

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

FAMILY COURT APPEAL NO.56 OF 2025

Anup Anil Gogate
Age : 39 Years; Occu: Service
R/at: 04-36, BLK 103 Bukit
Purmei Road,
Singapore – 090103
TODAY AT PUNE
Versus

...Appellant

Kshitija Anup Gogate
Age : 38 Years; Occu: Unemployed
R/At: Mandar Bungalow,
Lane No.1, Vinit- Co-operative Housing
Society, Near Merchant I Co-operative Bank,
Rahul Nagar, Kothrud,
Pune – 411038.

...Respondent

Mr. Abhijit D. Sarwate for the Appellant.

Ms. Neeta Kataria i/b Mr. Nitin Deshpande for the Respondent.

***CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.***

DATE : 13th FEBRUARY 2026

ORAL JUDGMENT (Per Bharati Dangre, J.) :

1. This appeal filed by father of a 10 year old child, presently a resident of Singapore, on account of his official engagement, has

raised a challenge to the impugned order passed by the Family Court, on his application filed under Section 12 of the Guardians and Wards Act, 1890 in a pending petition (D/23/2025) filed by him under Section 7 of the Guardians and Wards Act, praying for a declaration of himself as a guardian of the minor child.

2. We have heard learned counsel Mr. Sarwate for the petitioner and learned counsel Ms. Neeta Kataria who has marked her appearance through video-conferencing. With the able assistance of the respective counsel we have perused the record and the impugned order.

3. As a preliminary objection was raised by the learned counsel Ms. Kataria about the maintainability of the present appeal against the impugned order dated 19th May 2025, by claiming that it being an interlocutory order under Section 19 of the Family Courts Act such an appeal is not maintainable.

This Court directed the registry to ascertain this position by order dated 18th June 2025, and we feel ourselves guided by the decision of the Full Bench of the Delhi High Court in the case of *Dr. Geetanjali Aggarwal v/s Dr. Manoj Aggarwal*¹, decided on 16th October 2024, which has answered the reference by holding that an order under Section 12 of the Guardians and Wards Act would be appealable under Section 19 of the Family Courts Act, 1984.

We concur with the said view expressed by the Delhi High Court and therefore we deem it appropriate to entertain the appeal under Section 19 of the Family Courts Act.

4. On hearing the respective counsel on merits of the matter, though Mr. Sarwate had made a feeble attempt to canvass before us the issue of the lack of jurisdiction of the Family Court, as the couple having being residing in Singapore and all of a sudden the respondent-wife leaving Singapore along with the child on 10th March 2025 and it is in this background, he had filed the proceedings. An attempt on part of Mr. Sarwate to call in question the jurisdiction of the Court, is

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not appreciated by us as we find that it is he who has invoked the jurisdiction of the Court under the Guardians and Wards Act, seeking his appointment as a guardian of the minor child and once he has succumbed to the jurisdiction, definitely he will not call in question the jurisdiction of the said Court to decide an Interim Application filed under Section 12, which is a power to make the interlocutory order for production of minor and interim protection of the personal property.

Therefore, Mr. Sarwate fairly concedes that he may not press this at this point. He has taken us through the impugned order and requested us to get into the merits of the reasons, to be noted that his application under Section 12 is reduced into a form of an application for grant of access, though the nature of his Interim Application, in specific his prayer was for production of the child and handing over of his custody, by an interim measure on the basis that the child was taking education in Singapore. An attempt in the application was made to demonstrate that by bringing him to India, it has amounted to uprooting him from the environment in which he was to be found for last three years, which would detrimentally affect his

welfare.

5. We have perused the application with specific averments, as regards the Child's potential for full development in Singapore with the assistance of his father but the child was deprived of the aforesaid facilities of being educated in Singapore on account of a rash act of the mother in bringing him to India, in an attempt to settle him there.

6. When we perused the impugned order, we have noted that there is no consideration of the aforesaid aspect, as in a perfunctory manner, the learned Judge of the Family Court has referred to the conduct of the parties and specifically relied upon the contentions advanced on behalf of the respondent-wife that she was subjected to cruel treatment and ultimately arrived at a conclusion that this will have to be determined by leading appropriate evidence and this contention is specifically to be found in paragraph 12 of the order.

We find that taking this into consideration, the Family Court, has arrived at a conclusion that it would be inappropriate and

premature to undertake a detailed examination or arrive at any conclusive determination regarding the truthfulness or falsity of the serious allegations and counter allegations levelled by either parties against each other and the respective claims of the parties which include grave allegations regarding Domestic Violence, parental misconduct, emotional abuse and psychological harm raising complex and sensitive factual issues which would require to go through an evidentiary process and the conclusion can be drawn only at the end of a full fledged trial which could not be done at an interlocutory situation. The learned Judge observed thus in paras 19 and 20 :-

“19. Such an exhaustive factual inquiry falls within the province of a full-fledged trial and cannot be conducted summarily at this interlocutory stage. Any adjudication of these issues, without the benefit of complete evidence, would not only be procedurally improper but may also risk prejudice to either party's case. Accordingly, I refrain from making any observations that may either directly or indirectly affect the merits of the case when it proceeds to trial.

20. In the meanwhile, as a matter of urgent and independent concern the court is duty-bound to address the pressing question of interim relief in the context of the child's best interests. It is a well-settled position in law that in proceedings involving custody and visitation of a minor child, the paramount and overarching consideration is the

welfare and well-being of the child, superseding all other legal rights or technical entitlements of the contesting parents.”

7. In the entire order, we do not find any deliberation on the contention raised in the application by the applicant-father as regards his claim for temporary custody and protection of the child, pending his proceedings for being declared as a guardian under Section 7 of the Guardians and Wards Act in the main petition filed by him. Since the Court exercises *Parens Patriae* Jurisdiction, and the contest between the parents about who shall serve as a better guardian requires determination but to determine the application seeking temporary custody of the child for its protection and for his welfare, the Court was expected to consider the pros and cons of the claims put up by the parents respectively, but instead we find that the Court is carried away by the relationship between the husband and wife as there are counter accusations levelled against each other.

What is important for a child is not the relationship between the parents but the capability, and the potential of each of the parents to act in the interest of the child and the point for

determination in such proceedings would be as to who would be in a better position to take care of the child and under what circumstances.

Since we find that the impugned order fails to consider this aspect of the matter, we deem it appropriate to quash and set aside the impugned order dated 19th May 2025 passed by the Family Court and we deem it appropriate to relegate the parties to the same Court for determination of the application filed by the applicant/appellant under Section 12 of the Guardians and Wards Act in Petition D/23/2025 with due focus upon the welfare of the child and in the circumstances which are highlighted before the Court that the child from 2016 to 2022 was in Pune, but shifted to Singapore in 2022 and continued to reside there till he was removed from Singapore on 10th March 2025. We expect the Family Court to take into consideration this relevant aspect by keeping in mind that the welfare of the child is of paramount importance, even in considering the Interim Application for grant of temporary custody while determining the right of a father of being declared as a guardian.

8. Upon the matter being remanded back, we direct the Family Court to decide the application within a period of eight weeks from today.

9. Family Court Appeal is accordingly disposed of.

All concerned to act on the authenticated copy of this judgment.

MANJUSHA DESHPANDE, J.

BHARATI DANGRE, J.