



2025:DHC:10234-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment reserved on: 04.11.2025

Judgment pronounced on: 21.11.2025

+ **MAT.APP.(F.C.) 35/2024**

SONALI JAIN

.....Appellant

Through: **Mr. Anuj Jain, Mrs. Monika Aggarwal, Mr. Jai Gaba, Mr. Ashish Sapra and Mr. Dinesh Kumar, Advs.**

versus

DHEERAJ CHAUHAN & ANR.

.....Respondents

Through: **Mr. Anil Dagar along with Respondent in-person.**

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

ANIL KSHETARPAL, J.

1. The issue which arises for consideration in the present Appeal is whether, in the facts and circumstances of this case, the welfare and best interest of the minor son would be better served by transferring his permanent custody from the Respondent-father to the Appellant-mother, who already has custody of the elder minor daughter, or whether the arrangement directed by the learned Family Court, whereby each parent retains custody of one child, ought to be maintained.



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2. The present Appeal, filed by the Appellant-mother, assails the correctness of Judgment dated 18.09.2023 [hereinafter referred to as “Impugned Judgment”] passed by the learned Family Court, whereby the Family Court directed that the custody of the minor daughter, Devangana, shall remain with the Appellant-mother, while the custody of the minor son, Yohan, shall remain with the Respondent-father. The Appellant seeks limited interference to the extent that the permanent custody of the minor son, Yohan, be also entrusted to her, contending that the arrangement directed by the Family Court fragments the natural bond between siblings and that the welfare, emotional stability, and holistic development of the minor son would be better secured in the care and company of his mother and sister.

3. This Court has heard learned counsel for the parties at considerable length, carefully perused the paperbook, and the Impugned Judgment and also interacted with the two minor children on 01.11.2025 in chambers. Separate interactions were held with the son, Yohan, and the daughter, Devangana, to understand their individual perspectives and the nature of their emotional bonding. The record of these interactions, together with the pleadings and evidence, constitutes the factual substratum on which the Court must apply the settled legal principles governing child custody disputes.

FACTUAL MATRIX

4. The brief facts leading to filing of the present Appeal, as pleaded, are that the marriage between the parties was solemnized on 23.01.2007 according to the Hindu rites and ceremonies. Out of the



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said wedlock, two children were born – Devangana, the elder daughter, on 24.12.2009, and Yohan, the younger son, on 04.09.2014. Owing to the growing matrimonial discord and incompatibility, the relationship between the parties deteriorated over time, eventually resulting in their separation. Both parents are gainfully employed, the Appellant-mother with HDFC Bank, and the Respondent-father with M/s Cipla Ltd. The record further reflects that multiple proceedings between the parties are pending across different fora, including criminal complaints, domestic violence proceedings, and guardianship proceedings, one of which, G.P. No. 31/2018, culminated in the Impugned Judgment dated 18.09.2023.

5. The Appellant's grievance is confined only to the latter part of the Impugned Judgment whereby custody of the son, who is now over 11 years of age, was directed to remain with the father. The Family Court, after appreciating the evidence adduced by both sides, had taken the view that while the daughter should remain with the mother, the son's welfare would be better served in the care of the father. It is this determination that is under challenge before this Court.

6. Interaction with the Minor Son, Yohan - On 01.11.2025, this Court interacted in chambers with the minor son, Yohan, who appeared to be a bright, articulate, and well-mannered child. During the interaction, this Court found him to be confident in expressing his views and responses to the questions put to him. He stated that he has been residing with his father and paternal grandmother for the past 7 years and feels emotionally secure and attached to them. He expressed



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a clear preference to continue residing in the same environment, emphasizing his comfort and routine with his father and grandmother.

7. The child also mentioned that his mother resides within the same residential complex, at a short distance of approximately one and half kilometre, and that his maternal grandparents live in another tower within the same complex. This Court found that Yohan was aware of both households and the people in them, but his responses reflected that his day-to-day life and primary emotional comfort presently revolve around his father and grandmother. His statements were made without any visible sign of coaching or hesitation, and the Bench found his preference to be both genuine and informed for his age.

8. Interaction with the Minor Daughter, Devangana -This Court also interacted with Devangana, the elder daughter, who is now about 16 years old. When enquired about her relationship with her younger brother, she expressed natural affection and concern for him. However, upon further questioning, it emerged that despite studying in the same school, the siblings rarely meet or spend time together outside of school activities.

9. This Court, in its effort to assess the emotional bonding between the two children, posed several neutral questions to understand the nature of their interaction. From her answers, it appeared that over the years, the siblings have grown accustomed to living separately, largely as a consequence of the physical separation between the parents and the existing custodial arrangement. There was



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no indication of animosity between them, but the regularity of contact and shared experiences has diminished, which in turn has affected the natural sibling closeness that might otherwise be expected.

CONTENTIONS OF THE APPELLANT

10. Learned counsel for the Appellant has made the following submissions:

10.1. That the Family Court failed to appreciate the deposition of the Appellant and the cross-examination of the Respondent. It was contended that the minor son, Yohan, was only 3 years old when the interim arrangement placing him with the father came into effect, and has thereby been deprived of maternal care and the company of his sister for most of his formative years. It was submitted that the absence of the mother's affection and influence at such a tender age has caused emotional deprivation, and that restoration of custody to the mother would best serve the welfare and psychological development of the child.

10.2. That the statement of Yohan recorded before the Family Court on 05.08.2023 demonstrates that the child is not averse to his mother and, in fact, expressed that he likes her and is comfortable in her company. It was argued that the child's simultaneous expression of willingness to remain with his father ought not to be given determinative weight, since he was of tender age and, therefore, susceptible to the influence of the father, with whom he has continuously resided. It was urged that the child's preference must be



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assessed in light of the surrounding circumstances and not treated as conclusive of his welfare.

10.3. That the Appellant-mother has at all times displayed deep concern for both children and has taken steps to maintain their welfare, even within the limited visitation rights granted to her. It was further submitted that the Respondent-father has exhibited conduct and temperament unfit for a parent, referring to his alleged habit of consuming alcohol and becoming aggressive, particularly towards the daughter, Devangana. It was argued that such behaviour reveals an orthodox and discriminatory mindset within the Respondent's household, where the female child has been subjected to harsh treatment, while the male child is favoured, a pattern that, if allowed to continue, may adversely affect Yohan's moral and social development.

10.4. Learned counsel also referred to certain observations of the Family Court itself in paragraphs 38 and 39 of the Impugned Judgment, where the Court found that the allegations of extra-marital relationship levelled by the Respondent against the Appellant with one Karan Bagga were false and unsubstantiated. It was urged that these false imputations are reflective of the Respondent's character and his lack of ethical and moral values, thereby rendering him unfit to be the custodial parent.

10.5. That the Respondent had, during his cross-examination, admitted to consuming alcohol, albeit denying daily use. It was submitted that his inconsistent statements, coupled with the existence



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of FIR No. 295/2018 dated 13.10.2018 under Section 188 of the Indian Penal Code, 1860, registered for non-compliance of lawful orders, demonstrate his disregard for authority and his volatile temperament.

10.6. That the Appellant, being a financially independent and educated woman employed with HDFC Bank, is capable of providing the child with a stable, nurturing, and disciplined environment. She resides in the same residential complex as the Respondent, along with her daughter and parents, which ensures continuity and convenience in schooling and social life. The Appellant thus seeks that the permanent custody of Yohan be entrusted to her, submitting that the welfare of the child would be better secured under her care and in the company of his sister, with whom he shares a natural and irreplaceable bond.

CONTENTIONS OF THE RESPONDENT

11. *Per contra*, learned counsel for the Respondent has made the following submissions:

11.1. That the Family Court, after a thorough and holistic appreciation of the evidence and upon interacting with both children, had rightly concluded that the welfare of the minor son would be best served in the custody of the father. The impugned arrangement, it was urged, strikes a careful balance, ensuring stability and emotional security for both children while preserving contact with both parents.

11.2. That the minor son, Yohan has been residing continuously with his father and paternal grandmother since 2018 and has developed a



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deep emotional attachment and sense of belonging in that household. The child's comfort, education, and well-being have remained stable under the father's care, and the home environment is affectionate and nurturing. The grandparents, in particular, have devoted substantial time and attention to both children since birth, and the same is reciprocated by the children. Any interference with this settled environment, it was urged, would cause unnecessary psychological distress and dislocation in the life of the child.

11.3. That both parents are working professionals, but unlike the Appellant, the Respondent's work schedule allows him to ensure that the child's day-to-day needs are adequately attended to with the assistance of the paternal grandparents. The Appellant, on the other hand, is frequently occupied with official assignments and travel, leaving little time for hands-on parenting. It was further alleged that the Appellant has, in the past, voluntarily left the children in the care of the Respondent and his family and has demonstrated a pattern of indifference to their daily upbringing, resurfacing in litigation only intermittently.

11.4. The Respondent's counsel also relied on various precedents emphasizing that the welfare of the child is the paramount consideration in custody matters and that a court must consider all facets of the child's well-being, emotional, educational, physical, and moral. Reliance was placed on *Mausami Moitra Ganguli v. Jayant Ganguli*¹, *Rosy Jacob v. Jacob A. Chakramakal*², and *Sonia Sahaye*

¹ (2008) 7 SCC 673

² (1973) 1 SCC 840



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*v. Vikramjit Singh Sahaye*³, to submit that custody orders must ensure continuity, security, and an atmosphere conducive to the balanced growth of the child.

11.5. Further reliance was placed on the order dated 30.06.2018 of the Child Welfare Committee, Avantika, Rohini, wherein after a detailed home investigation report, it was found that both children were healthy, happy, and well-cared for by their father and grandmother, and that they had themselves expressed the desire to live with their father. The Committee, therefore, concluded that the case was not one of children in need of care and protection under the Juvenile Justice Act, 2015. This independent finding, the counsel urged, lends strong support to the conclusion that the father's custody is in the best interest of the child.

11.6. Learned counsel also stressed that during the interaction with the minor son of this Court, the minor son reiterated his wish to continue residing with his father, demonstrating not only affection but also comfort and a settled routine. It was argued that at this age, the child's preference cannot be lightly disregarded, particularly when it aligns with his welfare and the stability of his environment.

ANALYSIS & FINDINGS

12. The submissions advanced on either side have received this Court's anxious consideration, keeping in view that in matters concerning custody of a minor, the paramount consideration before the Court is and must always remain the welfare and best interest of

³ [2010 (168) DLT 353]



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the child, transcending the legal rights or emotional claims of the disputing parents.

13. It is a settled proposition of law, reiterated in a long line of precedents including *Rosy Jacob* (supra), *Mausami Moitra Ganguli* (supra) and *Gaurav Nagpal* (supra), that in custody matters the Court is not to be guided by the relative fault or conduct of the spouses but by the overarching principle of what would best secure the minor's physical, emotional, moral and intellectual welfare. Allegations of acrimony, impropriety or personal misconduct between the parents are a common feature in matrimonial disputes, but the Court must guard itself against allowing such bitterness to cloud its judgment in determining what arrangement truly serves the child's welfare.

14. In the present case, both parents are educated and gainfully employed. The Appellant-mother is working in a private bank where, as per her daughter Devangana's statement, her working hours extend till around 7:30 to 8:00 p.m. The Respondent-father is employed with a private company and, according to the son Yohan's statement, generally returns home by about 7:00 p.m. It is also undisputed that the paternal grandmother resides in the same household and is actively involved in the day-to-day care of the child. These factual aspects are significant because they reveal that during the major part of the day, when both parents are at work, Yohan continues to receive care and supervision at home from his grandmother, a figure with whom he has developed strong emotional dependence and familiarity.



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15. From the record and the in-chambers interaction, it is evident that Yohan, now 11 years of age, has been residing with his father and paternal grandmother for the past 7 years, a large portion of his formative period. This Court noted that he appeared comfortable and confident in his current environment. When questioned carefully and repeatedly by both Members of the Bench, he expressed, without hesitation or sign of tutoring, his clear preference to continue residing in the same setting. Significantly, he did not display any deep emotional bonding with either his mother or sister, despite acknowledging affection for them. The absence of such bonding, in this Court's assessment, is not due to alienation or influence, but rather the natural consequence of prolonged separation and habituation to the present home environment.

16. This Court is conscious that siblings ideally ought to grow together and share companionship; however, welfare cannot be evaluated in the abstract or by ideal standards alone. The real question is whether disturbing a settled, stable and nurturing environment at this stage of the child's life would advance or undermine his welfare. Yohan is presently at a tender and impressionable age, and any abrupt transition in custody would risk unsettling his emotional equilibrium, academic focus and sense of security. Courts have consistently cautioned against altering custody arrangements that have attained stability over the years, unless the existing environment is shown to be harmful or detrimental, which is not the case before this Court.

17. The material on record, including the earlier inquiry by the Child Welfare Committee (Avantika, Rohini), does not indicate that



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the father's custody is in any manner adverse to the child's welfare. On the contrary, Yohan's demeanor, physical well-being and the affectionate relationship with his father and grandmother reflect that he is being cared for. The Appellant's professional commitments, while not to her discredit, naturally limit the time she can devote personally to the child on weekdays. Balancing these realities, the Family Court's assessment that the welfare of the minor son would be best served by continuing his custody with the father, while ensuring the mother's access through visitation, cannot be said to suffer from any perversity or misappreciation of evidence.

18. In these circumstances, and bearing in mind the settled legal principles and the child's present emotional state, this Court finds no reason to disturb the well-considered arrangement directed by the Family Court. Any interference at this juncture would likely cause more harm than benefit to the child's sense of continuity and stability.

CONCLUSION & ORDER

19. In view of the foregoing discussion and the reasons recorded hereinabove, this Court is of the considered opinion that the arrangement presently in place, whereby the Appellant-mother retains custody of the elder daughter, Devangana, and the Respondent-father retains custody of the younger son, Yohan, strikes a balanced and workable approach, safeguarding the welfare of both children in their respective environments.



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20. Accordingly, this Court finds no ground to interfere with the Impugned Judgment dated 18.09.2023 and the Appeal stands dismissed.

21. It is, however, reiterated that the welfare of a child is a dynamic consideration that may evolve with time and changing circumstances. The Appellant-mother shall continue to enjoy liberal visitation rights as already granted, and both parents are expected to cooperate in facilitating interaction between the two siblings and maintaining cordial communication, keeping aside personal acrimony. Either party shall be at liberty to seek modification of the custody arrangement before the competent court in the event of any substantial change in circumstances affecting the welfare of the minor children.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 21, 2025/sp/pal