



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO. 1274 OF 2024

Dattatray s/o Prabhakar Rao Duratkar
Age: 52 years, Occu. Private Service,
R/o Chandaneshwar Galli, Manwat,
Tq. Manwat, Dist. Parbhani

... APPELLANT
(Orig. Respondent No.1)

VERSUS

1. The Chief Executive Officer,
Zilla Parishad, Aurangabad
2. The Education Officer
Zilla Parishad, Aurangabad
3. The Chief Accounts & Finance Officer,
Zilla Parishad, Aurangabad
4. Akshat s/o Dattatray Duratkar,
Age: 17 years, Occu. Education,
5. Anushri d/o Dattatray Duratkar
Age: 11 years, Occu. Education,
[Nos. 4 & 5, both minors
Through: respondent No.6]
6. Vasantrao Bhavdu Tapkire,
Age: 84 years, Occu. Business,

Nos. 4 to 6 R/o Guruprasad Niwas,
Plot No.4, Pagariya Colony,
Bansilar Nagar,
Chha. Sambhaninagar

... RESPONDENTS
(Nos. 1 to 3 – Ori. Respondents)
(Nos. 4 & 5 – Ori. Applicants)

....

Mr. Manish P. Tripathi, Advocate for the Appellant

Mr. S. R. Dheple, Advocate for Respondent Nos. 1 to 3

Mr. Shrimant Mundhe, Advocate for Respondent Nos. 4 to 6

....

WITH

**CIVIL APPLICATION NO. 1897 OF 2025 WITH
CIVIL APPLICATION NO. 5575 OF 2024 WITH
CIVIL APPLICATION NO. 2739 OF 2025 WITH
CIVIL APPLICATION NO. 2740 OF 2025**

CORAM : Y. G. KHOBRAGADE, J.

DATE : April 06, 2026

PER COURT :-

1. Heard Mr. Tripathi, the learned counsel appearing for the appellant, Mr. Dheple, the learned counsel for respondent Nos. 1 to 3 and Mr. Mundhe, the learned counsel for respondent Nos. 4 to 6.

2. By the present appeal, the appellant takes exception to the order dated 01.04.2024, passed in Civil M. A. No.420 of 2022 by the learned District Judge-6, Aurangabad, thereby appointed the respondent No.6 as a guardian of the minor respondent Nos. 4 and 5, for carrying all required activities, work for the benefit and betterment of the minors and for taking the retirement benefits of their natural mother Smt. Vidya Dattatray Duratkar, till they attain their age of majority.

3. Having regard to the submissions canvassed on behalf of both the parties, I have gone through the record. It is not in dispute that on 05.05.2005, the marriage between the present appellant and Vidya was solemnized. Out of the said wedlock, the appellant blessed with two children i.e. present respondent Nos. 4 and 5. On 18.07.2008, Vidya, the wife of the appellant and mother of Respondent Nos. 4 and 5, joined the service on the post of Junior Clerk with respondent No.3, which comes within the head of Respondent No.1 Zilla Parishad, Aurangabad. On 13.03.2022, Vidya, the wife of the present appellant and the mother of present respondent Nos. 4 and 5, died due to cardiac attack, at Aurangabad.

4. On 13.12.2022, i. e. after nine months from the death of Smt. Vidya, the present respondent Nos. 4 and 5, through their maternal grand father i.e. respondent No.6, filed Civil M.A. No.420 of 2022 under Sections 7 and 12 of the Guardians and Wards Act, 1890, seeking that respondent No.6 Vasantrao Bhavdu Tapkire may be appointed as guardian of respondent Nos. 4 and 5 i.e. Akshat Dattatray s/o Duratkar aged about 16 years and Anushri d/o Dattatray Duratkar, aged about 9 years, till they attains the majority. Respondent Nos. 4 to 6 further prayed for issuance of directions

against the present respondent Nos. 2 and 3, not to disturb the amount lying in the name of deceased Vidya Dattatray Duratkar, in the bank account, recurring deposit, L.I.C. or any pecuniary benefits or sale transaction without leave of the Court.

5. The present appellant / original non-applicant No.1 had filed reply at Exh.13 and strongly resisted the application. The present respondent Nos. 1 to 3 i.e. employer of the deceased Vidya also filed reply at Exh.11 and stated that the present appellant / original respondent No.1 is the nominee of deceased Vidya Dattatray Duratkar, but other pleadings are denied.

6. On 01.04.2024, the learned District Judge-6, Aurangabad, passed the impugned order in Civil M.A. No.420 of 2022, holding that though the present appellant / original respondent No.1 appeared through his advocate, but he failed to file reply. The present respondent Nos. 1 to 3 / original respondent Nos. 2 to 4 had filed their reply at Exh.11 and contended that as per the record of the Zilla Parishad, the present appellant / original respondent No.1 is the nominee of deceased Smt. Vidya Dattatray Duratkar and submitted the Court that they would abide by the order, if any, passed by this

Court. However, the learned trial Court held in paragraph Nos.7 and 8, as under:-

“7. It is a matter of record and also not in dispute that the proposed guardian namely Vasantrao Bhavdu Tapkire is the real grandfather (father of mother) of the minors Akshat and Anushri. It is not in dispute that the respondent No.1 is the natural father of the applicant Nos. 1 and 2. It is also a matter of record that the mother of the minors and wife of the respondent No.1, Vidya was the daughter of the proposed guardian Vasantrao. She was working on the post of Junior Assistant in the office of the Chief Executive Officer of the Jilha Parishad, Aurangabad. Her job was permanent. She died on 13.03.2022 at Aurangabad. It is also not in dispute that after her death, her minor children are residing with the proposed guardian and not with the respondent No.1. It is further an admitted fact and also a matter of record that after her death there are certain retirement benefits to which the legal heirs and successors of the deceased are entitled to. It is also matter of record that the respondent No.1 is shown as nominee on the service book of the deceased Vidya. Thus, the applicant, i.e. the proposed guardian claiming appointment of the guardianship against the natural father.

8. I have interacted with the minors and found that they have no trust upon the respondent No.1. It is further found that the after the death of deceased Vidya, the respondent No.1 has not taken any responsibility of the minors and since then every responsibility is taken by the proposed guardian of the minors. It is further found that a very good bond of trust has also been developed between the minors with the proposed guardian and minors are happy with him. It is further found that when the minors are pursuing their studies, the proposed guardian is also taking care of the minors emotionally and financially including food, shelter and education etc.”

7. However, as per the provisions of Section 17 of the Guardians and Wards Act, the Court is required to consider the

welfare of the minors to maintain them as well as the property standing in their names. Sub-sections (2), (3) and (5) of Section 17, and Section 19, provides as under:-

“(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.

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

19. Guardian not to be appointed by the Court in certain cases. *Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person-*

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or

[(b) of a minor, other than a married female, whose father or mother is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor, or]

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.”

8. It is not in dispute that the appellant / original respondent No.1 is the natural grand-father of the present respondent Nos. 4 and 5. In the case in hand, it *prima facie* appears that though the present appellant / original respondent No.1 appeared in the

matter and had filed his W.S./reply at Exh.13, but the learned trial Court recorded illegal findings that the present appellant though appeared through his counsel, but he failed to file reply and the contentions raised by the present appellant have not been considered. The facts of filing of the reply by the present appellant at Exh.13, have not denied by the present respondent Nos. 4 to 6. On perusal of say of the present appellant, it appears that about occurrence of controversy between the present appellant and respondent Nos.4 to 6. So also, no proper opportunities were granted to lead the evidence. Therefore, to my mind, the impugned order dated 01.04.2024 is not sustainable in the eyes of law and the matter is required to be remanded back to the trial Court for fresh decision after giving opportunity to both the parties to lead the evidence and to prove the issues involved in the said matter.

9. Hence, the First Appeal is remanded back to the trial Court for fresh decision after giving opportunity to both the parties to lead the evidence and to prove the issues involved in the said matter.

10. On 27.11.2024, this Court passed an order in Civil Application No. 10064 of 2024 and the respondent Nos. 1 to 3 were

directed to deposit entire amount of service benefits of deceased Vidya Dattatray Duratkar, the wife of the present appellant and mother of respondent Nos. 4 and 5, and after deposit of the said amount, the present respondent No. 4 Akshat Dattatray Duratkar was permitted to withdraw 50% of the amount of his $1/3^{\text{rd}}$ share along with accrued interest. Accordingly, the present respondent Nos. 1 to 3 have deposited the entire service benefits of deceased Vidya to the tune of Rs.17,13,111/-. Accordingly, the present respondent No.4 Akshat Dattatray Duratkar has already withdrawn an amount of Rs.2,80,133/- i.e. 50% of his $1/3^{\text{rd}}$ share. Therefore, the remaining amount lying in this Court shall be remitted to the learned trial Court along with the accrued interest.

11. All pending civil applications stand disposed off.

[Y. G. KHOBRADE, J.]

SMS