

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****FAM No. 151 of 2012**

- Smt. Sangita Talokar W/o Bhimesh Talokar Aged About 32 Years Mamta Nagar, Gali No.5, Rajnandgaon, P.S. And Tah. And Distt. Rajnandgaon C.G.

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

- Bhimesh Talokar S/o N.M. Talokar Aged About 37 Years Plot No. 92, Punam Colony, P.S. And Tah. And Distt. Rajnandgaon C.G.

**---- Respondent**


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For Appellant : Shri Anup Majumdar, Advocate

For Respondent : Shri Rajat Agrawal, Advocate

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**D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava****Hon'ble Smt. Justice Rajani Dubey****Order****24/06/2019**

This appeal is directed against order dated 26/10/2012 passed by the Family Court, Rajnandgoan whereby appellant's application under Section 25 of the Guardians and Wards Act, 1890 has been rejected.

2. The appellant moved an application for grant of custody of her minor son – Shubh Talokar, who admittedly is born out of the wedlock of her and respondent / husband. The relationship of appellant and respondent were strained and according to the appellant, she was subjected to cruel treatment by the respondent / husband and was unceremoniously shunted out of the matrimonial house. According to the appellant, the child, born on 04/10/2008, the appellant was her natural guardian as the child was of only 3 years of age. According to the allegations contained in the application, the respondent / husband having entered

into illicit relation with another lady, custody of the child to the father would adversely affect his development and growth. It was also alleged that as the respondent mostly remains away from home in connection with his job, care and maintenance of child is being ignored by the respondent. The appellant earning Rs.20,000/- per month is fully financially capable of maintaining her child if the child is given to her custody.

3. The application was opposed by the respondent / husband on the pleadings that the allegations of cruelty are false and fabricated. The allegations of illicit relation are also false. The welfare of child would be better in the hands of the father rather than the mother as the father is financially more competent.

4. The Family Court, after affording the parties opportunity to lead oral and documentary evidence, came to the conclusion that the material on record shows that the child is residing with his father since his birth and is happy in the atmosphere in which, he has been kept by his father. He is receiving proper education including medical facilities in case of illness. Therefore, the welfare of the child rests in allowing him to remain in custody of his father. At the same time, the Court below granted visitation rights to the appellant. The matter remained pending before this Court since 2012. In order to ascertain wishes of the child, at this stage, this Court again interacted with the child on 10/01/2019 and recorded its observation that the child is willing to continue with the present arrangement of meeting with his mother every Sunday and is not ready to live with her permanently.

5. Considering that the child, since his birth, is residing with his father and at this stage, the age of the child is almost 11 years and that the mother has been given visitation rights also, learned counsel for the appellant would submit that this arrangement may be continued and at this stage, this appeal may be disposed off with liberty to revive the same, in case, the appellant intends to seek custody of the child. Learned counsel for the respondent would also submit that such prayer would

not be opposed if the custody of the child is not disturbed.

6. In view of submission made before this Court, we are also inclined to dispose of this appeal at this stage. The appellant will have the right to continue with the present arrangement of visitation rights as enjoyed by her by virtue of interim order. In future, if the appellant is inclined to claim custody of the child, she would have liberty to revive the appeal.

7. This appeal is accordingly finally disposed off.

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

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