



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

FIRST APPEAL NO.418/2019

1.Asma Khanam Wd/o Shaikh Nazakatullah, @ Asma Khanam
D/o Azmatullah Khan, (w/o Yakubali)
aged about 31 years, Occ: Household work.

2.Imtiyaz Parveen D/o Shaikh Nazakatullah,
aged about 7 years, Occ:Student,
(the appellant No. 2 is minor hence through
appellant No.1).

Presently residing at below address.

The appellant No.1 & 2 are R/o, Gordi Bes, Hiwarkhed
Tq.Telhara, Dist. Akola.

Appellants

VERSUS

Shaikh Sakhaullah S/o Shaikh Shahjullah,
aged about 65 years, Occ: Nil,
R/o, Qazipura, Hatroon, Tq. Balapur, Dist. Akola.

1A) Nazmabi Wd/o Shaikh Sakhaullah
aged about 60 years, R/o Kazipura Hatroon,
Tq. Balapur, Dist. Akola.

1B) Salma Sultana W/o Abdul Sadique,
aged about 42 years, Occ: House wife,
Khadapura, Barshitakli, Tq. Barshitakli,
Dist.Akola.

(Amendment as
per Court's
order dated
22.12.2022.)

1.C) Najma Sultana W/o Shaikh Samad,
aged about 40 years, Occ: Household,
R/o Kazipura Hatroon,
Tq. Balapur, Dist. Akola.

1D) Shaikh Faizullah S/o Shaikh Sakhaullah,
aged about 35 years, Occ: Agriculturist,

R/o Kazipura Hatroon, Tq. Balapur,
Dist. Akola.

1E) Shaikh Arshadullah S/o Shaikh Sakhaullah,
aged about 25 years, R/o Kazipura Hatroon,
Tq. Balapur, Dist. Akola.

Respondents

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Mr. A.B.Mirza, Advocate for the appellants.

CORAM : PRAVIN S. PATIL, J.

DATED : 17.12.2025.

ORAL JUDGMENT :

1. By way of present appeal, the appellant no.1-mother and the applicant no.2 - Imtiyaz Parveen (the child whose custody in question) filed the present appeal against the judgment and order passed by the learned District Judge-5, Akola, whereby the learned Court below appointed the original respondent no.2 i.e. deceased father-in-law of appellant no.1 and grandfather of appellant no.2 as a guardian of appellant no.2.

2. Brief facts of the matter are as under:-

The deceased father-in-law namely Shaikh Sakhaullah s/o Shaikh Shahjullah filed an application under Sections 25 and 7 of the Guardian and Wards Act for appointment of guardian of appellant no.2 and for declaration of title of the guardian. It is his case that marriage between appellant no.1 and his son Sk. Nazakatullah was solemnized on 2.6.2010 at Hiwarkhed, Tq. Telhara, Dist. Akola as per the rites and

customs prevailing in the muslim community. Out of said wedlock, begotten appellant no.2 Imtiyaz Parveen. However, there was matrimonial discord and the present appellant no.1 insisted for divorce. The appellant no.1 also started residing separately from the family Shaikh Sakhaullah and his son.

3. It is also the case of the deceased that the husband of the appellant no.1 name Nazakatullah Khan expired in railway accident on 6.6.2013. After the death of father the appellant no.2 she has resided in the family with grandfather continuously for more than one month. However, thereafter the relatives and other persons sent messages to him for carrying the minor child for meeting with her mother with a promise to return back the minor child. Accordingly, 3 to 4 times the minor child was sent for meeting with his mother and return back the minor child.

4. It is his case that in the month of October-November, 2015 one Aslam Khan had come to fetch minor appellant no.2 and since then, minor child was not sent back. It is further case of deceased that he made various attempts to get back the custody of the child but appellant no.1 did not respond the same. Hence, he has filed application to appoint him as guardian of the minor child.

5. In the background of the abovesaid factual position, the learned District Judge by the impugned order dated 11.2.2019 appointed deceased (original respondent) as a guardian of appellant

no.2. However, it is pointed out that during the pendency of proceeding, the custody of appellant no.2 is with appellant no.1.

6. In the background of aforesaid factual position, the appellants filed present appeal. According to the appellants, dispute arose out of property matter and strained relations between them. However, in any case, appellant no.1 being a natural guardian of appellant no.2, the custody of minor ought to have been given to appellant no.1.

7. In the present appeal one important event which was taken place is required to be noted down. Original respondent no.2 i.e. grandfather of child to whom learned District Court has appointed guardian is expired on 26.1.2022. Thereafter, his legal heirs are brought on record. They are uncle and aunt of minor child. This Court issued them notices. However, no one come forward to resist the claim of the appellants. As such it is clear that present respondents are not interested to claim as a guardian of minor child.

8. In the background of this factual position, I thought it fit to interact with the child who is presently only 14 years old. Accordingly, on 5.12.2025, I had interacted with appellant no.2. From the discussion, it is revealed that she is happy with appellant no.1. She has pointed out that appellant no.1 is taking her due care, she is regularly attending the school and has no grievance of any kind from appellant no.1 during interaction with her.

9. It is well settled position of law that in the cases of custody of child, welfare of the child is paramount consideration. In the change of circumstances, Court has to consider the present situation and welfare of the child. I am satisfied after the interaction with appellant no.2 that she is more interested to reside with appellant no.1. So also appellant no.1 being her natural guardian is taking her due care. Appellant no.2 has raised no grievance of any kind against appellant no.1 during interaction with her.

10. For the aforesaid reasons, I am of the opinion that indulgence of this Court is necessary in the matter. Hence, I pass the following order:

- (i) The appeal is allowed.
- (ii) The judgment and order dated 11.12.2019 passed by the learned District Judge-5, Akola in Civil Misc. Application No.42/2016 is hereby quashed and set aside.
- (iii) The appellant no.1 being the natural mother of the appellant no.2 is held to continue the custody of the appellant no.2.
- (iv) In the facts and circumstances of this case, no order as to costs.
- (v) Pending application (s), if any, is disposed of.

(PRAVIN S. PATIL, J.)