

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 19 of 2019**

- Mustafa Khan S/o Late Shri Eid Mohammad Khan Aged About 30 Years R/o Ekta Chowk, Behind Noorani Masjid, Talapara, Bilaspur, P.S. Civil Lines, Tahsil And District Bilaspur Chhattisgarh

**---- Appellant****Versus**

- Smt. Noor Be W/o Shri Shahid Khan Aged About 50 Years R/o Ekta Chowk, Behind Purani Masjid, Talapara, Bilaspur, P.S. Civil Lines, Tahsil And District Bilaspur Chhattisgarh

**--- Respondent**


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| For Appellant  | : | Mr. Yogesh Pandey, Advocate.   |
| For Respondent | : | Mr. Ravi Maheshwari, Advocate. |

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**DB : Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Rajani Dubey****Order On Board****09/09/2019**

1. This appeal is directed against order dated 03.12.2018 passed by the Family Court, Bilaspur in Civil Suit No. 263A/2016, by which, application for the custody of minors Mohd. Saif Khan, aged about 9 years and Mohd. Kaif Khan aged about 7 years, filed by appellant-plaintiff has been rejected by the learned Family Court.
2. The father of the two minors, as aforesaid, moved an application under Section 7 read with Section 10 of the Guardians and Wards Act 1890, seeking custody of his two sons on the pleadings that his marriage was solemnized with respondent's daughter Rukhsana on 04.12.2003. They are blessed with two

sons, out of wedlock. Later on, Rukhsana left the matrimonial house. It was further pleaded that after the wife left the appellant, the respondent-maternal grandmother, has forcefully kept the two children with her against their wishes. The children are forced to live in a very adverse atmosphere where the maternal grandfather is drug addict and respondent is a lady of easy virtue and her son is a person of criminal background. The future of his two sons is, therefore, not in safe hands.

3. In reply, respondent opposed the plaintiff's case and stated that the appellant is not taking care of his two sons and the two children right from the beginning, were residing along with their mother with the respondent. The respondent has nurtured the children since childhood and in order to maintain them, she is earning.
4. It is further stated that the appellant has also contacted second marriage but because of his ill-treatment, second wife also left him. The appellant, in connection with various cultural programmes, mostly remained outside the city and there is no one to look after the children.
5. After allowing the parties an opportunity to lead oral and documentary evidence and interacting with the child, learned trial Court held that welfare of the two children for the present, rests in allowing them under the custody of their grandmother-respondent rather than leaving them in the hands of the appellant.
6. Learned counsel for the appellant would submit that appellant is the father of two minor children and therefore, he is the natural guardian in accordance with the provision of law and unless there are extraordinary circumstances warranting that the children,

should be allowed to remain in the custody of their grandmother, the appellant ought to be granted custody. In his evidence, he has stated that the future of children is not safe in the hands of respondent because of she being a lady of loose character, her husband being drug addict and son being a person of criminal background. Therefore, welfare of appellant's sons does not lie in allowing them to continue with the respondent-grandmother.

7. The evidence led by the non-applicant is that the two children have been nurtured by her since, their childhood and they are residing with her. The allegations against her are false. She has also stated that her daughter has contacted second marriage. According to her, she is working as maid servant and manages Rs. 3,000/- per month. Evidence has also been led that the two children have been admitted in the school.
8. True, it is that the appellant is the father of the two children. However, the children, who are of tender age, they are willing to reside with their respondent-grandmother only. We have also interacted with the children. Having interacted with those children, we have formed opinion that the children, without any pressure but out of their affection, have repeatedly expressed their willingness to reside with their grandmother.
9. The allegations made by the appellant against the respondent that she is a lady of loose character or her husband is drug addict or their other members of the family are persons of criminal background, could not travel beyond allegations and no clinching evidence has been brought on record.
10. We also do not find that there is huge gap of earning capacity of the appellant and respondent so as to say that the present day

financial requirements to bring about the children could not be met with by respondent but it could be done only by appellant. We find that the appellant has been ordered earlier to pay one thousand for each children.

11. Taking into consideration the oral evidence, circumstances, wishes of the children, family background and further taking into consideration that the appellant's wife has already left him, we are of the view that the welfare of the two children rest in allowing the children to remain with their grandmother rather than forcing them at this stage, to go along with their father and living in lurch.

12. In the result, we do not find any good ground to interfere with the order of the learned trial Court. We however, observe that in future, after two years, the appellant may renew his application and the wishes of the children may again be ascertained as to whether they intend to come back to their father because the respondent also had appeared before us during the interaction with the children and said that if the children would be willing to go along with their father, she would have no objection. Further, the appellant, being the father, is entitled to visitation rights every week on Sunday between 11:00am to 5:00pm and with the consent of the respondent he may take the children for day outing.

13. The appeal is, therefore, dismissed.

**Sd/-**  
**(Manindra Mohan Shrivastava)**  
**Judge**

**Sd/-**  
**(Rajani Dubey)**  
**Judge**