

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(FC) No.48 of 2026

Decided on: 23.09.2026

Rakesh Kumar	... appellant.
Versus	
Sarla Devi	... Respondent

Coram

Hon'ble Mr. Justice Ajay Mohan Goel, Judge.

Hon'ble Mr. Justice Yogesh Jaswal, Judge.

Whether approved for reporting?¹Yes

For the appellant: Mr. Gurinder Singh Parmar, Advocate.

Ajay Mohan Goel, Judge (Oral)

CMP(M) No.1571 of 2026

By way of this application, a prayer has been made for condonation of 7 days' delay in filing the appeal.

2. Having heard learned Counsel for the parties, we are of the considered view that as the delay in filing the appeal is not all that inordinate, we allow the application and condone the delay. The application stands disposed of.

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3. Be registered. By way of this appeal, the appellant has assailed the order passed by the Court of the learned Additional Principal Judge, Family Court, Amb, District Una, H.P., in petition Registration No.9 of 2019, titled Rakesh Kumar versus Sarla Devi, decided on 17.06.2026, in terms whereof, the petition filed by the appellant under Section 6 of the Hindu Minority and Guardianship Act, 1956, for the grant of a decree of custody of the minor Vansh

¹ Whether reporters of the local papers may be allowed to see the judgment?

Thakur, son of the appellant in his capacity as the natural guardian/father of the minor son, has been dismissed by the learned Court below.

4. Learned Counsel for the appellant argued that the impugned judgment is perverse and not in accordance with law, as the learned Court below erred in not appreciating that as the appellant is the natural guardian of the minor son, he has the first right over the custody of the child. Learned Counsel further argued that the learned Court below also erred in not appreciating that as the appellant was not given custody of his minor child, there would be no bonding between him and the minor child and this would be an impediment to the growth of the minor child after his maternal grandparents, to whom his custody has been granted are no more. No other point was argued.

5. Having heard learned Counsel for the appellant and having perused the judgment under challenge, we are of the considered view that this appeal has no merit.

6. The findings recorded by the learned Court below while dismissing the petition of the present appellant are cogent findings, which in the course of submissions made by the learned Counsel for the appellant could not be demonstrated to be perverse or not borne out from the record.

7. In fact, we are quoting Para-34 onwards of the judgment passed by the learned Court below for ready reference hereinbelow:-

“...34. Thus, the minor child has been living with the respondent, his maternal grandmother, essentially since his infancy. As of today, considerable time has elapsed, and the child has been in the continuous care and custody of the respondent for the overwhelming majority of his life. The child has become fully acclimatized to his current living environment. He has developed deep emotional bonds with the respondent, who has been his primary caregiver and the only constant parental figure in his life following the demise of his mother.

35. The record before this Court demonstrates that the minor child Vansh Thakur is now regularly attending school and is pursuing his education in a settled and stable manner. The respondent has been bearing all the expenses of the child's education and upbringing. Uprooting the child from his current environment and school, and transplanting him into an entirely different family setting with the petitioner, would undoubtedly have a cascading and adverse effect on the child's overall well-being, his academic progress, his emotional stability, and his growth and development. The courts have consistently held that continuity and stability in a child's educational and social environment are vital components of the child's welfare, and any disruption to the same must be avoided unless there are compelling reasons to the contrary.

36. In the course of proceedings, the minor child Vansh Thakur has appeared before this Court. After personal interaction with the child, the Court found that the child has given unequivocal and clear consent to stay with his maternal grandmother, the respondent Sarla Devi. The child expressed his preference firmly and without any hesitation.

37. *The wishes of a child, particularly when the child is of sufficient age and understanding to form an intelligent preference, are a factor of great weight in custody matters. In the present case, the minor child has attained an age where he is capable of articulating his preference, and his desire to remain with the respondent is a significant indicator that his emotional and psychological well-being is best served in the custody of the maternal grandmother. The Hon'ble Supreme Court, in multiple decisions, has emphasized that the wishes of the child, while not determinative, are an important factor and must be given due consideration. In the present case, the child's expressed preference aligns with the other factors pointing towards the welfare of the child being best served in the respondent's custody.*

38. *It is also pertinent to note that the petitioner, by his own admission, did not have effective physical custody of the minor child for any substantial period since the child's infancy. Even during the lifetime of the child's mother, the petitioner did not file any petition for custody of the child. The petition was filed only after the death of Sapna Devi. Furthermore, the respondent has stated this, and the petitioner has not effectively rebutted it, that the petitioner did not pay maintenance as ordered by the Court, nor did he take active steps to maintain a relationship with the child during his formative years. While a father's right as a natural guardian under the Act is not in question, the exercise of such right must yield to the paramount consideration of the welfare of the child.*

39. *In the present case, while the petitioner, as the biological father, has a statutory right recognised under the Act, the exercise of that right must be measured*

against the comprehensive welfare of the child. The petitioner's legal right as natural guardian does not automatically entitle him to physical custody where the welfare of the child demands otherwise.

ORDER

40. In light of the above discussion and for the reasons stated herein, the present petition filed by the petitioner Rakesh Kumar under Section 6 of the Hindu Minority and Guardianship Act, 1956, seeking custody of minor Vansh Thakur, is hereby DISMISSED.

41. However, it is clarified that the petitioner, being the biological father of the minor, may seek and exercise visitation rights in accordance with the interim order already passed by this Court dated 20.04.2019 (as modified on 14.05.2019), or may file a fresh application for appropriate visitation rights as the father of the child.

42. No order as to costs."

8. A perusal of the above paragraphs of the judgment demonstrate that the learned Court below while dismissing the petition, took into consideration the fact that the minor child was living with his maternal grandmother since his infancy. As the child was in the continuous care and custody of the maternal grandmother for the overwhelming majority of his life, he had become fully acclimatized to his living environment and had also developed deep emotional bonds with his maternal grandmother, who was his primary caretaker and also a constant parental figure in his life after the demise of his mother. Learned Court below also took note of the fact that the minor child was regularly attending a

school and pursuing his education in a settled and stable manner and that his entire expenses were being borne by the maternal grandmother and it observed that in these circumstances, uprooting the child from his current environment and school and transplanting him into an entirely different family setting with the appellant herein, would have a cascading and adverse effect on the child's overall well-being, his academic progress, his emotional stability, as well as his growth and development. Learned Court below thereafter observed that the personal interaction with the child demonstrated that the child unequivocally wanted to stay with his maternal grandmother and the child had expressed his preference in this regard firmly and without any hesitation. Learned Court below also observed that the wish of the child, particularly when the child was of sufficient age so as to form an understanding of an intelligent preference, was to be given due weightage and on the basis of these observations, the learned Court below dismissed the petition by holding that the emotional and psychological well-being of the minor child would be best served in the custody of the maternal grandmother.

9. The findings returned by the learned Court below, as observed by us hereinabove also, are cogent and well reasoned. We totally agree with the reasoning given by the learned Court below in the judgment. In the circumstances as have been mentioned in the judgment passed by the learned Court, the custody of the child

obviously with the maternal grandmother, with whom the minor child is residing since his infancy after the demise of his mother, is best for the overall growth and emotional stability of the child.

10. As far as the contention of the learned Counsel for the appellant that until and unless physical custody of the child is not given to the appellant, no binding will develop between him and the child is concerned, we do not agree with the same. In our considered view, this purpose can be served in case the appellant seeks appropriate visitation rights in his capacity as the father of the child, so that in the interregnum, he can develop emotional bond with the child without uprooting him from the emotional comfort zone in which he presently is with his grandmother.

11. Accordingly, in light of the above observations, as we do not find any merit in the present appeal, the same is dismissed, so also the pending miscellaneous application(s), if any.

(Ajay Mohan Goel)
Judge

(Yogesh Jaswal)
Judge

September 23, 2026
(Rishi)