellectual development and favourable surroundings. If the minor is not old enough to form an intelligent preference as regards the welfare then it is for the Court to

take the decision by taking into consideration all the factors mentioned above.

21. The respondent- father has stated in his affidavit that his is a joint family, wherein his parents and his brother's family stay together, who all will be taking care of the child when the respondent – father will be out for his job. The brother has minor children and the girl child will get the company of the children, who are almost of the same age as her. As there are grand parents and uncle and aunt in the family, she will be getting their affection, care, companionship, which will help in her overall growth. The respondent-father lives in Chhatrapati Sambhajnagar where means of education, health care and other facilities are easily available. On the other hand, the appellant – grand father and grand mother are aged, they live in Rohilagad village. If the child is admitted in the school, she will have to travel a considerable distance by bus. The father is having a good income. Hence, it is in the welfare of the child that she be given in custody of her natural guardian i.e. respondent-father.

22. The present case is squarely covered by the observations of the Hon'ble Supreme Court in the aforementioned judgments. As held in **Tejaswini Gaud** (supra) and **Gautam Das** (supra), where the custody of a minor child was left with relatives under compelling circumstances following the death of the mother, and the father, being the natural guardian, had neither abandoned nor neglected the child, the custody must be restored to the natural guardian. The appellant cannot claim a permanent right to the custody of the minor child merely because the child has remained with them since birth due to the unfortunate demise of her mother.

23. Section 6 of the Hindu Minority and Guardianship Act, 1956, lays down that the father is the natural guardian of a Hindu minor and that the mother is next in line; it further provides that for a child below five years, custody ordinarily vests with the mother. It is necessary to clarify that although the said provision ordinarily gives such preferential custody to the mother, in the present case, the minor child is approximately four years and eight months old, i.e., below five years of age. However, as her mother is no longer alive, the father, being

the first natural guardian under Section 6 of the Act, is entitled to her custody. The proviso to Section 6(a) of the Act, which gives preferential custody to the mother for a child below five years, cannot be applied in the present case as the mother is deceased. The respondent-father, therefore, has the legal right to the custody of the minor child, and there are no compelling circumstances to deny him that right.

24. The judgment relied upon by the learned advocate for the appellant in ***D. Manjunatha*** (supra) is distinguishable on facts. In the present case, there were no disputes between the respondent and his deceased wife prior to her death. The respondent has sufficient means to survive and provide for the child, as observed above, and he is in a better position to ensure the welfare of the girl child. The said judgment, therefore, is of no help to the appellant.

25. In view of the foregoing discussion and the settled legal position, we are of the considered opinion that the learned Family Court has rightly held and observed that the welfare of the female child, Arohi, lies with the respondent-father, who is her natural guardian. The

learned Family Court has dealt with all the issues such as welfare of the child and has also discussed the law and evidence and therefore, the impugned judgment and order dated 30.06.2025 passed by the learned Judge, Family Court, Jalna, in Petition No. D-10/2022 requires no interference. Hence, we pass the following order :-

ORDER

- (i) The appeal is dismissed.
- (ii) The appellant is directed to handover the custody of child Arohi to the respondent-father within 15 days from the date of this order.
- (iii) The appellant, his wife, son and daughter are entitled to meet Arohi on every Sunday in between 12.00 p.m. to 04.00 p.m. at the place of respondent for one year from the date of passing of this order.
- (iv) The respondent shall make necessary arrangement for the visitation at his place.
- (v) Pending Civil Application, if any, stands disposed of.

[VAISHALI PATIL-JADHAV]
JUDGE

sga

[SANDIPKUMAR C. MORE]
JUDGE