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HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 360 of 2024

{Arising out of judgment and decree dated 27-8-2024 in Misc. Civil Suit No.1/2024 of the Judge, Family Court, Balodabazar}

Tikaram Kaiwart, S/o Late Shri Sukhiram Kaiwart, aged about 38 years, R/o Village Amethi, Distt. Balodabazar-Bhatapara (C.G.)
(Plaintiff)
... Appellant

versus

1. Kavita Kaiwart, W/o Shri Tikaram Kaiwart, aged about 32 years, R/o Village Gurhi Chowk, Ward No.1, Dhamalpur, P.S. Gidhauri, Distt. Balodabazar-Bhatapara (C.G.)

2. Minor Yogeshwar Kaiwart, S/o Shri Tikaram Kaiwart, Aged about 7 years, R/o Village Gurhi Chowk, Ward No.1, Dhamalpur, P.S. Gidhauri, Distt. Balodabazar-Bhatapara (C.G.) Through natural guardian mother Smt. Kavita Kaiwart, W/o Shri Tikaram Kaiwart.

(Defendants)
... Respondents

For Appellant	**:**	Mr. Sumit Shrivastava, Advocate.
For Respondent No.1	**:**	Mr. Shiv Sewak Manjhi, Advocate.

Division Bench: -
Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

Judgment On Board
(29/10/2026)

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the appellant herein/plaintiff husband has

preferred this appeal challenging the judgment & decree dated **27-8-2024** passed by the Judge, Family Court, Balodabazar, District Balodabazar-Bhatapara in **Misc. Civil Suit No.1/2024** (**Tikaram Kaiwart v. Smt. Kavita Kaiwart and another**), by which the application filed by the appellant herein/plaintiff husband under **Section 7** of the **Family Courts Act, 1984,** read with **Section 25** of the **Guardians and Wards Act, 1890**, for custody of the minor son/ respondent No.2 herein, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

Factual Matrix

Admitted Facts: -

3. It is admitted fact on record that marriage of the appellant/plaintiff was performed with respondent No.1/defendant No.1 as per the Hindu rites and customs at Village Sel, District Balodabazar on **28-4-2015** and from their wedlock, one son – respondent No.2/defendant No.2 Minor Yogeshwar Kaiwart was born, who was aged about 7 years at the time of filing the application/suit and who is presently residing with respondent No.1/defendant No.1. The respondents/defendants have filed an application for maintenance against the appellant/plaintiff before the jurisdictional competent court in which the competent court has passed an order directing the appellant/plaintiff to pay an amount of ₹ 3,000/-

per month to respondent No.2/defendant No.2 and after filing appeal before the High Court to pay an amount of ₹ 6,000/- per month to respondent No.1/defendant No.1. It is the further admitted fact that the appellant/plaintiff has filed an application before the court against respondent No.1/defendant No.1 for dissolution of marriage in which the jurisdictional competent court by judgment dated 7-2-2022 allowing the said application had passed decree for dissolution of marriage by a decree of divorce.

-:Case of the Appellant herein/Plaintiff Husband before the Family Court:-

4. Case of the appellant herein/plaintiff husband before the Family Court is that respondent No.1 herein/defendant No.1 wife is a rural woman with an independent ideology and a stubborn nature. She has studied up to 12th class and is presently residing in Village Dhamalpur and for that reason respondent No. 2 herein/defendant No.2 minor son is deprived of proper care, education, and upbringing, and is forced to live like an orphan while the appellant herein/plaintiff husband i.e. his father is very much present/alive.

5. It is the further case of the appellant/plaintiff husband that overall development of his minor son is not possible while living with respondent No.1/defendant No.1 wife. The appellant/plaintiff husband is educated and is holding a position as teacher. His family is a joint family consisting of his mother, brother, and his sons and daughters. Therefore, overall development of the minor son i.e. respondent No.2/defendant No.2 is possible by living with the appellant herein. It

is also the case of the appellant/plaintiff husband that respondent No.2/defendant No.2 minor is becoming weak due to lack of proper care and attention. The appellant/plaintiff husband wishes to keep respondent No.2 minor with him and provide him with a high-quality education by educating him in an English-medium school as respondent No.2 minor's future is not secure by living with respondent No.1/ defendant No.1 wife. Despite the request made by the appellant/ plaintiff husband before respondent No.1/defendant No.1 wife to keep the minor son with him, she has refused to send the minor son to him and abused him, threatening to kill him, and threatening to implicate him in false criminal cases. The appellant/plaintiff husband is the natural father of respondent No.2/defendant No.2 minor. On the aforesaid factual premise, it was prayed that the application for custody of the minor son be accepted.

-:Written Statement of Respondent No.1 herein/Defendant No.1 Wife before the Family Court:-

6. Respondent No.1 herein/defendant No.1 wife in her written statement has denied all the facts mentioned in the application/suit except the admitted facts and it has been specifically stated that the order passed by this Court has not been followed by the appellant/plaintiff husband till date and the amount of ₹ 6,000/- towards maintenance is not being paid to her. It has further been stated that respondent No.1/defendant No.1 wife is giving proper education and values to respondent No.2/ defendant No.2 minor. It has also been stated that the all-round development of minor Yogeshwar is possible only with his mother

respondent No.1/defendant No.1 wife. The appellant/plaintiff husband has not loved respondent No.2, as he has not come to see him or to take him from his birth till date. He has filed the case to avoid the payment of maintenance amount. Respondent No.2 minor is currently studying in Class-II at Nehru Public English Medium School, Hasuwa, Police Station Gidhauri. Whenever the appellant comes to the court on the date of hearing, he used to abuse her by saying to give respondent No.2 to him and by refusing to pay the maintenance amount, the order of the High Court is not being followed. Finally, a request has been made to reject the application of the appellant.

-:Proceedings before the learned Family Court:-

7. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

S.No.	Issues	Finding
1.	क्या आवेदक टीकाराम कैवर्त्य अप्राप्तवय बाल योगेश्वर कैवर्त्य, उम्र 07 वर्ष के हित एवं सर्वोत्तम कल्याण को देखते हुए अनावेदिका कविता की अभिरक्षा से अपने संरक्षण में प्राप्त करने का अधिकारी है ?	आवेदक टीकाराम कैवर्त्य यह साबित करने में असफल रहा है कि वह अप्राप्तवय बालक योगेश्वर कैवर्त्य, उम्र 07 वर्ष के हित एवं सर्वोत्तम कल्याण को देखते हुए अनावेदिका कविता की अभिरक्षा से अपने संरक्षण में प्राप्त करने का अधिकारी है ।
2.	सहायता एवं वाद व्यय ?	निराकृत

-: Details of evidence and documents available before the Family Court:-

Evidence led by appellant/plaintiff:-

8. Before the Family Court, appellant/plaintiff husband **Tikaram Kaiwart** has examined himself as **PW-1** and **Seukram Nishad** as

PW-2, on behalf of the appellant/plaintiff husband and exhibited three documents **Exs.P-1 to P-3** which were admitted in evidence.

Evidence led by respondent/defendant:-

9. Similarly, on behalf of the respondents/defendants, respondent No.1/ defendant No.1 wife **Kavita Kaiwart** has examined herself as **DW-1, Lachh Kumar Kaiwart** as **DW-2** and **Makhanlal Kaiwart** as **DW-3** and exhibited as many as eight documents **Exs.D-1 to D-8** which were admitted in evidence.

-:Finding and Judgement of Family Court :-

10. Parties were given opportunity to adduce evidence and after completion of trial, the suit/application of the appellant herein/plaintiff husband has been dismissed vide **Judgment dated 27-8-2024**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) The learned Family Court has erred in appreciating the evidence available on record because from perusal of the evidence of the appellant it is clearly proved that the appellant is in a position to provide better education and to take better care than the respondent as the appellant is working as a Government Teacher and he lives in a joint family.

(ii) The appellant is financially more stable than respondent No.1 and since the minor respondent No.2 is a school going student, he needs more financial assistance as well as proper care which could be provided by the appellant and his family and the grand-parents of

the minor is also ready to take the care and provide the love to their lovely child.

(iii) It is the settled position of law that while granting the custody of children the welfare of the children must be the priority consideration and in the present case, the learned Family Court did not given any weightage to the welfare of minor though the appellant/plaintiff has produced oral as well as documentary evidence that the appellant is capable of providing better education to the child, but the said aspect of the matter has not been considered by the learned Family Court.

(iv) The finding recorded in paras 7 & 8 of the judgment is contrary to the evidence available on record and mere being a mother is not sufficient to prove that she is providing proper care to the child.

(v) The learned Family Court has failed to see that the appellant lives in a joint family wherein female members are also present who can prepare food or tiffin in time and the child will not feel stress and will feel happy as there is everyone to look after him in absence of the father.

(vi) The learned Family Court is legally incorrect in providing the custody of minor to the respondent Mother without considering the welfare of the child though this Court as well as the Supreme Court has held in series of judgments that the welfare of child should be first considered before deciding the Guardianship.

(vii) The learned Family Court has failed to see that the Mother is always the guardian of her son but the question of custody can be decided looking to the welfare of the minor and in the present case, the minor is residing with mother since long, therefore the said minor has stated to reside with mother, but looking to the age, he required the love and care of father also.

(viii) The finding recorded by the learned Family Court is not legally sustainable in view of the principle laid down by this Court as well as the Supreme Court in series of judgments in which it is held that the custody can be decided looking to the need and welfare of child.

(xi) The learned Family Court has committed an error of law in not granting the custody of minor to the father, even not granted visiting rights to father who is the natural guardian/biological Father of the child.

(x) The learned Family Court without any proper pleadings and evidence recorded the finding that the appellant has performed second marriage, therefore, he is not entitled to get the custody of the child though the law did not provide any bar to take the custody after performing the second marriage.

-: Proceeding before the Appellate Court :-

11. It is particularly noteworthy that the appeal has been finally heard with the consent of both parties.

-:Points for Determination:-

12. Considering the entire facts of the case, the following two points would emerge for determination of the issue: -

1. Whether the appellant/father has established that the welfare and best interests of his seven-year-old minor son require that his custody be transferred from the respondent/mother to him under Section 25 of the Guardians and Wards Act, 1890?

2. Whether the learned Family Court has committed any illegality or material irregularity in dismissing the appellant/father's application for custody of the minor child?

-:Argument of the Appellant/Plaintiff Husband:-

13. Learned counsel for the appellant, during the course of arguments, submits that the appellant does not press his prayer for custody of the minor child and confines his submission to the grant of visitation rights to enable him to meet and maintain contact with his minor son.

-:Argument of Respondent No.1/Defendant No.1 Wife:-

14. Learned counsel for the respondent submits that the learned Family Court has rightly dismissed the application for custody of the minor child and that the impugned order does not warrant any interference. It is further contended that, considering the circumstances of the case and

the welfare of the minor child, the appellant is not entitled to any visitation rights. Accordingly, it is prayed that the appeal be dismissed.

-: Finding and Analysis of the Appellate Court :-

15. Points for determination Nos.1 and 2 are taken up together for consideration, as they are interconnected.

16. The paramount consideration in determining the question of custody of a minor under **Section 25** of the **Guardians and Wards Act, 1890**, is the **welfare of the child** and not the competing rights of the parents. In the matter of ***Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413**, the Supreme Court has reiterated that the welfare of the child is the paramount consideration in custody matters.

17. In the present case, **Ex.P-1**, the judgment passed by the Family Court, and **Ex.P-2**, the judgment passed by the High Court in the first appeal, establish that marriage between the parties has been dissolved by a decree of divorce. Appellant/father **Tikaram (PW-1)** has sought custody of his seven-year-old son on the ground that he is a teacher and can provide him with better education and care. He has also alleged that the respondent/mother does not permit him to meet the child and threatens to implicate him falsely. However, in **paragraph 9** of his cross-examination, the appellant admitted that he had contracted a second marriage. In **paragraph 10**, he has further admitted that he had not lodged any complaint regarding the alleged threat of false implication. His allegations, therefore, remain unsupported by any corroborative material.

18. On the other hand, respondent/mother **Kavita Kaiwart (DW-1)** has produced receipts relating to the child's education, marked as **Ex.D-1 to Ex.D-7**, which indicate that the child is studying in a good school while residing with her. Thus, the appellant's contention that he is better placed to secure the child's education merely because he is a teacher, does not establish that the child's welfare is being neglected in the mother's custody.

19. It also emerges from the evidence that the child has not had meaningful contact with his father since early childhood. When the child appeared before the learned Family Court, he neither looked towards his father nor expressed any inclination to accompany him. Considering the child's tender age, his existing circumstances and the absence of a meaningful relationship with the appellant, an abrupt transfer of custody would not be justified in the absence of cogent material demonstrating that such a change would promote the child's welfare.

20. The appellant's status as a teacher and his capacity to provide education are relevant considerations, but they cannot outweigh the child's existing circumstances when the evidence establishes that he is already receiving education and that no neglect of his essential needs has been proved. The question is not which parent is comparatively better qualified, but whether the proposed transfer of custody would serve the child's welfare.

21. In view of the evidence on record, this Court finds that the appellant has failed to establish that the welfare of the minor requires his removal

from the respondent's custody. The learned Family Court has committed no illegality or material irregularity in dismissing the application under **Section 25** of the **Guardians and Wards Act, 1890**. Accordingly, both points for determination are answered in negative and against the appellant.

22. It is further relevant to mention that, during the course of arguments, learned counsel for the **appellant/plaintiff did not press** the prayer for custody of the minor child and confined the submissions to **grant of visitation rights**. In view of the foregoing discussion and the fact that, during the course of arguments, the appellant has confined his submissions to grant of visitation rights without pressing the prayer for custody, this Court finds no ground to interfere with the finding of the learned Family Court declining to transfer the custody of the minor child to the appellant.

23. However, the question of visitation rights requires separate consideration. There can be no dispute that a natural father ordinarily has a legitimate interest in maintaining a relationship with his minor child, and that the child's welfare may also be served by preserving an appropriate relationship with both parents. Nevertheless, such visitation must be regulated in a manner that safeguards the child's emotional security and psychological development.

24. In the present case, having regard to the circumstances of the parties and the fact that the child has not developed a meaningful relationship with the appellant since early childhood, a rigid direction requiring

visitation at fixed weekly or monthly intervals may give rise to unnecessary friction and conflict between the parents. If one parent seeks to meet the child while the other resists such interaction, repeated disputes over compliance with the visitation schedule may adversely affect the child's mental and emotional well-being.

25. In these circumstances, it would be appropriate to permit the appellant to meet the minor child at a mutually agreed public place, subject to prior intimation to respondent No.1/defendant No.1 and her consent regarding the time and place of the meeting. Respondent No.1/ defendant No.1 shall consider such a request in good faith, keeping the welfare of the child paramount. Although no specific day or date is fixed for visitation, the appellant may seek to meet the child on festivals, the child's birthday, or during extended school holidays, subject to the aforesaid arrangement. Any such meeting shall take place in a peaceful and cordial atmosphere, without exposing the child to disputes or hostility between the parents.

-:Final Conclusion :-

26. Accordingly, while the finding of the learned Family Court declining to transfer custody of the minor child to the appellant is affirmed, the impugned order is modified to the limited extent indicated above regarding visitation. The appeal is dismissed insofar as the prayer for custody is concerned and stands disposed of with the aforesaid modification.

27. Decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

Sd/-
(Sushma Sawant)
JUDGE

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