



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

952 FIRST APPEAL NO. 1607 OF 2025
WITH
CIVIL APPLICATION NO. 6485 OF 2025
IN FA/1607/2025

MOHD. ARHAN MOHD. MUZAFFAR U/G OF HABIB UR RAHEMAN
SHAIKH MAHEBOOB AND ANR

VERSUS

THE DISTRICT COLLECTOR AND ANR

...
Advocate for Appellants : Mr. Md. Samiuddin M. Y. Choudhari
AGP for Respondent No.1/State : Mr. S.S.Dande
...

CORAM : Y.G. KHOBRADE, J.
DATE : 20.02.2026

PER COURT :

1. Heard the learned counsel Mr. Chaudhari, appearing for the appellants and the learned APP, Mr. Dande, appearing for respondent No. 1-State.
2. Despite service, the respondent No. 2 failed to appear in the matter.
3. The appellants have filed Civil M.A. bearing No. 328 of 2019, under Section 10 of the Guardian and Wards Act, 1890 and prayed for allowing the application.
4. By the present appeal, the appellants/minors, through their

guardian i.e. the maternal grand-father takes exception to the order dated 15.02.2025, passed in Criminal Application No. 328 of 2019, by the learned District Judge-9, Aurangabad, thereby, rejected the application of the applicants therein for the appointment of guardian on behalf of the minor i.e. Mohd. Arhan Mohd. Muzaffar and Mohd. Afnan Mohd. Muzaffar.

5. Needless to say that, Mrs. Afrin Farzan d/o Habib Ur Raheman s/o Shaikh Maheboob was married with respondent No. 2 Mohd. Muzaffar s/o Mohd. Rauf on 31.05.2006. Out of the said matrimonial relations, appellant No. 1 minor Mohd. Arhan Mohd. Muzaffar was born on 14.12.2009 and appellant No. 2 minor Mohd. Afnan Mohd. Muzaffar was born on 15.03.2014. It further appears that, the mother of both minor/appellants and wife of respondent No. 2 was in service with the Municipal Council, Morshi, District Amrawati. The mother of minors/appellants and wife of respondent No. 2 died on 30.09.2018 at her parental house at Paithan and since then both the appellants/minors were staying with their maternal grand-father i.e. the mother's father.

6. The appellants, through their guardian claimed that, the appellant Nos. 1 & 2 are studying at Paithan and guardian Habib-ur Raheman Shaikh Maheboob is nurturing both the appellants, however, their natural father respondent No. 2 did not maintain them. Further,

the amount of Rs. 2,36,940/- towards provident fund of the deceased mother of the appellants and wife of respondent No. 2, as well as immovable and movable property and Rs.10 lakhs amount is of appellants/minors. However, the natural father of the appellants is not protecting the rights of both the minors/appellants. So also, respondent No. 2 solemnized second marriage, therefore, prayed for grant of certificate under the Guardian and Wards Act, to maintain the property of the deceased Afrin Farzana, the mother of appellants and wife of respondent No. 2.

7. On 15.02.2025, the learned District Judge -9, Aurangabad passed the impugned order holding that, as per the provisions of Guardians and Wards Act, 1890 ordinarily the natural guardian should be appointed as guardian for the welfare of the minors, under the Guardians and Wards Act and only when the natural guardian is not found or is unfit or is dis-interested, in such exceptional circumstances, the person other than the natural guardian can be appointed.

8. The section 7 of the Guardians and Wards Act empowers the Court, to appoint the guardian to protect the property of minor or for the person or with both. Section 7, which reads as under :

“7. Power of the Court to make order as to guardianship,

(1) Where the Court is satisfied that, it is for the

welfare of a minor that an order should be made,

- (a) appointing a guardian of his person or property, or both, or*
- (b) declaring a person to be such a guardian, the Court may make an order accordingly.*

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.”

9. Section 8 provides for entitlement of the person who can apply for the orders. Section 9 provides about the jurisdiction of the Court and Section 10 provides the form of the application.

10. On plain reading of Section 7 of the Guardians and Wards Act, 1890, it appears that, the Court may pass the order as to the appointment of guardian for the protection/welfare of minor or his property, if it is found necessary to do so in the interest of the minor.

11. Section 19 of the Guardians and Wards Act provides that, in certain cases the guardian of the property of minor cannot be appointed

when the said property is under the superintendence of Court of Wards or declare a guardian of the person or the minor, whose property is under the superintendence of a Court of Wards.

12. In the case in hand, it is not in dispute that, the present respondent No. 2 and the original non applicant No. 1 is the natural father of the present appellants-minors and he is the natural guardian with the meaning of Guardians and Wards Act. There is nothing on record to show that respondent No. 2 refused to maintain his children i.e. the appellants. Therefore, as per the provisions of Section 19 of the Act, there is bar for appointment of the guardian for the appellants.

13. Nonetheless, as per the ratio laid down in the case of **Ashok Shankarrao Ghatage vs. Mahipati Yashwant Khutale – 2006 (3) BOMCR 517**, wherein it is observed that, the natural guardian /father of the present appellants does not appear to be unfit or he is acting against the interest of the present appellants, therefore, Mr. Habib-ur Raheman Shaikh Maheboob, father-in-law of the respondent No.2 and maternal grand-father of the appellant Nos. 1 & 2, minors, cannot be appointed. On 15.02.2025, the learned trial Court passed the impugned order and rejected the application, which does not appear illegal or bad in law. Hence the present appeal is dismissed.

14. The Civil Application is disposed of.

15. Both the minor appellants can file a proceeding under Section 125 of the Code of Criminal Procedure (Corresponding Section 144 of the Bhartiya Nagari Suraksha Sanhita, 2023), for maintenance, through their grand-father, Habib-ur Raheman Shaikh Maheboob.

(Y.G. KHOBRAGADE, J.)

mahajansb/