IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No.178 of 2025

Saurav Kumar, aged about 39 Years S/o Surendra prasad, Resident of-Ajnara Le Graden, I-2106 Plot No Gh02 Sector 16 B, Greater Noida West 201306 U.P. at Present Address-Building No.2, 2nd floor, Azad Sipahi Paper Gali, Near Hanuman Mandir, Kokar Chowk, Old HB Road, Ranchi, P.O.-Kokar, P.S.-Sadar, District-Ranchi

… … Appellant/Petitioner

Versus

Megha Kandhway, W/o Saurav Kumar Resident of-Jaya Kutir, House No.3, Lane No.1, Old Bank Colony, Kokar, P.O.-Kokar, P.S.-Sadar, Distt-Ranchi (Jharkhand), PIN-834001

… … Respondent/Defendant

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE AKHIL KUMAR

For the Appellant : Mr. Nikhil Ranjan, Advocate
For the Respondent : Mr. Manoj Kr. Choubey, Advocate
Mr. Madhav Prasad, Advocate

CAV on 28/09/2026 ***Pronounced on 29/10/2026***

Per Sujit Narayan Prasad, J.

Prayer

1. The instant appeal filed under Section 19(1) of the Family Courts Act, is directed against the Order/Judgment dated 23.09.2024 passed in Original Suit No.60 of 2024 by the learned Addl. Principal Judge-I, Addl. Family Court-I, Ranchi, whereby and whereunder, the application filed by the petitioner under Section 26 of the Hindu Marriage Act, 1955 for grant of temporary custody has been partially allowed.

Factual Matrix

2. The brief facts of the case, as per the pleading made in the petition, is required to be enumerated, which read as under:

3. It is the case of the petitioner/appellant herein that the marriage of the parties was solemnized on 16.07.2012 according to Hindu rites and rituals at Ranchi which was an ideal marriage and out of their said wedlock, the couple was blessed with a baby boy on 24.03.2021 to whom they named as Master Trishaan Kumar.

4. It is the further case that respondent-wife, respondent herein has without any good reason left the society of the petitioner, appellant herein and has deserted him after taking all her belongings on 19.08.2023 and also took their child with her. The petitioner is very much attached with respondent-wife and his child and has given his full attention, love and care to them always.

5. It is the further case of the petitioner/appellant that respondent-wife is living in adultery and has deserted the petitioner/appellant and also keeping him away from his child and denied him of any visitation. The petitioner/appellant herein has tried his level best to bring the respondent-wife and their child back but all the efforts made by the petitioner went into vain. The petitioner has sent multiple messages, e-mails and even notice to the respondent but the respondent keeps blocking the petitioner from every platform and did not give any heed of the same. The petitioner has been fulfilling all the expenses of fooding, clothing and shelter and education of respondent-wife and their child and still ready to keep them with him.

6. It is the further case that the matter was brought before the Child Welfare Committee (CWC) and respondent-wife in front of Child Welfare Authority clearly stated that she will never let the petitioner even look at the child. There is no male member in the family of respondent-wife and

respondent is presently residing with her mother, who is aged about 75 years old and there is a great apprehension of any mishappening with the child. The petitioner is deeply concerned about the emotional and psychological impact of this separation on his child. It is imperative for the child to have regular and consistent contact with both parents to ensure their holistic development and emotional stability.

7. Therefore, the petitioner had prayed to grant temporary custody of the child before the learned Family Court and for establish a daily visitation schedule and video calling that allows him to spend quality time with the child and issue appropriate orders restraining the respondent from interfering with petitioner's visitation rights and to facilitate the smooth implementation of the visitation schedule and the petitioner assures the court of his commitment to providing a safe, loving, and nurturing environment for the child during his custodial period.

8. The learned Family Court, based upon the submissions advanced on behalf of the parties and after going through the material available on record, has disposed of the suit by denying the temporary custody of the child, vide order/judgment dated 23.09.2024, in the light of the proposition of law as rendered by the Hon'ble Apex Court in ***Yashita Sahu Vs. State of Rajasthan, AIR 2020 SC 577***, against which the present appeal has been preferred by the appellant/wife.

Submission of the learned counsel for the Appellant/husband

9. The learned counsel appearing for the appellant has taken the following grounds in challenging the impugned judgment:

(i) The learned counsel for the appellant has submitted that the learned Family Judge has not appreciated the material available on record in right perspective and even though the order by denying the temporary custody has been passed.

(ii) It has been contended that appellant is very much attached with his child and given his full attention, love and care to him always.

(iii) It has also been contended that the respondent has deserted the appellant and also keeping him away from his child and denied him of any visitation.

(iv) It has been submitted that the appellant/husband is natural guardian of his child and he has sufficient source of income for making the future of his child bright and on the other hand, the respondent has no source of income and she is dependent upon her family who cannot provide better education to the children.

(v) It has also been submitted that the appellant has tried his level best to bring the respondent-wife and his child back but all the efforts made by the appellant went in vain.

10. The learned counsel, based upon the aforesaid ground, has submitted that the impugned judgment suffers from an error, hence is not sustainable in the eye of law.

Submission of the learned counsel for respondent/wife

11. While on the other hand, learned counsel appearing for the respondent/wife has taken the following grounds while defending the impugned judgment:

(i) It has been contended that there is no error in the impugned judgement. The learned Family Judge has rightly considered the issue of visitation right by taking into consideration the proposition of law as well as the convenience of child.

(ii) Learned counsel for respondent-wife has submitted that the money alone cannot be deciding factor in giving custody of child and the love and affection of a mother is also very essential for proper nourishment and development of a child.

(iii) It has further been contended that the appellant is not a responsible father and he was never ready to discharge the duty of a responsible father and he is an arrogant person and used to beat her on every small matter.

(iv) It has also been contended that appellant never took care of respondent-wife or her son and he did not even provide for their maintenance and the things needed to the child and somehow, the respondent-wife managed the things on her own.

(v) It has further been contended that while deciding the custody of child, the paramount consideration is the welfare of child which can be best served with the mother.

12. On the aforesaid premise the learned counsel for the respondent-wife has submitted that if the learned Family Judge by taking into consideration the aforesaid facts have passed the order, then, it cannot be said that the learned Family Judge has committed any error, hence, the present appeal is fit to be dismissed.

Analysis

13. We have heard the learned counsel for the parties and gone through the material available on record, as also the finding recorded by the learned Family Judge in the impugned order.

14. The question of legality and propriety of the impugned judgment is the issue of consideration in the present appeal.

15. This Court before considering the aforesaid rival submission and propriety of the impugned judgment needs to discuss herein the Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Act of 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.*

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."

16. It needs to refer herein that the word “after” as used in Section 6(a) of the Act, 1956 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.

17. It is evident from the mandate of the said Statute that although the father has been made natural guardian but how to make balance in awarding the custody of the minor, the wellbeing consideration even in the Statute has been mandated by inserting the provisions under section 13 thereof.

18. It is evident from Section 13 of the Act, 1956 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.

19. Section 13 of the Act of 1956 is very specific that there cannot be compromise on the issue of the welfare of the minor even though the father is natural guardian in view of the provision of section 6 of the Hindu Minority and Guardianship Act, 1956.

20. The relevance of provision of section 13 of the Act of 1956 has got bearing in the matter of custody of the minor if the sub-section 2 of section 13 will be taken into consideration wherein the word starts “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”, meaning thereby, it is onus upon the Court to come to the

satisfaction by making out a concrete opinion regarding the issue of the welfare of the minor.

21. 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.

22. 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, 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.*
>
> *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."*

23. 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.

24. 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.

25. 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.

26. 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 wellbeing of the child. In selecting a guardian, the court is exercising "parens patriae jurisdiction" and is expected, any 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.

27. 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."*

28. 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."*

29. 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.***

30. 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*
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> *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.

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 for the parents. 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 for 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 Gowda v. State can of be made to Rohith Thammana 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."*

31. 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.

32. In the backdrop of the aforesaid settled position of law this Court is now adverting to the factual aspect of the present case in order to asses as to the whether the findings so recorded by the learned Family Judge can be said to suffer from an error.

33. It is evident from the statutory provision referred herein as also the judgment passed by Hon'ble Apex Court, the consideration has been given by laying down the law that even the father is the natural guardian but the

well-being/welfare of the minor child is to be taken into consideration as provided under Section 13 of the Act 1956, wherein the welfare of the minor has statutorily been provided of the paramount consideration.

34. The Hon'ble Apex Court in the judgment referred hereinabove has also come out with the said view that the paramount consideration in the matter of guardianship/custody is the welfare of the minor child.

35. It is evident from the order impugned that suit has also been filed by the petitioner/ husband/appellant herein under Section 9 of the Hindu Marriage Act against respondent-wife for restitution of conjugal right. In pursuant to notice respondent-wife appeared and the case record was fixed for filing Written statement/conciliation, in the meantime, the petition has been filed on behalf of petitioner/husband under Section 26 of Hindu Marriage Act 1955 for interim custody of his child.

36. It is further admitted fact that the parties to the proceeding are legally wedded husband and wife and out of their wedlock one baby boy was born on 24.03.2021. Both the parties are living separately from 19.08.2023 and child of the parties is living with his mother respondent. It is further evident that the child was aged about 3.5 years at the time of passing of impugned judgment and since separation of his parents he got no occasion to stay together with his both parents and he would not have been able to develop emotional bond and intimation with his father.

37. It has further been observed by the learned Family Court that it would not be desirable to disturb the custody of child because it will impact his mental and psychological status which is against the welfare of the child and

also observed that the child interest will be best served, if he will continue in the custody of his mother.

38. So far as the prayer of petitioner regarding exercising of his visitation right is concerned, it has been observed that admittedly petitioner is biological father of the child who now aged about 5 years and six months and for proper upbringing of the child, he requires love, affection, care, company and protection of both parents and it is not only requirement of the children but it is their basic human right. For ready reference, the relevant paragraphs of the order impugned are being quoted as under:-

> *"…. ….. Heard both parties and perused the case record. It appears that this suit has been filed by the petitioner/ husband u/s 9 of the Hindu Marriage Act against respondent wife for restitution of conjugal right. In pursuant to notice respondent-wife appeared and the case record was fixed for filing W.S/conciliation, in the meantime the instant petition has been filed on behalf of petitioner/husband. It is evident from record that the parties to the proceeding are legally wedded husband and wife and out of their wedlock one baby boy was born on 24.03.2021. It is evident that both parties are living separately from 19.08.2023 and child of the parties is living with his mother respondent. It is evident that presently child is aged about 3.5 years and since separation of his parents he got no occasion to stay together with his both parents and he would not have been able to develop emotional bond and intimation with his father petitioner and under aforesaid facts and circumstance, in my opinion, at present, it would not be desirable to disturb the custody of child because it will impact his mental and psychological status which is against the welfare of the child. Thus, considering the paramount interest of the child as well as discussion made above, I find that at present, child interest will be best served, if he will continue in the custody of his mother.*
>
> *So far prayer of petitioner regarding exercising of his visitation right is concerned, admittedly petitioner is*

> *biological father of their child who is presently aged about 3.5 years and for proper upbringing of the child, he require love, affection, care, company and protection of both parents and it is not only requirement of the children but it is their basic human right. ……"*

39. Thus, from the aforesaid paragraphs of the impugned order as quoted and referred hereinabove, it is evident that the learned Family Court has categorically observed that it would not be desirable to disturb the custody of child because it will impact his mental and psychological status which is against the welfare of the child and also observed that the child interest will be best served, if he will continue in the custody of his mother.

40. Further, it is evident from the impugned order that the learned Family Judge by taking into consideration proposition of law and considering the factual, emotional and practical aspects of the case as well as convenience of child who is of tender age, which is paramount consideration of the Court, has directed the petitioner/appellant herein to visit their child once in a month for two hours preferably on Saturday or Sunday or on any Holiday subject to mutual convenience but at the place to be decided by the respondent, for ready reference, the said paragraph is being referred as under:-

> *"Keeping in mind the above proposition of law considering all these factual, emotional and practical aspects of the case as well as convenience of child who is of tender age, which is paramount consideration of this court, petitioner is directed to visit their child once in a month for two hours preferably on Saturday or Sunday or on any Holiday subject to mutual convenience but at the place to be decided by the respondent. In addition, the petitioner would be free to make virtual meeting with the child through Whatsapp, Google, Zoom, video call etc for half and hour twice in a week subject to convenience of the child. However, respondent is directed to inform the petitioner/*

husband at least one week prior to exercise her visitation right in such a manner….. ….”

41. It needs to refer herein that as per the ratio laid down by the Hon’ble Apex Court in the case of ***Gaurav Nagpal* v. *Sumedha Nagpal (supra)*** while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. It has further been observed by the Hon’ble Apex Court that it is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration. The Hon’ble Apex Court has further observed that 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 or 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.

42. Further in the case of ***Gaytri Bajaj v. Jiten Bhalla, (supra)*** the Hon’ble Apex Court has categorically 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.

43. There is no denial of the fact that 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" as per the settled proposition of law which has been settled by the Hon'ble Apex Court and same has been referred in the preceding paragraphs.

44. From the impugned order as quoted and referred hereinabove in the preceding paragraphs, it is evident that while adjudicating the application preferred by the petitioner/appellant under Section 26 of the Hindu Marriage Act, 1955, concerning the interim custody of the minor child, who is presently about five and a half years of age, the learned Family Court has primarily been guided by the paramount consideration of the welfare and well-being of the child. Upon due consideration of the facts and circumstances of the case, the learned Family Court found it appropriate not to disturb the existing custody of the minor child, who is residing with his mother.

45. The impugned order further reflects that the learned Family Court, recognizing the significance of the love, care and affection of both parents in the upbringing of the child, has granted visitation rights to the petitioner/appellant-father for two hours once every month and has also permitted telephonic interaction with the minor child through WhatsApp. Thus, it is apparent that the learned Family Court has taken into account all relevant aspects governing the issue of interim custody and visitation rights while deciding the application under Section 26 of the Act of 1955, which came to be considered during the pendency of the suit for restitution of conjugal rights. In such circumstances, the impugned order cannot be said to suffer from any perversity, arbitrariness, or illegality warranting interference by this Court.

46. At this juncture, it needs to refer herein that 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."*

47. Thus, from the aforesaid, it is evident that any order said to be perverse 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.

48. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached it. It signifies a gross and unreasonable assessment of evidence or law by a court.

49. Further Perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

50. Thus, in view of the discussions made hereinabove, and upon applying the ratio laid down by the Hon'ble Supreme Court in the cases quoted and referred in the preceding paragraph, this Court is of the considered opinion that the paramount consideration in matters relating to custody and visitation of a minor child is the welfare and best interests of the child. Taking into account the strained and embattled relationship between

the parties, the tender age of the minor child, and the overall welfare and well-being of the child, this Court finds that the learned Addl. Principal Judge, Addl. Family Court-I, Ranchi, has judiciously exercised the discretion vested in it while adjudicating the petition preferred under Section 26 of the Hindu Marriage Act, 1955.

51. Accordingly, this Court finds no reason to interfere with the order passed by the learned Addl. Principal Judge, Addl. Family Court-I, Ranchi, on the application filed by the petitioner under Section 26 of the Act, 1955.

52. Further, this court is conscious with the fact that even if the custody of minor child is with one parent herein mother 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, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Yashita Sahu v State of Rajasthan (Supra).***

53. However, the learned Family Court has granted visitation rights to the petitioner/appellant-father, this Court is of the considered view that, in order to ensure the effective implementation of the said arrangement and to safeguard the welfare and best interests of the minor child, the visitation shall be facilitated under the supervision of the Jharkhand State Legal Services Authority (JHALSA). While regulating such visitation, due regard shall also be given to the educational schedule, academic commitments and overall routine of the minor child so that no inconvenience is caused to him.

54. Accordingly, the Member Secretary, JHALSA, is directed to ensure effective implementation of the visitation rights granted to the appellant by

the learned Family Court. For the said purpose, the Member Secretary, JHALSA, shall issue appropriate directions to the concerned District Legal Services Authority (DLSA), through its Chairman, to facilitate and monitor the visitation arrangement and to ensure that the appellant is able to exercise the visitation rights granted under the impugned order in a smooth, meaningful and hassle-free manner, strictly in accordance with the directions issued by the learned Family Court.

55. With the aforesaid directions and observations, the instant appeal stands disposed of.

56. Pending interlocutory applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Akhil Kumar, J.)

(Akhil Kumar, J.)

29/10/2026

Rohit/**A.F.R.**

Uploaded on 30.10.2026