IN THE HIGH COURT OF JHARKHAND AT RANCHI
F.A. No.78 of 2023
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Rakesh Shukla, aged about 46 years, son of Late Yogendra Prasad Shukla, resident of Neel Kuthi Danga, S.C. Sen Road, P.O. + P.S. Purulia and District Purulia-723101, at present residing at 143-B, Alok Smrity Budha Colony, Patna, P.O.-G.P.O., Patna, P.S. Budha Colony, District Patna (Bihar).

... ... Appellant

Versus

1. Putul Devi Upadhyay, wife of Late Ram Ratan Upadhyay.
2. Raj Kishore Upadhyay, son of late Ram Ratan Upadhyay.
3. Rakesh Kumar Upadhyay, son of Late Ram Ratan Upadhyay.

All residents of Bank Colony, Near New Stadium Pakur, P.O. Pakur, P.S. Pakur, District Pakur (Jharkhand).

... ... Respondents

P R E S E N T
HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE ARUN KUMAR RAI

.....

For the Appellant : Mr. Subhro Sanyal, Advocate
[Through V.C.]
: Mr. Sunil Kr. Mahto, Advocate
For the Respondent : Mr. Ashish Verma, Advocate
: Mr. Manoj Kr. Jha, Advocate

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C.A.V. on 28.11.2025 **Pronounced on 16/12/2025**

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 and decree dated 05.01.2023 and 15.01.2023 respectively, passed by learned Principal Judge, Family Court, Pakur in Original Guardianship Suit No. 86 of 2019, whereby and whereunder the petition filed by the plaintiff/appellant under the Guardians and Wards Act, 1890 for custody of minor son has been dismissed.

Factual Matrix

2. The case of the plaintiff/appellant in brief is that the plaintiff/appellant is the father of the minor Anirudh Kumar and plaintiff/appellant was married to Rita Shukla and out of their wedlock she delivered the minor Anirudh Kumar on 03.11.2009 at Purulia District (West Bengal) in a Nursing Home and just after eight hours of delivery she died in the said hospital.

3. Since the wife of plaintiff/appellant died just after eight hours of delivery of minor Anirudh Kumar the defendant no. 1 (Putul Devi Upadhyay) was allowed to retain the custody of the minor with consent of the plaintiff/appellant.

4. The defendant made promise that after five years she will hand over/return the minor to the plaintiff/appellant and at the time of death of wife of the plaintiff/appellant the father-in-law of the plaintiff/appellant was alive and he has given assurance to return the minor to the plaintiff/appellant but in the meantime father-in-law also died.

5. With the consent of defendant no. 1 Putul Devi Upadhayay and father-in-law, plaintiff/appellant got married with another lady who is also willing to get the custody of minor.

6. It is the further case of the appellant that the defendant no. 2 Raj Kishore Upadhayay and defendant no. 3 Rakesh Kumar Upadhayay are not allowing the defendant no. 1 Putul Devi Upadhayay to handover the custody of minor to the plaintiff/appellant.

7. After attaining five years of age minor Anirudh Kumar custody was promised to be given to plaintiff/appellant for his welfare and the plaintiff/appellant is capable to get minor Anirudh Kumar educated and wiling and ready to do all act for his welfare as his earning is more than 7 Lakhs per annum.

8. After attaining five years of age the custody of Minor Anirudh Kumar was not handed over the plaintiff/appellant. He visited the house of defendant on 12.06.2017 along with his mother and two younger brothers again on 15.08.2018 and lastly visited on 19.05.2019 but the defendant denied to return the ward/minor to the custody of the plaintiff/appellant, as such cause of action arose on 19.05.2019.

9. In the aforesaid circumstances as alleged by the appellant, an application under the Guardians and Wards Act, 1890 for return of ward/minor to the custody of the biological father as a guardian for the benefit and upliftment to give proper education and care of the minor and the same has been numbered as the Original Guardianship Suit No.

86 of 2019.

10. After, service of notice defendants appeared before the court and filed their written statement on 13.01.2022.

11. The defendants have stated in their written statement *inter alia* that the present suit is not maintainable in view of the facts and circumstances of the case as well as in the eyes of law and the suit is without jurisdiction and hit by the principles of law of waiver, estoppel and acquiescence.

12. It has been stated that Late Rita, daughter of the defendant no. 1 (Putul Devi Upadhayay) had been married to the present plaintiff Rakesh Shukla, who is resident of Purulia (West Bengal) in the year 2004 and the present plaintiff was not possessing good character since before his marriage which was not known to this defendant no. 1 (Putul Devi Upadhayay) or her husband.

13. It has further been stated that Rita became pregnant and she delivered a male child on 13.11.2009.

14. It has been stated in the written statement that the plaintiff was not happy with the birth of the male child and he having done some foul play got her daughter killed and the doctor treating her after eight hours declared her dead.

15. It has been stated that soon after the death of the defendant's daughter, the plaintiff got her body released

from the hospital quickly and cremated her and the defendant having found no way out, took a day born child to native village where defendants maintained him by making all sorts of expenditure and he is now reading in Class -VI.

16. It has been stated that the appellant/plaintiff has never taken care of the child during the period of 11 years nor he spent even a single farthing over his maintenance. The plaintiff never came back to see the face of the newly born child, save and except, two and half year back and therefore, there has been no occasion for giving any assurance by maternal grandfather or this defendant.

17. Soon after the death of the daughter of defendant no. 1 (Putul Devi Upadhayay) the appellant/plaintiff married to a woman with whom he had illicit connection since before and it is wholly false to say that he had taken second wife with the consent of the defendant no. 1 (Putul Devi Upadhayay) especially she had seen the face of this plaintiff after about two and half year ago.

18. It has been stated that about two and half year back, the plaintiff came to the house of this defendant and asked her to allow him to take away the child with him on the pretext that he will now take care of the child as a legal guardian and the aforesaid minor Anirudh Kumar, having heard the proposal of the plaintiff started weeping very loudly. Therefore, some of the neighbours assembled there

and scolded this plaintiff for not taking any care within a period of about 11 years.

19. It has been stated that the demand of the plaintiff at this stage is malafide in as much as he is completely in the clutch of his wife and he now wants to do away the life of this Anirudh Kumar in order to secure the position of his son born from his present wife and there has been reasonable apprehension that this plaintiff wants to kill the child Anirudh Kumar in order to safeguard the interest of his son born from the second wife and for this end in view, he wants to take away the minor child after about 11 years of his birth.

20. It has also been stated that the plaintiff has annual income of Rs. 7,00,000/- (Rupees Seven Lacs) as admitted by him, but curiously enough, he never paid even a single farthing for maintenance and welfare of the minor child within a period of 11 years and be wants custody of the child for killing him on the pretext of giving education which does not appear reasonable to anybody.

21. It has been asserted that plaintiff claims custody on the ground of his becoming the legal guardian but the welfare of the child which is the paramount consideration is absolutely impossible at the ends of the plaintiff and his wife, rather there has been serious danger on the life of the minor child Anirudh Kumar.

22. It has been stated that the Hon'ble Supreme Court repeatedly held that the custody of minor child and his interest and welfare is paramount consideration and convenience and pleasure of the parents. The present minor child has attained the age of about 11 years and he will be grown up after 5-6 years and then he will take his own decision about his custody, interest and welfare and so the present suit is malafide one and is fit to be dismissed.

23. The learned family court, on the basis of respective claim of the parties assertions and its denial, framed the following issues:-

(i) Whether the suit is maintainable in its present form?

(ii) Whether the Plaintiff has got valid cause of action for the suit?

(iii) Whether this court has got territorial jurisdiction to try the suit?

(iv) Whether the plaintiff being the father of the child entitled to having custody of the child as prayed?

(v) Whether the custody of minor child in the hand of plaintiff is for his better welfare and education?

(vi) Any other relief/reliefs, the plaintiff is entitled to?

24. In order to prove its case, the plaintiff/appellant has examined four witnesses including himself, namely -

P.W. 1 is Rakesh Shukla, the plaintiff himself.

P.W. 2 is Shashikala Devi Shukla, the mother of plaintiff.

P.W. 3 Chandshekhar Sharma.

P.W. 4 Umesh Kumar Shukla

25. Defendants have adduced five witnesses on their behalf, namely -

D.W. 1 Rakesh Kumar Upadhayay (Defendant no. 03).

D.W. 2 Sheweta Upadhayay.

D.W. 3 Putul Devi Upadhayay (Defendant no.1).

D.W. 4 Raj Kishore Upadhayay (Defendant no.2)

D.W. 5 Manoj Kumar

26. The learned family court, based upon consideration of principle of handing over the children, and the evidence led on behalf of parties, has dismissed the suit holding that the plaintiff/father is not entitled a decree under Section 10 of Guardians and Wards Act, 1890 of custody of minor, against which the present appeal has been preferred.

Submission of learned counsel for the appellant:

27. The learned counsel for the appellant has submitted that the wife of the appellant died just after eight hours of delivery of minor Anirudh Kumar so the maternal grandmother, defendant No. 1 (Putul Devi Upadhayay) was allowed to retain the custody of the minor with consent of the appellant with promise that after five years she will hand over / return the minor to the appellant.

28. The learned counsel for the appellant has further submitted that after attaining five years of age minor Anirudh Kumar custody was to be given to appellant for his welfare and the appellant is capable to get minor Anirudh Kumar educated and wiling and ready to do all act for his welfare.

29. Learned counsel has submitted that the learned trial court has failed to appreciate that as per provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956, the natural guardian of a boy is the father in absence of the mother, as such, the plaintiff appellant was the natural guardian who should have been granted custody and guardianship of his minor son.

30. It has been submitted that the learned trial court has failed to appreciate that the appellant was not disqualified under the proviso to Section 6 of the Hindu Minority and Guardianship Act 1956 as the appellant has not ceased to be a hindu or completely and finally renounced the world by becoming a hermit or an ascetic.

31. It has been submitted that the learned trial court has failed to appreciate that the respondents were in temporary custody of the minor son but the respondents had never applied for guardianship of the minor before any Court of law and as such the respondents had no legal right to resist the guardianship of the father i.e., appellant.

32. The Learned Trial Court has failed to appreciate that the appellant had filed petition for custody of his minor son as he has better means to support the family.

33. The Learned Trial Court has also failed to appreciate that the respondent no.1 is an old lady and further the respondent nos. 2 & 3 are maternal uncles who have their own families and children to look after.

34. It has been submitted that the learned trial court has failed to appreciate that temporary custody by respondents over the minor was merely as a caretaker with the oral permission of the appellant during difficult times i.e. death of his mother after child birth.

35. Learned counsel has submitted that the learned trial court has failed to appreciate that the respondent had never filed any application under the Guardianship and Wards Act, to formalize/legalize their right of guardianship over the minor son.

36. The Learned Trial Court has failed to appreciate the evidence on record which reflects that the appellant is in no manner unfit for appointment as guardian of his minor son.

37. The Learned Trial Court has also failed to appreciate that the appellant had remarried two years after the death of his first wife and second marriage per se does not render him unfit to be guardian of his minor son and that a father can be deprived of his right only when it is shown that he is unfit

and the welfare of the minor required that he should not be allowed to exercise his rights.

38. The Learned Trial Court has failed to appreciate that the contest was between maternal grandmother and maternal uncle on one hand and father on the other hand as such the guardianship ought to have been given to the appellant (father).

39. The Learned Trial Court has failed to appreciate that there were no cogent materials placed on record by the respondents against the appellant to show his unfitness to be natural guardian of his minor son.

40. It has been submitted that the learned trial court has failed to appreciate that the respondent nos. 2 & 3 have their own families and responsibility towards them and the minor son of the appellant will be deprived of love and affection of his natural father apparently for no plausible reason.

41. The learned counsel for the appellant based upon the aforesaid ground has submitted that since there is no consideration of these facts by learned trial court, as such the impugned judgment requires interference by this Court.

Submission of learned counsel for the respondent:

42. Per contra, learned counsel for the respondents has taken the following ground in defending the order passed by the learned family court.

43. It has been contended that marriage late Rita Shukla (daughter of respondent no.1) was solemnized with Rakesh Shukla. From their wedlock a child Anirudh Kumar was born who has been living at his maternal grandmother house since his birth and appellant or his family members never visited to see the Anirudh Kumar and he has not paid any single penny for maintenance of Anirudh Kumar, therefore, the contention of the appellant that he will take care of all the need of the said child Anirudh Kumar is not fit to be accept.

44. It has further been contended that the plaintiff never took care of the child within a period of 11 years nor he spent even a single penny over his maintenance and his welfare and plaintiff never came back to see the face of the newly born child, save and except, two and half year back and therefore, there has been no occasion for giving any assurance by maternal grandfather or this defendant. The demand of the plaintiff regarding the hand over of custody of child at this stage has been malafide in as much as he is completely in the clutch of his 2nd wife.

45. It has further been contended that after the death of first wife the plaintiff very soon solemnized 2nd marriage with Priyanka Devi and from Priyanka Devi he has a son Anurag. The learned counsel of the respondents further strongly taking plea that the step mother and step brother never will be able to accept the minor Anirudh as a son and brother respectively

and in that situation the welfare of the child will be jeopardized.

46. It has further been contended that Plaintiff/Appellant with connivance and collusion with his wife want to take custody of the child Anirudh with their ulterior motive, so it is not in the interest and welfare of the child to be handed over the custody of child to his maternal grandmother as his own mother and maternal uncle is his own father.

47. It has been submitted that since the learned family court based upon the aforesaid grounds and on consideration of the aforesaid fact and particularly taken into consideration the welfare of child as paramount consideration, has passed the impugned judgment which requires no interference by this court.

Analysis

48. We have heard learned counsel for the parties and gone through pleading available on record as also the finding recorded by learned family court.

49. This Court, before going to examine as to whether the finding recorded by learned family court denying the custody of the minor son to the father, the appellant herein, requires interference needs to refer herein the provision of law as provided under the *Hindu Minority and Guardianship Act, 1956* and as also the Guardians and Wards Act, 1890.

50. Section 6 of the *Hindu Minority and Guardianship Act, 1956* deals with natural guardian of a Hindu minor, Section 9 thereof deals with the testamentary guardians and their powers and Section 13 deals with the provision of welfare of the minor to be paramount consideration. For ready reference, these provisions are quoted as under:

> **"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) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father; (c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section— (a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expressions "father" and "mother" do not include a step-father and a step-mother.
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> **9. Testamentary guardians and their powers**.—(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both. (2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian. (3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of

her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property (other than the undivided interest referred to in section 12) or in respect of both. (4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will, appoint a guardian for any of them in respect of the minor's person or in respect of the minor's property or in respect of both. (5) The guardian so appointed by will has the right to act as the minor's guardian after the death of the minor's father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will. (6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

13. Welfare of minor to be paramount consideration.— (1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration. (2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor."

51. It needs to refer herein that the word 'after' as used in Section 6(a) can be construed so as to save it from being unconstitutional the presumption being that the legislature acted in accordance with the constitution. Moreover, when Sections 4 and 6 of the Hindu Minority and Guardianship Act are construed harmoniously the word 'after' can be understood to mean 'in the absence of', thereby referring to father's absence from the care of the minor's property or person for any reason whatever. Hence, in such situations

mother can act as natural guardian of the minor during the lifetime of the father, who would be deemed to be 'absent' reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of Githa ***Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.***

52. It is evident from Section 13 that while appointing any person as guardian of a Hindu minor the paramount consideration is the welfare of the minor and no person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

53. The matter to be considered by the Court in appointing guardian has been made under the provisions of Guardians and Wards Act, 1890. For ready reference, the relevant provision of the Act, 1890 is quoted as under:

> *"4. (1) "minor" means a person who, under the provisions of the Indian Majority Act, 1875, (9 of 1875) is to be deemed not to have attained his majority:*
>
> *(2) "guardian" mean's a person having the care of the person of a minor or of his property, or of both is person and property:*
>
> *7. Power of the Court to make order as to guardianship.—(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made— (a) appointing a guardian of his person or property, or both, or (b) declaring a person to be such a guardian, the Court may make an order accordingly. (2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or*

declared by the Court. (3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

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

54. The law, therefore, is well settled that even though the father is the natural guardian as stipulated in the statute but the paramount consideration in the matter of handing over the custody of the child is welfare of the child.

55. The law relating to custody of minors has received an exhaustive consideration by the Hon'ble Apex Court in a series of pronouncements. In the case of ***Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42*** the principles of English and American law in this regard were considered by Hon'ble Apex Court to hold that the legal position in India is not in any way different. Noticing the judgment of the Bombay

High Court in ***Saraswatibai Shripad Ved* v. *Shripad Vasanji Ved*** **[AIR 1941 Bom 103] ,** ***Rosy Jacob* v. *Jacob A. Chakramakkal*** **(1973) 1 SCC 840 and** ***Thrity Hoshie Dolikuka* v. *Hoshiam Shavaksha Dolikuka*** **(1982) 2 SCC 544,** the Hon'ble Apex eventually concluded in paras 50 and 51 which reads as under:

> "50. [T]hat when the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case [Mausami Moitra Ganguli v. Jayant Ganguli, (2008) 7 SCC 673] , the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.
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> 51. The word 'welfare' used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases."

56. Thus, the Hon'ble Apex Court has categorically held that while considering the issue of custody of the minor child the court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those

issues. Further it has been held that the Court should not emphasis only on what the parties say rather the welfare of the minor should be paramount consideration. Further the Hon'ble Apex Court has opined that the Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted.

57. The Hon'ble Apex Court in the aforesaid Judgment interpreted the word 'welfare' used in Section 13 of the Act and has observed that it must be taken in its widest sense, though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its "*parens patriae jurisdiction*" arising in such cases.

58. It needs to refer herein that in child custody matters, the court's "parens patriae" jurisdiction empowers the Court to act as a guardian for the child, prioritizing their best interests above all else. This principle, allows the court to intervene and make decisions that protect the child's welfare, even if it means overriding the wishes of the parents or guardians.

59. In the case of ***Nil Ratan Kundu v Abhijit Kundu, 2008 (9) SCC 413*** the Hon'ble Apex Court has held that in deciding a difficult and complex question as to the custody of

a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising "parens patriae jurisdiction" and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

60. In the case of ***Yashita Sahu v State of Rajasthan, (2020) 3 SCC 67***, the Hon'ble Apex Court has propounded that the welfare of the child is paramount in matters relating to custody. In this context, we may refer to Para 22 thereof, which reads as follows:

> 22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.'

61. In the case of ***Gaytri Bajaj v. Jiten Bhalla*****, (2012) 12 SCC 471,** the Hon'ble Apex Court has observed that it is the welfare and interest of the child and not the rights of the parents which is the determining factor for deciding the question of custody and the question of welfare of the child has to be considered in the context of the facts of each case and decided cases on the issue may not be appropriate to be considered as binding precedents. For ready reference the relevant paragraph of the aforesaid judgment is being quoted as under:

> **14.** From the above it follows that an order of custody of minor children either under the provisions of the **Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 is required to be made by the court treating the interest and welfare of the minor to be of paramount importance**. It is not the better right of either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the court while deciding the issue of custody of a minor. What must be emphasised is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the court.

62. It is settled position of law that there cannot be any straitjacket formula in the matters of custody. 'Welfare of the child' is of paramount importance, reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Gautam Kumar Das v. State (NCT of Delhi), (2024) 10 SCC 588.***

63. In the case of ***Shazia Aman Khan v. State of Orissa*, (2024) 7 SCC 564** the Hon'ble Apex Court while referring the ratio of ***Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413*** has observed that welfare of the children is to be seen and not the rights of the parties, the relevant paragraph of the aforesaid judgment is being quoted as under:

19. In Nil Ratan Kundu v. Abhijit Kundu [Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413] , this Court laid down the principles governing custody of minor children and held that welfare of the children is to be seen and not the rights of the parties by observing as under : (SCC pp. 428-29, paras 52 & 55)

"Principles governing custody of minor children

52. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to the custody of minor, a court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

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55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents."

(emphasis supplied)

21. This Court in Roxann Sharma v. Arun Sharma [Roxann Sharma v. Arun Sharma, (2015) 8 SCC

318 : (2015) 4 SCC (Civ) 87] , opined that the child is not a chattel or ball that it is bounced to and fro. Welfare of the child is the focal point. Relevant lines from para 18 are reproduced hereunder : (SCC p. 328)

"18. ... There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a ball that is bounced to and fro the parents. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the mother and this expectation can be deviated from only for strong reasons."

20. This Court has consistently held that welfare of the child is of paramount consideration and not personal law and statute. In Ashish Ranjan v. Anupma Tandon [Ashish Ranjan v. Anupma Tandon, (2010) 14 SCC 274 : (2011) 4 SCC (Civ) 948] , this Court held as under : (SCC p. 282, para 19)

"19. The statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

22. Another principle of law which is settled with reference to custody of the child is the wish of the child, if she is capable of. Reference can be made to Rohith Thammana Gowda v. State of Karnataka [Rohith Thammana Gowda v. State of Karnataka, (2022) 20 SCC 550: 2022 SCC OnLine SC 937] case. It was held as under: (SCC para 18)

"18. We have stated earlier that the question 'what is the wish/desire of the child' can be ascertained through interaction, but then, the question as to 'what would be the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had

> swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d'etre for the said remark."

64. Thus, from the aforesaid settled position of law it is evident that the consideration governing the custody of children is the welfare of the children" and not the rights of the parties." Further, the welfare of child is determined neither by economic affluence nor a deep mental or emotional concern for the well-being of the child. The answer depends on the balancing of all these factors and determining what is best for child's total well-being.

65. In the backdrop of the provisions of law and judicial pronouncements, in order to assess the welfare of the minor child, we have gone through the oral evidence adduced by the parties.

66. **P.W. 1 Rakesh Shukla** is the plaintiff of the case has stated in his examination-in-chief that he filed the instant suit against his mother-in-law Putul Devi Upadhayay, brother-in-law Raj Kishore Upadhayay and another brother-in-law Rakesh Kumar Upadhayay. He has filed this case to get back custody of his son Anirudh Kumar who is 12 years of age and his date of birth is 03.11.2009. Her son birth take place at Rameshwar Lal Singhania Seva Pratisthan Hospital at Purulia. At the time of birth of his son he, his mother-in-law and his parents were present there. His wife name was Rita Devi Shukla. His wife died just after 7-8 hour of delivery of child

and his mother-in-law asked him to permit her to retain the custody of minor due to tender age of minor and took the newly born boy for his look after and care. Some days they kept his son at Ranchi Thereafter they carry his son at Patna and thereafter they bring his son at Masouri. Thereafter he went to Patna and his mother-in-law asked him that you are an educated person and you will do the job at Patna. Thereafter he applied for job and he get job as a teacher at Patna. He went every Saturday from Patna to Masouri to look after of his son and he giving entire expense towards his son maintainance and cae and also giving Monday He solemnized 2nd marriage with the knowledge of his in-laws. In the month of October he went to meet his son at the rented house and he found no person was present there then he asked where about of his in-laws then someone told him that his in-laws have vacated the house and went somewhere. Thereafter he has searched where about of his in law's then he knows through face book that his in-laws are now living at Pakur. In the summer vacation he had come at Pakur on 12.06.2017 and demanded to return back custody of his son. But in-laws refused to hand over the custody of his son. Thereafter he further went at Pakur on 15.08.2018 and lastly on 29.05.2019 and to demanded the hand over the custody of his son but the in-laws further refused to returned the custody of child. Then he filed the instant suit. He further stated that his annual income is more than Rs. 7 lakhs and he residing at Patna and

he want to give higher education to his son so that his son future will be bright. Because he is a teacher and residing at Patna which is a good education hub city and in comparison, of Pakur better facility available in Patna. He claimed the custody and guardianship of his child as biological father.

67. During cross-examination he stated that his marriage was solemnized with Rita Devi on 27th June, 2004. After five years of marriage his wife became pregnant. The child was born on 09.11.2009 and at that time he was present with his wife. in para-11 he admitted that at the time of his marriage he was not a teacher rather he was running a coaching institute. In para 13 admitted that after death of first wife he solemnized 2nd marriage within two years and from the second marriage he has a son now aged nine years. The name of his second wife is Priyanka Devi Shukla. In para 14 he stated that he is a teacher of CBSE affiliated school but he is not a government teacher. He further admitted that in service book he nominated the name of his second wife. He further stated that he had given Rs. 4,000/- per month maintenance expense for his elder son to his mother-in-law.

68. P.W.-2 is Shashikala Devi Shukla has stated in her examination-in-chief that Rakesh Shukla is her elder son. Her son has filed the instant suit against Rakesh Upadhayay, Kishore Upadhayay and their mother for handing over the custody of a child. The child is her first grandson. The child was born in the year 2009 at Singhaniya Hospital. At that

time, she and her son and mother-in-law of her son were present there. After birth of her grandson her daughter-in-law has been died within six hours of the birth of child. The last rite of her daughter-in-law was commenced at Purulia by her son. Her Samdhan made request to keep child custody and on her request, they giving the custody of newly born grandson to her. Her Samdhin asked her that she took the boy for his care and you don't worry when the boy became school going then she will return the boy. Since then, the child is in custody of her Samdhan. They took the child at Ranchi thereafter Ranchi to Masouri. Her son usually went to Masouri from Patna for look after the child and at that time her son was doing job at Patna. They went twice to see the child at Masouri. After that the laws of his son left Masouri and came at Pakur. They did not inform to them about leaving Masouri and shift to Pakur. Anyhow they search and know where about the in-laws who are living at Pakur. They came at Pakur in the year 2017. They came Pakur to bring back the child because at that time the grandfather of child fell ill and his grandfather desire to see the grand son and at that time her husband was on dialysis. They have made request to hand over the custody of child but in-laws not handover the custody of child to them. Till now the child is in the custody of in-laws of his son. Her son is doing the job as a teacher in a English school. His son wants to keep the child with him for the better education. His son is competent to care and maintained the child.

69. During cross-examination she stated in para 6 & 7 of her cross-examination that at the time of birth of child her daughter-in-law was crying due to pain and her son brought a doctor. In para 11 she stated that she is not remember in which year the grandfather of child was fall ill. They came at Pakur in the month of June, 2017 for taking custody of child. At that time the age of the child was 11 years. When the custody of the child not handover then they not approached the police and not narrate the incident to the surrounding persons. In para 13 she further admitted that her elder son has solemnized 2nd marriage and from 2nd marriage he has a son namely Anurag now aged is 08 years. In para 14 she stated that the step mother wants to keep her grandson Anirudh 2 with them. The step mother already has one son. In para 16 she admitted that Anirudh is studying in his maternal grandmother's house. In para 18 she stated that from her daughter-in-law (sister's daughter) they came to know about the maternal grandmother of Anirudh is living at Pakur In para 20 she stated that although the maternal grandmother of Anirudh would send him to a renowned college, but they have objection because they want to keep the custody of child with them.

70. P.W.-4 is Umesh Kumar Shukla has stated in his examination-in-chief that he identified the Rakesh Shukla and Putul Devi Upadhayay. Rakesh Shukla is his elder brother. The first marriage of his brother was solemnized with late Rita

Devi Shukla. The death of Rita Devi was occurred on 03.11.2009 within 5-7 hour of child birth. At that time his mother and mother of Rita Devi were present there. The last rite and rituals were performed by his brother on the next day. After the death of Rita Devi, Putul Devi asked them that the child is very teenage so custody of the child hand over her and the child grow up and will going school then they return the child to them. After that Putul Devi took the child and keep the child with them. Thereafter they took the child at Ranchi and after that at Masouri. Thereafter his brother was doing the job at Patna and he continuously went at Masouri to saw the child. When the child attained the age of 3-4 years then in-laws took the child from Masouri to another place thereafter his brother search the child and found that they are living at Pakur. Thereafter on June, 2017 they came at Pakur and went to the house of in-laws. Those persons identified them but they did not give the custody of the child and calling nearby the persons and driven out from there. The instant suit has been filed by his brother for handing over the custody of the child. His brother is living at Patna and he is a teacher and his brother is competent for care and maintaining of the child.

71. During cross-examination, he stated in para 4 And admitted that his elder brother solemnized 2nd marriage. After the two years of death of his first wife and from second wife his brother has a son namely Anurag aged about 09 years. In para 6 he stated that Rita Devi had died at night and on the

next day they took the dead body to their house and at that time the child was in custody of Putul Devi. In para 9 he stated that even if the maternal grand mother would send the child to study in a good school, they 'still not renounce the claim of child custody because his brother wants the child in his guardianship and wants to send him to good school for studies.

72. Let us have to discuss the evidence of the defendant.

73. D.W. 1 is Rakesh Kumar Upadhayay has stated that Rakesh Shukla is his brother-in-law. His sister Rita Shukla marriage was solemnized with Rakesh Shukla. His sister Rita Shukla expired on 03.11.2019 after the delivery of a son. The child is alive and his name is Anirudh Kumar. Since birth Anirudh Kumar is living with his maternal grandmother. Rakesh Shukla never giving any expenses regarding the maintenance of Anirudh Kumar. Even If the Rakesh Shukla wants to keep the custody of child Anirudh Kumar, they still are not ready to handover.

74. During cross examination he stated that he is living at Pakur for last ten years. They are natively living at Masouri Patna and they have lived in a rented house of Jay Kishan Singh. They have left Masouri about ten years before. His brother-in-law Rakesh Shukla is the residing at Purulia (West Bengal). At the one of delivery of his sister Rita Shukla she was admitted at Purulia Hospital. The matrimonial house of his sister was at Purulia. After the birth of the child Rakesh

Shukla giving the custody of the child to the lap of his mother and this person left there. Rakesh Shukla is giving the custody of the child. They. never fled there. He has no knowledge where the Rakesh Shukla is presently posted. In para 15 he stated that they have not giving any information to Rakesh Shukla about the leaving the Masouri because Rakesh Shukla was not their contact. In para 16 he stated that it is true that the Rakesh Shukla is the biological father of Anirudh but in last 13 years Rakesh Shukla was not in contact Dt.05.01.2023. He is contact with them or Anirudh hence Rakesh Shukla is not entitled to get custody of Anirudh.

75. D.W. 2 is Sheweta Upadhayay has stated in her examination in chief that the marriage of her younger sister-in-law late Rita Shukla was solemnized with Rakesh Shukla. From their wedlock a child Anirudh Kumar was born who is living at his maternal grandmother house since his birth. Rakesh Shukla or his family members never visited to see the Anirudh Kumar and he has not paid any single penny for maintenance of Anirudh Kumar. They want to keep the custody of Anirudh Kumar.

76. During cross-examination she stated that her marriage was solemnized in the 2000-2001. At the time of marriage her husband was doing the business and living at Masouri Patna. After her marriage they lived at Masouri about 12 -3 years thereafter they came at Pakur last 10 to 12 years. Rakesh Shukla never came her house at Pakur. In para 6 she stated

that at the time of birth of Anirudh Kumar she did not go Purulia West Bengal but her mother-in-law went there and she took the custody of child Anirudh Kumar. At that time they are living at Masouri.

77. D.W. 3 is Putul Devi stated in her examination in chief that her daughter Rita Shukla marriage was solemnized with Rakesh Shukla. After the birth of child her daughter died but the child is alive. His name is Anirudh Kumar. At the time of birth of Anirudh Kumar, she was present at Purulia Hospital. After the death of her daughter Rakesh Shukla and his family members not took the custody of newly born Anirudh Kumar and they giving the custody of child in her lap and went away. Then they came back with the child to native place at Massouri. Since then Rakesh Shukla and his family member never came to take Anirudh nor they give any maintenance expenses for Anirudh. Now Anirudh is studying in DAV School, Pakur and they have maintained his livelihood, educational expenses and in future they want to keep him and will provide with all expenses and education. She does not know that Rakesh Shukla has performed another marriage or not and she has not contact with him.

78. During cross-examination she has stated that she does not know when she has received the notice from the court but that has one year ago. She came at court for one time to put her signature. She and her son have put their signature which was in typed paper. Rakesh Shukla by his own accord

handover the child in her lap. She never asked him to give the child. In para 11 she stated that because their business was failed at Masouri then they shift at Pakur with family. Masouri is ahead of five Station from Patna junction. She further stated in para 12 that the Patna is the capital of Bihar State and very big city in comparison of Pakur. She further stated that in Patna so many high-quality educational institutes are available in comparison of Pakur. In para 14 she admitted that it is true that they are fell in love affection with the child.

79. D.W. 4 is Raj Kishore Upadhayay stated that Rita is his sister and marriage of Rita was solemnized with Rakesh Shukla and from their conjugal life a son namely Anirudh was born at Purulia. At that time his mother was present there. When he got information then he rushed to Purulia from Musouri and he found that his sister Rita Kumari was died in hospital but the child was alive and in the lap of his mother. At that time the in laws of his sister was not present there and they are not ready to keep the custody of child. Thereafter he and his mother took the child at Musouri. Anirudh is now studying at DAV school, Pakur in class VII. After that there is no relation with the father of Anirudh. They knows about that Rakesh Shukla was solemnized 2nd marriage and have a father of child. Anirudh is fully healthy and they care the child and the child is know them as a mother and father.

80. During cross-examination he stated that Putul Devi is his step mother. His care is taking by his step mother. His

sister matrimonial house at Purulia. When his sister was admitted in hospital at Purulia at that time his mother was present there. She was admitted by his mother and Rakesh Shukla. His mother went there for 10 to 15 days at Purulia and stayed in the house of complaint at any police station or court. In para 10 he stated that at Patna is a good education system in comparison of Pakur Rakesh Shukla never came to meet his family. In para 13 he stated that it is true that Rakesh Shukla is the father of the child and it is wrong to say that he is the legal guardian of the child.

81. D.W. 5 is Manoj Kumar has stated in his examination in chief that Rakesh Shukla is the father of Anirudh Kumar. The birth of Anirudh take place at his house and after that he was come at Musouri. Anirudh was previously lives at Musouri with his maternal uncle and maternal grandmother. Now he is living at Pakur. The mother of the Anirudh has been died so he lived with his maternal grandmother. He is neighbor of the maternal grandmother of Anirudh at Musouri. The father of Anirudh never came at Musouri to see his son and he never pay any expense regarding the care and maintenance of child. The child is living very happily and healthy at Musouri with his maternal grandmother. He in the interval came at Pakur and meet with the Child and found that the child is very happy and do his study.

82. During cross-examination he has stated that there is no relation with the maternal grandmother and maternal

grandfather of Anirudh only he is the friend. He giving milk to the family of maternal grandmother. He does the business of supply of milk.

83. It is evident from the testimony of the appellant that during course of cross examination in para 13 admitted that after death of first wife he solemnized 2nd marriage within two years and from the second marriage he has a son now aged nine years. He further admitted that in service book he nominated the name of his second wife. He further stated that he had given Rs. 4,000/- per month maintenance expense for his elder son to his mother-in-law. But the learned Family Court has specifically observed that in this regard the plaintiff has totally failed to produce any chit of paper which support of his version that he pays regularly maintenance amount of his son. It has further been observed by the learned Family Court that appellant has not produced any bank pass book, post office pass book or any statement of account which shows he has ever withdrawn Rs 4,000 from his account to pay the amount to his mother-in-law towards his son's maintenance expense.

84. Thus, it is evident that the plaintiff/appellant did not pay any amount of maintenance regularly to the education, clothes, fees, fooding & lodging of his elder minor son as stated by him. Thus, it is now established fact that appellant never paid even a single farthing for maintenance and welfare of the minor child within a period of 11 years i.e. from 2009 to

2020. Thus, question arises herein that when the appellant has not taken care of his son for long 11 years then how this Court presume that appellant will take care of all the need of growing adolescent child.

85. Further After considering the evidence of plaintiff's/appellants witnesses, it appears that all the four P. Ws witnesses clearly admitted that they voluntarily gave the custody of the child to maternal grandmother Putul Devi (respondent no.1 herein) when the mother of the child expired. From analysis of the entire evidence, it indicates that due to the death of Rita Shukla (daughter of respondent no.1) the plaintiff/appellant and his family left the child in lap of Putul Devi at hospital and they took the dead body of Rita Shukla for her last rite and on next day they cremated the dead body as per Hindu rites and rituals. It appears from the evidence that they never gave the attention to newly born son due to vested interest of the plaintiff/appellant and newly born child has been neglected by the plaintiff all this time hence in compelling circumstances maternal grandmother of child took the custody and took him to her village at Musouri.

86. The learned Family Court has given its finding upon the question that why the family member of the plaintiff/appellant not took the custody of the newly born child at that time. The learned Family Court has concluded the mother died in suspicious circumstances and appellant and his family wanted to get rid of the newly born child and do away with the

child's responsibility and further plaintiff wanted to marry with other women therefore, the newly born child would be the obstacle in his future plans so they left the newly born child in the lap of maternal grandmother.

87. It is a settled law as discussed and referred in the preceding paragraphs that in all matters of custody irrespective of the law under which the same is sought, the welfare of the child is of paramount-importance. The Court has not only to look at the issue on legalistic basis but has to take into consideration the human angles as well.

88. Now the question arises herein that whether the step mother and step brother will accept the new family member as their own and treat child Anirudh aged about 16 years boy in their house. Whether in future they accept his presence and ready to share the household, room, clothes, food and other several domestic daily essential things.

89. This Court is conscious to the fact that aside from the societal norm not every step mother has negative influence on all round grooming and nurturing of child but in the instant case where the child is living with his maternal grandmother and maternal uncle and with maternal aunt and consider them the only family from his birth then perhaps he will not be able to adjust in new atmosphere of his step mother and step brother and a person (plaintiff/appellant). Till date child Anirudh understand his maternal grandmother as his mother

and maternal uncle as a father and guardian and if the custody of the child be given to his biological father who never even bothered to meet and see his own child all these year and whom the child had never seen or even met and not even recognized as a father then the child will, naturally be reluctant to accept unknown person the plaintiff/appellant as his father and plaintiff's/appellant's second wife as mother.

90. The learned Family Judge while passing the judgment has taken care of settled position of law that the welfare of the child is paramount consideration while handing over the custody of the minor.

91. From the record it is evident that the child is living since his birth in the care of his maternal grandmother. It requires to refer herein that moral ethics, character would be more conducive for all round development of any growing child. The feelings and emotions of maternal grandmother is very thick. Further from impugned judgment it is evident that Anirudh is studying D.A.V School, Pakur and he is well acquainted with the environment of the school and with the teachers, with the colleague students and he might have made many friends in his school and neighbouring children of his maternal grandmother house. Further, a social, moral and educational requirements for all round development of the child is very essential.

92. It needs to refer herein that seedling/plant which is growing up and when it is displaced and allocated to a new

place and environment, there is possibility that the said plant may fade and die and its growth would stop. Therefore, in the same manner the growth of the adolescent child will also be affected when at the age of 16 years he would have to transfer to any new place which might harm his social, psychological, physical and moral development. At his tender age of 16 years if he is displaced from his usual place to unknown environment there might be appalling effect on his character, personality, emotion and promotion of his overall development and his proper grooming. Further the appellant has not alleged any ill-treatment or incapacity of the maternal grandmother and maternal uncles to provide him a good environment and background.

93. The law has been propounded by Hon'ble Apex Court, as taken note of above, that the welfare of the child is paramount consideration while handing over the custody of the minor and herein the fact is admitted that plaintiff has left his new born child just after the death of his first wife, thereafter two years later he performed 2nd marriage with other female and from his 2nd wife one son born and it is clear that plaintiff and his 2nd wife only care about their own son and their moto and intention is still not clear about the custody of Anirudh after so long years. So, this Court is of the considered view that when child Anirudh will attain majority, he has every right to take proper decision which will be better for his future prospectus.

94. Moreover, the natural father i.e. the plaintiff-appellant has not taken any interest what to talk of genuine interest in bringing up the said child since 2009 and has also not even a glimpse of the said minor child and only in the year 2018/2019 he tried to meet with this child and further he never paid even a single farthing for maintenance and welfare of the minor child within a period of 11 years, in this view of the matter and considering the welfare of the minor, the appellant has forfeited his right of having the custody of the said minor child.

95. The Hon'ble Apex Court in the case of **Anjali Kapoor VS Rajiv Baijal** reported in **2009 0 AIR(SC) 2821** in para-21 held that "Ordinarily, under the Guardian and Wards Act, the natural guardians of the child have the right to the custody of the child, but that right is not absolute and the Courts are expected to paramount consideration to the welfare of the minor child. The Child has remained with the appellant/grandmother for a long time and is growing up well in an atmosphere which is conducive to its growth. It may not be proper at this stage for diverting the environment to which the child is used to. Therefore, it is desirable to allow the appellant to retain the custody of the child".

96. In the light of the aforesaid settled position of law, it needs to refer herein that the minors welfare is of a paramount consideration and it is only relevant factor and any right of the father is subordinate to that.

97. Herein the placing of the said minor child in the custody of the appellant may cause emotional and psychosocial break down of the said minor child at such belated stage in the facts and circumstances of this case, which may affect his future prospect, which stands secured presently in his living with the defendants-respondents. Therefore, it is not be in the interest of the welfare of the said minor child to entrust his custody to the natural guardian i.e. the appellant.

98. Herein the minor child is staying with his grandmother rom maternal side for a long time and on facts it is found that he is being brought up in an atmosphere which was conducive to his growth. it will not be proper at this stage (child is of about 16 years of age) to divert the environment to which the child is used to and it is desirable that the maternal grandmother retains the custody of the child.

99. Further taking reference of the settled position of law as discussed and referred hereinabove it is considered view of thus Court that the matters of custody of the minor child should be decided not on consideration of the legal rights of the parties but on the sole and pre-dominant criterion of what would best serve the interest and welfare of the child.

100. This Court, after discussing the aforesaid factual aspect along with the legal position and adverting to the consideration made by the learned Family Judge in the impugned judgment, has found therefrom that the issue of giving custody of minor son has well been considered along

with the evidence as well as from the pleadings made in the plaint and the written statement. Accordingly, the learned Family Judge, on consideration of the evidence, has come to the conclusion that the custody of minor son shall remain with respondents/defendants. Accordingly, the suit filed by the plaintiff/appellant was rejected.

101. Further, this Court, while appreciating the argument advanced on behalf of the parties on the issue of perversity, needs to refer herein the interpretation of the word "perverse" as 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.

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.

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.

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."

102. This Court, on consideration of the finding arrived at by the learned Principal Judge, Family Court and based upon the aforesaid discussion and judicial pronouncements, is of the view that the judgment passed by the learned Family Judge is not coming under the fold of the perversity, since, the conscious consideration has been made of the evidences, as would be evident from the impugned judgment.

103. This Court, therefore, is of the view that the judgment and decree dated 05.01.2023 and 15.01.2023 respectively, passed by learned Principal Judge, Family Court, Pakur in Original Guardianship Suit No. 86 of 2019 needs no interference.

104. Accordingly, the instant appeal stands dismissed.

105. Pending interlocutory application(s), if any, also stands disposed of.

(Sujit Narayan Prasad, J.)

I agree.

(Arun Kumar Rai, J.) **(Arun Kumar Rai, J.)**

Date : 16/12/2025

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

Uploaded on 17.12.2025