

IN THE HIGH COURT OF JHARKHAND AT RANCHI
First Appeal (Filing) No.2181 of 2026

... .. **Appellant**
Versus

Jharkhand-834003. **Respondent**

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant	: Mr. Anurag Kashyap, Advocate
For the Respondent	: Mr. Rohit Sinha, Advocate
	: Mr. Paritosh Rai, Advocate
	: Mr. Vijay Shankar, Advocate
	: Mr. Imran Hassan, Advocate

Order No. 06/Dated 15th May, 2026

Per Sujit Narayan Prasad, J.

Prayer:

- 1.** Heard learned counsel for the parties. The appellant and the respondent are also present in the Court.
- 2.** The judgment is being dictated in open Court in the presence of both parties, namely, the appellant-mother and the respondent-father, thereby acknowledgment of their participation in the proceedings.
- 3.** The instant appeal has been filed under Section 19(1) of the Family Court Act, 1984, directed against the order dated 20.11.2025 passed by learned Additional Principal Judge Additional Family Court-II, Ranchi in Original Suit

No.250 of 2025 by which the petition filed on behalf of the appellant, the mother, under Section 12 of the Guardianship and Wards Act, 1890 for interim custody of her minor daughter has been disposed of by which the petitioner (appellant herein) has been directed to visit the child once in two months for 2-3 hours on any Holiday subject to mutual convenience but at the place to be decided by the respondent husband and the meeting with the child through Whatsapp, Google, Zoom etc. for half an hour subject to convenience of the child preferably on Saturday or Sunday. The petitioner-appellant has also been directed to inform the respondent/ husband at least one week prior to exercise her visitation right in such a manner.

Factual Matrix

4. The brief facts of the case as per the pleading made in the writ petition, which are required to be enumerated, read hereunder as :-

The case in brief is that the marriage of the petitioner was solemnized with respondent on 22.01.2017 as per Hindu Rites and Rituals at Bihar and out of said wedlock the minor girl child was born on 18.07.2021 who was under the care and custody of the petitioner since her birth.

It is the further case that due to severe physical and mental cruelty meted out by the respondent, the appellant was compelled to leave her matrimonial house on

03.08.2024 and take shelter at her parental house at Nayagaon, Chapra, Saran (Bihar) and since then she is residing with her parents.

It has been stated that while the appellant was residing at her parental home, the respondent visited the house of the appellant on 25.08.2024 and stayed for one day and thereafter, on the next day i.e., on 26.08.2024, under deceitful and misrepresentation induced the parents of the appellant into handing over the custody of minor girl child namely Radya Singh on the false pretext that the child would be returned within two days, however, the respondent neither returned the child as assured nor made any effort to restore the child to care and custody of the appellant.

It is the further case of the appellant that such wrongful and illegal retention of the minor girl child of the tender care, nurturing and maternal affection of the appellant, which is essential for the child's emotional, physical and psychological development. The unwanted separation of the minor girl child from the appellant, who is the biological mother, natural and primary caregiver, is not only contrary to the rule of law but also detrimental to the paramount welfare and best interest of the minor girl child, who, at the tender age of 04 years, requires the constant care, love and emotional support of her mother for her holistic development.

The appellant, several times, has requested the respondent to return her daughter but the respondent straightway denied. The appellant left with no hope, then on 20.9.2024 she had lodged an F.I.R. against the respondent and his family members being Nayagaon P.S. Case No. 184/2024 u/s 126(2), 115(2), 74, 85, 352, 351(2), 79, 3(5) of B.N.S., 2023 corresponding to Section 341, 323, 354, 498A, 504, 506, 509/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act.

It has been stated that the appellant being the biological mother and for the welfare and custody of her minor daughter had filed a guardianship case being Guardianship Case No. 09/2024 dated 18.11.2024 before the learned Principal Judge, Family Court, Chapra, Saran invoking the provision of the Hindu Minority and Guardianship Act, 1956 and Section 7(g) of the Family Courts Act, 1984 in which despite several notices the respondent did not appear and when appeared he was asked to be present on the next date with child. Later on, the learned court vide order dated 05.03.2025 observed that since the respondent has appeared, hence, the presence of the child is not required, thus, the case was finally dismissed by the learned Principal Judge, Saran at Chapra on the point of jurisdiction.

Being aggrieved with the aforesaid order, the appellant has moved before the High Court of Judicature at Patna and filed a petition under Article 226 of the Constitution of India being. Cr.W.J.C. No. 461 of 2025 with a prayer to direct the respondent to immediately produce the minor girl child and upon such production, grant the custody of the minor girl child to the appellant and further restrain the respondent from unlawfully interfering with or obstructing the appellants right to custody, care and upbringing of her minor daughter along with other prayers and the said matter was taken up on 18.03.2025 and after hearing the parties, the respondent was directed to bring the minor girl child in the chamber and the matter was directed to be listed on 20.03.2025, wherein the said writ petition was disposed of as withdrawn.

Thus, the appellant left with no other option than to approach the learned Family Court at Ranchi and has filed a case for custody of her child being Original Suit No. 250/2025 on 02.04.2025.

During pendency of the Original Suit No. 250/2025 a separate petition has been filed by the appellant on 18.07.2025 for grant of interim custody of her minor child alongwith other prayer. Since the respondent husband has not appeared accordingly, the learned Family Court has

passed the ex-parte order dated 18.07.2025 with direction to facilitate the meeting of the appellant with her daughter.

Further during the pendency of the said Original Suit No. 250/2025 the appellant has then filed a petition for grant of interim custody of her minor child on 08.09.2025 alongwith other prayer.

On 20.11.2025 after hearing both the parties, the learned Additional Principal Magistrate, Additional Family Court, Ranchi passed the order on the petition filed by the appellant dated 08.09.2025 directing the appellant to visit the child once in two months for 2-3 hours on any holiday subject to convenience but on the place to be decided by the Respondent/ husband, meeting with the child through WhatsApp, Google Zoom etc. for half an' hour subject to convenience of the child preferably on Saturday or Sunday with a further direction to inform the Respondent/husband at least one week prior to exercise her visitation right in such a manner.

Being aggrieved with the aforesaid order, the appellant-mother has approached to this Court by filing the instant appeal.

5. It is evident from the factual aspect that the allegation and counter allegation are there in between the appellant and the respondent and, as such, the said

differences ultimately culminated into the separation on their own.

6. It has been informed that both the appellant and the respondent are living separately for about two years.

7. One child (female) has taken birth from their wedlock and she is aged about 04 years. The female child is in the custody of the respondent.

8. It has been alleged that on one day the respondent had visited the paternal house of the appellant and taken away the female child and since then, i.e., last one and a half years, she is living with her father, the respondent herein.

9. In the backdrop of the aforesaid fact, a suit has been filed under Section 7 and 25 of the Guardianship and Wards Act, 1890 being Original Suit No.250 of 2025.

10. During pendency of the said suit, a petition under Section 12 of the Guardianship and Wards Act, 1890 has been filed to grant interim custody of the minor daughter to the petitioner-mother, from 18.07.2025 (her birthday) till the final disposal of the original suit.

11. The respondent has contested the case by taking the plea that the application filed under Section 12 of the Guardianship and Wards Act, 1890 is not maintainable and the petition is fit to be dismissed. Such ground has been taken that ad interim prayer cannot be same as that of the final prayer in any case.

12. The learned Additional Family Judge, after hearing both the parties, while admitting the fact that the appellant/petitioner is the biological mother of the child, who at that time was aged about 3 years only and for proper upbringing of the child, she requires love, affection, care, company and protection of both parents and it is not only requirement of the child but it is her basic human right.

13. The learned Additional Family Judge after considering the judgment passed by the Hon'ble Apex Court wherein it has been observed that 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 manner the custody of the child should be shared between both the parents.

14. The learned Additional Family Court, based upon the aforesaid observation made by the Hon'ble Apex Court in the

aforesaid judgment, has taken into consideration the age of the child, i.e., of about 03 years. The learned Additional Family Court has also considered that after a visit on birth of the child; petitioner has not got any occasion to see the child. The learned Additional Family Judge has also considered that all factual, emotional and practical aspect of the case as well as convenience of child, who is of tender years, which is paramount consideration of this Court, petitioner is directed to visit the child once in two months for 2-3 hours on any holiday subject to mutual convenience but at the place to be decided by the respondent meeting with the child through WhatsApp, Google, Zoom, etc. for half an hour and hour subject to convenience of the child preferably on Saturday or Sunday. However, petitioner has also been directed to inform the respondent/husband at least one week prior to exercise the visitation right in such a manner.

15. The said order is under challenge in the present appeal.

Submission made on behalf of the appellant

16. Learned counsel for the appellant has submitted that whatever order has been passed by the learned Additional Family Judge is without taking into consideration the fact that the appellant, the mother, is now residing at Saran, a district in the State of Bihar, in her parental house. It has been submitted that the learned Additional Family Judge

has not appreciated the fact properly regarding the difficulties which is to be faced by the appellant, being a lady, to come from Saran to Ranchi which is at the distance in between 400-500 kms.

17. It has been contended that the condition which has been inflicted while allowing to visit only for 2-3 hours once in only two months is also highly improper for a mother who has kept the child in her own womb for nine months, as such, that is very pathetic. It has also been submitted that even for coming to visit for 2-3 hours in two months, the condition which has been imposed that the appellant is to communicate through WhatsApp, Google, Zoom, etc. for half an hour subject to convenience of the child preferably on Saturday or Sunday and further the appellant has been directed to inform the respondent/husband at least one week prior to exercise her visitation right in such a manner, the ground therefore has been taken that she is being deprived from her motherhood which includes all emotion of a mother towards the child.

Submission made on behalf of the respondent

18. The learned counsel for the respondent while defending the impugned order has submitted that the interim application filed under Section 12 of the Guardians and Wards Act, 1890, suffers from no error.

19. It has been contended that the alternative prayer made in the petition has already been allowed and as such, the relief which has been sought for as an interim measure has already been granted by the learned Additional Family Judge.

20. The learned counsel, therefore, has submitted that the learned Additional Family Judge since has allowed the application and as such, the same needs no interference reason being that the learned Additional Family Judge has taken into consideration the emotion, feelings of the mother and therefore, the visitation right has been given, as such, contention has been raised that the impugned order may not be interfered with.

Analysis

21. We have heard the learned counsel for the parties and gone through the impugned order dated 20.11.2025.

22. This Court needs to refer herein that the original suit filed under Sections 7 and 25 of the Guardians and Wards Act, 1890 is pending and the same is being contested by the parties herein. This Court being conscious with the fact that the suit is pending and as such, without causing prejudice to the parties, is to deal with the issue of interim application which has been dealt with by the learned Additional Family Judge by passing an order dated 20.11.2025 as appended to the present memo of appeal. But, even by taking all

precaution that parties may not be prejudiced in the original suit therefore, this Court thinks it proper to refer the underlying provisions as continued in Guardians and Wards Act, 1890 with its object and intent as also the Hindu Minority and Guardianship Act, 1956.

23. The Guardians and Wards Act has been enacted being a pre-independence law, i.e., way back in the year 1890 to consolidate and amend the law relating to Guardian and Ward. The underlying object is to consider the issue of the handing over the custody, the guardianship issue and property related rights. Section 7 confers power upon the Court to make order as to guardianship while Section 25 confers power upon the Court to give a declaration regarding title of guardian to custody of ward. For ready reference, Sections 7 and 25 are being referred 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.

25. Title of guardian to custody of ward.—(1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be

arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the Code of Criminal Procedure, 1882 (10 of 1882).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.”

24. The reference of Hindu Minority and Guardianship Act, 1956 also needs to be made herein in view of the provision as contained under Section 2 thereof wherein it has been provided that the provisions of this Act (the Act of 1956) shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890. The aforesaid provision, thus, stipulates that the harmonious construction is to be taken in between the Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956 is not in conflict with each other in achieving the object and intent for which these Acts have been enacted.

25. Section 12 of the Guardian and Wards Act, 1890 confers upon the learned Family Judge to pass an interlocutory order for production of minor and interim protection of person and property. It has been provided therein that the Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property

of the minor as it thinks proper. Sub-Section (2) thereof provides that if the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country. For ready reference, Section 12 is being referred here as under:-

“12. Power to make interlocutory order for production of minor and interim protection of person and property.—(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.”

26. It is thus, evident from bare reading of the provision of Section 12 that the Court has power to make interlocutory order for production of minor and interim protection of person and property only in proceeding for appointing or declaring him guardian. The Court has also been conferred with the power that the Court may direct the person, if any, having the custody of the minor shall produce him and may make such order for the temporary custody and protection

of the person or property of the minor as it thinks proper. The wider amplitude has also been asserted in the said provision that depending upon the situation the learned Court may pass an order for the temporary custody and protection of the person or property of the minor as it thinks proper. Meaning thereby, Section 12 is having wider power being conferred upon the learned Family Judge to be looked into at the ad-interim stage, i.e., for production of the minor or depending upon the situation the temporary custody of the minor.

27. We have gone through the application filed under Section 12 of the Guardian and Wards Act appended as Annexure-SA-1 wherein it has been prayed by making a prayer for providing custody during pendency of the adjudication on the ground that the appellant is the biological mother of the said minor child. It has been stated that even after several request made by the husband to facilitate communication between the petitioner mother and her minor daughter, the respondent has failed and neglected to comply. It has also been alleged that the respondent on various occasion offered false excuse and even provided a contact number of his mother to facilitate calls, but that number was later blocked making it nearly impossible for the petitioner to connect with her own child.

28. It has been stated that only on 01.07.2025, after repeated requests, the petitioner was permitted to speak briefly with her daughter. It has also been stated that such occasional and restricted communication is grossly inadequate and is seriously affecting the mental, emotional and psychological well-being of both mother and the minor child.

29. It has been stated that the petitioner is currently staying at her parental house at Dumri, Nayagaon, Saran (Bihar). She is also capable to take care of her minor child.

30. The appellant, therefore, has prayed before the learned Additional Family Judge that she having been deprived from contact and access to her minor child for an extended time without any justification and in the aforesaid background the application under Section 12 of the Act, 1890 was filed.

31. The said application was contested by the respondent/husband by taking the ground that if, at this stage, the application is filed under Section 12 will be allowed then, the same will amount to allowing the entire suit at this stage.

32. The reliance has been placed upon the judgment passed by the Hon'ble Apex Court in the case of **Vivek Singh vs. Romani Singh, (2017) 3 SCC 231** wherein it has been held that “welfare” principle is aimed at serving twin

objectives is to be taken into consideration. In the first instance, it is to ensure that the child grows and develops in the best environment. The best interest of the child has been placed at the vanguard of family/custody disputes according to the optimal growth and development of the child.

33. The second justification behind the “welfare” principle is the public interest that stands served with the optimal growth of the children.

34. Reliance has also been placed on another judgment rendered by the Hon'ble Apex Court in the case of ***Lahari Sarkhamuri vs. Sobhan Kodali, (2019) 7 SCC 311.***

35. The learned Family Judge has passed an order, which is under challenge, to the effect which is being referred as under:-

“Heard and perused the record.

Admittedly petitioner is biological Mother of the child who is presently aged about 3 years only and for proper upbringing of the child she requires love, affection, care, company and protection of both parents and it is not only requirement of the child but it is his basic human right. The Hon'ble Supreme Court in ***Yashita Sahu Vs. State of Rajasthan AIR 2020 SC 577*** has been pleased to observe that;

"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 re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance (2020) 3 SCC 67

BSB, J very carefully before deciding how and in what manner the custody of the child should be shared between both the parents."

In present case the child is also of tender year only about 3 years and as submitted by the petitioner that after a visit on birth of the child he has not got any occasion to see the child. Considering all these factual, emotional and practical aspects of the case as well as convenience of child who is of tender years, which is paramount consideration of this court, petitioner is directed to visit the child once in two months for 2-3 hours on any Holiday subject to mutual convenience but at the place to be decided by the respondent meeting with the child through Whatsapp, Google, Zoom etc. for half and hour subject to convenience of the child preferably on Saturday or Sunday. However, petitioner is directed to inform the respondent/ husband at least one week prior to exercise his visitation right in such a manner. Accordingly, the instant petition is hereby disposed of."

36. This Court needs to refer herein that before passing order on merit, the appellant-mother and respondent-father has been called for. The specific direction was passed by this Court upon the respondent-father to come along with the child in the Court, the same would be evident from the order dated 12.05.2026 which is being referred as under:-

"05/Dated:12th May, 2026

I.A. No.3018 of 2026

Reference may be made to the order dated 30.03.2026, in pursuance thereof, the trial court record has been received.

2. This Court has gone through the trial court record and is being satisfied that the Defect No.175 and Defect No.25 are to be ignored.

3. Accordingly, the Defect No.175 and Defect No.25 are to be ignored.

4. In view thereof, I.A. No.3018 of 2026 is allowed.

I.A. No.3819 of 2026

5. Heard the learned counsel for the parties.

6. This interlocutory application has been filed for condoning the delay of 61 days, which has occurred in preferring the present appeal.

7. Having regard to the facts and circumstances as mentioned in the application and also considering the facts that no counter affidavit has been filed opposing the interlocutory application by the respondent, we are of the opinion that the appellant was prevented by sufficient

cause from preferring the appeal within the period of limitation.

8. Accordingly, the delay of 61 days in preferring the present appeal is hereby condoned and this application stands allowed.

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9. Both the parties have submitted that there is chance of settlement through reunion for the welfare of the minor child aged about four years.

10. They have shown their willingness to call upon both the parties along with the child in the Court.

11. Considering the aforesaid submission, let both the parties along with the minor child appear in the Court on 15.05.2026.

12. List this case on 15.05.2026.

13. Office to institute and proceed.”

37. The purpose for calling upon the child in the Court is to have the feeling and emotion of the child to consider for passing of the final custody since the issue of welfare of the child is the paramount consideration.

38. 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.

39. 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. That 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.”

40. 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.

41. 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.

42. 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.

43. 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, 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.

44. 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.'

45. 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.”

46. 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.**

47. 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

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.”

48. 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.

49. In the backdrop of the aforesaid settled position of law, this Court has thought it proper to call upon the child also in the Court.

50. This Court has interacted with the appellant mother and the respondent father approximately in between 45 minutes to one hour.

51. The child has been brought by the respondent father.

52. This Court, having observed the proceedings, deemed it appropriate to call upon the respondent-father, who has appeared along with the minor child, so that the sentiments and disposition of the parties may be duly assessed.

53. The minor child, upon sight of the mother, instinctively sought to leave the lap of the father and immediately placed himself in the lap of the mother, thereby manifesting her natural inclination and attachment.

54. It was not an isolated occurrence rather, time and again the minor child alternated between the lap of the father and that of the mother, thereby reflecting her equal comfort and attachment with both parents.

55. This Court has further observed that the mother of the appellant was present in Court along with her husband, i.e., the father of the appellant. The minor child, upon approaching the maternal grandmother, picked up a bottle and thereafter handed it first to the father for water, and subsequently shared

the remainder with the mother. Such conduct of the child reflects her equal affection and sentiment towards both parents.

56. This Court has, therefore, called upon both parties to reflect upon the emotional disposition of the minor child, aged about four years, and to consider that the child bears no fault in the matter, her innocence warranting due regard in the resolution of the dispute.

57. Both the appellant-mother and the respondent-father, even after interaction with this Court, have not been readily inclined towards conciliation, notwithstanding that such reconciliation would be in the paramount welfare of the minor child.

58. However, subsequently, the respondent-father has agreed that he is ready to live along with the mother in the matrimonial house. The appellant-mother has refused on the pretext that she now wants to live alone to express all her emotional feelings towards the daughter at least for the period of three weeks.

59. She has further stated, in course of interaction, that let her be allowed to live with the daughter by handing over the custody by way of temporary measure at least for the vacation period, since, this Court is going to be closed today. She has stated that the matter may be posted on 8th of June, 2026 and thereafter, what is being proposed by her husband, she will follow it.

60. At this juncture, Mr. Rohit Sinha, learned counsel appearing for the respondent husband, has submitted that better would be for the future of the child, the couple, the appellant and the respondent, if remain at least for a week alone along with the child which will make the way easier for their reunion which ultimately will be incurred benefit for the future of the child.

61. The appellant wife although has not opposed the proposal but she has stated by reiterating what she has stated in paragraph 59 that she may be allowed to live with the daughter by handing over the custody by way of temporary measure for three weeks and the matter may be posted on 8th of June, 2026 and thereafter, what is being proposed by her husband, she will follow it.

62. This Court has observed the activities which the child has shown in course of court proceeding that has been seen by everybody sitting in the Court that the minor child remained in the lap of the mother all along and enjoyed the affection of mother.

63. This Court, considering the emotional attachment of the child with the mother, since the child all along was in the lap of the mother, is of the view that what is being stated by the mother that she wants to live along with the female child for three weeks since she has been deprived from showing the emotional feeling and to express the affection for last two years

having separated from the child, appears to be Bonafide and genuine.

64. This Court, considering the aforesaid fact, is of the view that the custody of the minor child be given to the appellant-mother till 07.06.2026.

65. Let this matter appear on 08.06.2026 for further deliberation on the issue as has been proposed by Mr. Rohit Sinha, learned counsel for the respondent, that both the appellant and the respondent may go to live together for a week for the purpose of reunion and whatever confusion is going in the mind that may be sorted out during the aforesaid period.

66. The aforesaid suggestion being the bonafide one and for the welfare of all the parties including the minor child, the same is expected to be carried out by the appellant as she has stated in the Court that first she may be allowed to live along with the child to express her emotional feeling as a mother and thereafter she may not have any difficulty to live together for one week.

67. Without interfering with the order at this stage, the matter is being posted on 08.06.2026 being conscious of the fact that the parties may be united for the welfare of the child.

68. This Court was intending to provide an opportunity for the welfare of the child, therefore, the proposal given by Mr. Sinha was accepted having been referred hereinabove.

69. After the aforesaid order was passed, Mr. Sinha the learned counsel for the respondent husband has submitted that let the final order be passed.

70. Thereafter, the Court has posed a question that what is being submitted by him, whether it is based on the instruction, then he has called the respondent husband, who has come and stated that let the order be passed finally.

71. This Court, in the background of the aforesaid deliberation which has come in course of interaction, is now proceeding to consider the illegality and propriety of the impugned order.

72. There is no dispute that once the provision has been made out under Section 12 of the Act, 1890 which confers power even to grant temporary custody of the minor child then it cannot be said that the Family Court is having no jurisdiction to pass an order by handing over the custody by way of temporary measure.

73. The learned Addl. Family Judge, although, has not given any finding on the issue of maintainability, rather, it has been held to be maintainable and the direction has been passed for allowing to visit the child once in two months for 2-3 hours on any Holiday subject to mutual convenience but at the place to be decided by the respondent and the meeting with the child through Whatsapp, Google, Zoom etc. for half an hour subject to convenience of the child preferably on Saturday or Sunday. The petitioner-appellant has also been directed to inform the

respondent/ husband at least one week prior to exercise his visitation right in such a manner.

74. This Court, after going through the application filed under Section 12 of the Act, 1890 wherefrom it has been found that the said application was not for the visitation right, rather, for the temporary/interim custody.

75. Although, it has been submitted by Mr. Rohit Sinha, learned counsel that the alternative prayer was made.

76. This Court is of the considered view that where an application contains both a substantial prayer and an alternative prayer, it is the bounden duty of the Court to first address and reject the substantial prayer by assigning cogent reasons, and only thereafter proceed to consider the alternative prayer.

77. It will be improper on the part of the Court of law to straightaway go to the alternative prayer skipping away the substantial prayer without assigning any reason as to why the substantial prayer is not being allowed.

78. This Court has found from the order impugned that there is no cogent reason has been assigned that as to why the main prayer of handing over the temporary/interim custody is not fit to be allowed in favour of the mother.

79. However, while the learned Additional Family Judge has adverted to the judgment rendered by the Hon'ble Apex Court in **Yashita Sahu v. State of Rajasthan (supra)**, but has failed

to address the core issue as to why interim or temporary custody of the minor daughter, aged about four years, could not be entrusted to the appellant-mother rather the issue has been decided on the point of visitation right.

80. This Court have also gone through the several judgments passed by the Hon'ble Apex Court, as referred hereinabove, wherein also the welfare of the minor child has given much weightage over and above the natural guardianship.

81. Herein, the child is aged about four years and being a female, the welfare of the female child is to be much taken care of by the mother.

82. Although, we are not expressing here any view on the issue, as to whether the custody said to be final in nature, is required to be given to the mother or father but for the purpose of temporary/interim custody also, the same is to be taken into consideration.

83. However, it is evident from impugned judgment that the learned Family Court has not taken care of the main issue of interim custody of minor child rather condition i.e. *visit the child once in two months for 2-3 hours on any Holiday subject to mutual convenience but at the place to be decided by the respondent husband* has been carved out in context of visitation right.

84. The aforesaid condition according to our considered view, cannot be said to be just and proper in the facts and situation

that the appellant mother is now residing at the distance of about 400-500 kms in the District of Saran in the State of Bihar.

85. The learned Addl. Family Judge ought to have taken into consideration the aforesaid aspect of the matter that is the convenience and the inconvenience caused to the parties. Certainly, no one will dispute that if the lady is living in the parental house, then coming from the place which is away from the destination to visit the child for 2 – 3 hours once in two months will be very harsh and that can only be possible if any male member will be there. It has been informed that the travelling can only be done either by road or the train. This aspect of the matter ought to have been taken into consideration by the learned Additional Family Judge.

86. This Court has also considered the legality and propriety of the order on the principle of perversity and non-application of mind.

87. The law is well settled that if the order/judgment is perverse, then the order/judgment is to be set aside, since, perversity means erroneous consideration of the factual aspect not based upon the rationale principle, for ready reference, the judgments rendered by the Hon'ble Apex Court are required to be referred herein.

88. 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 so 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.””

89. Simultaneously, this Court has also considered on the element of application of mind but what is being reflected from the impugned order that there is absolute non-application of mind for the reason that the learned Additional Family Judge has passed order for the purpose of getting permission by way of communication to be made by the appellant to the respondent through Whatsapp, Google, Zoom etc. for half an hour subject to convenience of the child preferably on Saturday

or Sunday but instead of that the approach should have been by directing the respondent-father to come with the child to avail the visitation right of the mother.

90. Having not done so, the order impugned suffers from element of perversity and non-application of mind.

91. This Court is of the view that without touching the main issue that whatever finding has been recorded based upon the conclusion suffers from error, reason being –

- (i) That the convenience of the mother has not been taken into consideration due to the reason that she is living in the parental house and coming from the place which is 400 to 500 k.m. away from the destination to visit the child for 2 – 3 hours once in two months will be very harsh.
- (ii) The mother has been asked to meet once in two months for 2 – 3 hours on any holiday subject to mutual convenience, how can it be said to be justified order?
- (iii) It has been pleaded in the present petition and also in the main application filed under Section 12 of the Guardianship and Wards Act, 1890 difficulty is being shown by the mother/appellant that she is not getting any cooperation on the part of the respondent and due to the said non-cooperation of the respondent the appellant is not in a position to talk with her minor daughter over telephone.

(iv) It appears to this Court that the learned Additional Family Judge has not considered the convenience issue, the emotional feeling of a mother and instead of passing temporary custody in exercise of power conferred under Section 12 of the Guardianship and Wards Act, 1890, has only allowed the visitation right that too once in 2 – 3 months for 2 – 3 hours and for that prior permission is required from the husband and the meeting with the child through Whatsapp, Google, Zoom etc. for half an hour subject to convenience of the child preferably on Saturday or Sunday. This condition appears to be unreasonable.

92. This Court, considering the aforesaid submission/statement, is of the view that based upon the reason as referred hereinabove, the order dated 20.11.2025 passed by learned Additional Principal Judge Additional Family Court-II, Ranchi in Original Suit No.250 of 2025 needs interference.

93. Accordingly, the order dated 20.11.2025 is hereby quashed and set aside.

94. In consequence thereof, the petition filed by the appellant-petitioner under Section 12 of the Guardianship and Wards Act, 1890 before the court of learned Additional Principal Judge Additional Family Court-II, Ranchi in Original Suit No.250 of 2025 is hereby allowed.

95. The instant appeal stands allowed.

96. In consequence thereof, the custody of the child is being handed over to the appellant-mother by way of temporary/interim measure, depending upon the final outcome of the suit which is lying pending before the Family Court.

97. Being the appellate Court, this Court has only gone into the material as available on record as well as the trial court record and the impugned order so as to assess as to whether the finding recorded by the learned trial court suffers from error being apparent on the order, nothing more nothing less.

98. Since the suit is pending and, as such, let the learned Additional Family Judge-II, Ranchi decide the suit expeditiously and without granting any unnecessary adjournment.

99. It is made clear that the learned Additional Family Judge-II, Ranchi while adjudicating the issue will not be prejudiced by any part of the order as has been referred herein.

(Sujit Narayan Prasad, J.)

(Sanjay Prasad, J.)

Date : 15th May, 2026

Birendra/**A.F.R.**

Uploaded on 16.05.2026