



2026:AHC:176829-DB

AFR

Reserved On: 03.08.2026

Delivered On: 21.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL No. - 645 of 2026

.....Appellant(s)

Versus

.....Respondent(s)

Counsel for Appellant(s)	: Anup Yadav, Yatindra
Counsel for Respondent(s)	: Zaid Arshad

Court No. - 40

**HON'BLE SARAL SRIVASTAVA, J.
HON'BLE SUDHANSHU CHAUHAN, J.
(Delivered by Hon'ble Sudhanshu Chauhan,J.)**

1. Heard Shri Yatindra, learned counsel for the appellant and Sri Zaid Arshad, learned counsel for the respondents.

2. The present appeal arises out of judgment and decree dated 31.05.2025 passed in Case No. 793/2024 (

) filed under Section 25 of the Guardians and Wards Act, 1890 read with Section 6 of the Hindu Minority and Guardianship Act, 1956 by means of which the learned trial court, while dismissing the suit of the appellant, has granted visitation rights to the appellant and his parents to meet his minor daughter, between 10am to 5pm every Monday.

3. The contention of the appellant in brief is that the appellant was married to _____ on 21.04.2019 at _____ according to Hindu rites and rituals. Respondent no. 1 is the father, while respondents No. 2 to 4 are the brothers of _____. After the marriage, the appellant and _____ started living as husband and wife, and a daughter, Avya was born from the wedlock on 30.08.2022 in a government hospital at Prayagraj and after the birth of the child _____ resided at her parental home for a while. It was sometime in March, 2023 that _____ developed some skin ailment and as a consequence, the appellant had taken her for treatment on 20.03.2023 to Dr. Shashank Rastogi. Subsequently, the appellant had also consulted Dr. Sudha Yadav and other doctors. On 29.11.2023, the appellant had taken his wife to Prakriti Clinic and Neuro Centre, Prayagraj, for treatment, on the very same day, the brothers of Shivani Yadav came to see her and took _____ to their home for further treatment, despite the resistance by the appellant. Hence, Avya remained in the custody of her father-appellant till 29.11.2023.

4. However, the condition of _____ worsened at her parental home, and she was admitted to SGPGIMS Lucknow for treatment. The appellant with his parents had gone to meet his wife while she was in the hospital, but the respondents did not permit the appellant to meet his wife. Ultimately, _____ passed away on 29.02.2024, and the appellant was informed about the same around 9:30 am on 01.03.2024. However, when the appellant, with his family and friends, reached the parental house of his wife, they were informed that the body had been taken to the cremation ground. When the appellant reached the cremation ground, he realized that the funeral pyre had already been lit, and the appellant was not even permitted to perform the last rites of his wife.

5. Thereafter, the appellant made several attempts to take custody of his minor daughter, _____, but the same were of no avail. The appellant stays in a joint family with his parents and an elder brother, _____, and

his wife . The respondents also live in a joint family, however, the mother-in-law of the appellant has passed away, and the respondent no. 1 is dependent on his sons for his livelihood. The appellant, being the natural guardian of his daughter, is entitled to the custody of his minor. The family of the appellant is more educated and prosperous than those of the respondents, as the appellant himself is an advocate, while the father, brother, and sister-in-law of the appellant are also practicing advocates at the High Court at Allahabad. Besides, the family of the appellant also owns agricultural land and a house in Prayagraj. Hence, the appellant is competent to take care of the welfare of his minor daughter.

6. On 20.04.2024, when the appellant, along with his friend , had visited the house of his in-laws to bring back his minor daughter, the respondents had refused to hand over the custody of the child. The respondent no. 1 had also told the appellant to deposit some money in the name of respondent no. 1, which shall be utilized for the welfare of the minor daughter. Hence, the appellant was compelled to file the suit for the custody of his minor daughter.

7. Under the circumstances, it has been argued on behalf of the appellant that the appellant, being the father of the minor daughter, is her natural guardian under Section 6 of the Hindu Minority and Guardianship Act, 1956, and as such is entitled to the custody of the child. The welfare of the minor would be taken care of by the appellant and his family, who are better placed to take care of the minor. Further, the Learned Trial Court has failed to appreciate the controversy involved, and the impugned judgment and decree is unreasoned and non-speaking, being based solely on the judgment of the Apex Court in the case of

and others vs. State of MP and others , even otherwise, the facts and circumstances of the said case were very different from the present case.

8. On the contrary, the respondents do not dispute the marriage of the appellant with and the daughter, being born from the

wedlock. However, it is contended that [redacted] was harassed and physically abused for more dowry, despite the fact that at the time of marriage, the appellant was given Rs. 5 lakhs in cash and a Tata Tiago car, along with jewellery and other household goods worth Rs 4 lakhs. After the birth of the girl child, the incidents of abuse of [redacted] in the hands of the appellant and her in-laws further increased. It was as a consequence thereof and physical injuries suffered including a head injury that [redacted] started keeping unwell, despite the fact that [redacted] was keeping unwell, she was made to do all the household chores. The appellant never took his wife to a doctor for treatment, and her condition continued to deteriorate. It was during this while that [redacted] had informed her father regarding her deteriorating health, and it was on 29.11.2023 that the respondent no. 1 along with his son, respondent no.4 had taken back [redacted] to her parental home in whatever she was wearing. The mental condition of [redacted] at that point in time was not at all good, and the respondents had got her treated at Saujanya Hospital and thereafter got her admitted at Aarav Hospital, Prayagraj. The mental and neurological condition of [redacted] had deteriorated solely on account of the torture that she was subjected to in the hands of her husband and in-laws and the severe head injury sustained in the process. On account of the severe head injury suffered, [redacted] was operated. However, with passage of some time condition of [redacted] deteriorated, and as a consequence, the doctors at Aarav Hospital had referred her to SGPGIMS, Lucknow. It was during the course of treatment at SGPGIMS that [redacted] passed away. The respondents immediately after the demise of [redacted] had informed her in-laws, but none was present from the appellant's side during her cremation. [redacted] had passed away solely on account of the harassment and physical abuse suffered in the hands of her husband and in-laws. The respondent no.1, in respect of the harassment so suffered by his daughter, had tried to lodge an FIR, and in this regard he had also approached the Police Commissioner, Prayagraj. Hence, it is contended that, in view of the fact that [redacted] had passed away

solely on account of the abuse and head injuries sustained in the hands of her husband and in-laws, thus the custody of the minor daughter should remain with the respondents.

9. The crux of contention of the respondents is that the impugned judgment and decree dated 31-05-2025 has been passed after taking into consideration all the relevant facts involved in the controversy and should be upheld. The minor child has been residing with her maternal grandfather since the time she was a few months old, and it would be torturous for the child, if her custody is handed over to the appellant. Besides, the welfare of the minor child is being well taken care of while she is residing with her maternal grandfather. Further, the appellant and his family did not treat _____ well, and she was repeatedly subjected to harassment and physical abuse including a severe head injury, which ultimately led to her demise. There was every likelihood of the appellant getting remarried in future, and the same would jeopardize the welfare of the minor child, whose mother was ill-treated in the hands of the appellant and his family.

10. On the perusal of the records of the case and the pleas raised by the respective parties, the following points of determination arise in the present appeal:-

- (1) Which of the parties are to ensure paramountcy of welfare of the minor?
- (2) Whether the appellant despite being natural guardian of minor is unfit for her custody?
- (3) Whether the judgment and decree dated 31.05.2025 is unreasoned and non-speaking?

POINT No.1

11. The records reveal that the appellant was married to _____ on 21.04.2019, and a daughter, _____, was born from the wedlock on _____

30.08.2022. lived with her father, the appellant, upto 29.11.2023, and thereafter went to the house of her maternal grandfather and has been residing there till date. Presently, is about four years old and has resided at the house of her maternal grandfather for about two years and nine months . It is also undisputed that the appellant is the father of the minor, and the mother of the minor, , passed away on 29.02.2024.

12. As far as the background of the two families is concerned, the family of the appellant comprises his parents and an elder brother and his wife. The father, brother and sister-in-law of the appellant are practicing advocates at the High Court at Allahabad, while the appellant himself is a practicing advocate at Prayagraj/Allahabad, while the mother of the appellant is a homemaker. The father of the appellant owns a house at Prayagraj as well as agricultural lands. The records further reveal that the parents of the appellant have invested an amount of about Rs. 15 lakhs in fixed deposits at Indian Bank. The appellant himself has invested an amount of about Rs. 9.58 lakhs in a life insurance policy in the name of his minor daughter. Thus, it is evident that the appellant, his father, brother, and sister-in-law are law graduates and maintain the life-style of a middle-class family.

13. On the other hand, the respondent no.1 has retired from a Class IV post in the UP Public Works Department in the year 2024. The respondent no.1 is not a literate . The wife of the respondent no.1 has already passed away. The respondent no. 1 has three sons i.e respondents no. 2 to 4, and two daughters, his younger daughter, , the mother of the minor having passed away. The eldest son of the respondent no.1, respondent no. 2, is a graduate and is employed as Assistant Signal at Kanpur, a Group C post in the Indian Railways. The respondent no.1 is married and has two children who reside with respondent number 1 at Prayagraj. The second son of the respondent no.1 , respondent no.3 is also married and has two children. There is not much clarity about the occupation of respondent no. 3, as respondent no. 1 in his

cross-examination in reference to a question in this regard has not said anything about the occupation of respondent no.3, respondent no. 4 in his cross-examination has stated that respondent no. 3 along with his younger brother, respondent no.4 is doing the business of retail sale of sand, while respondent no. 3 himself in his cross-examination has stated that he does plotting of land purchased from farmers. The youngest son of the respondent number 1, respondent number 4, is also married but is issueless, according to respondent no. 1 and respondent no. 2, respondent no.4 is doing the business of retail sale of sand, while the respondent no 4 himself states that he is into animal husbandry and owns five cows and three buffaloes. The eldest daughter of the respondent no. 1 is married and has got 5 children from the wedlock and stays separate from the respondent no.1.

14. Besides, as far as the financial status of the respondents is concerned, admittedly, respondent no. 1, though has a house and owns agricultural lands but at the same time had taken a loan of Rs. 6 lakhs at the time of the marriage of his younger daughter, Respondent no. 1 does not draw any pension as of now and seems to be largely dependent on his sons. The respondent no.. 2 in his cross-examination has stated that his younger brothers earn around Rs 1,500 to Rs 2,000 per day from the business of retail sale of sand, while the respondent no. 2 himself draws a monthly salary of Rs.55,000/-. Besides this court cannot lose sight of the fact that the respondents no .2 to 4, have their own families to maintain from their earnings, which is not so in the case of the appellant.

15. Thus, it can be concluded that the family of the appellant is financially more stable and educated as compared to that of the respondent no. 1.

16. Besides, this court is mindful of the fact that both the respondent no. 1 and respondent no. 3 have admitted the fact that the minor either stays with the respondent No. 1 or with her maternal aunt. In fact, the respondent no.3 in his cross-examination has stated that the minor stays with

him for 2 to 4 months and with her maternal aunt for 2 to 4 months. The records further reveal that the maternal aunt of the minor herself has a family including five children to maintain. Thus, we cannot remain oblivious of the fact that, even as of now, the minor child is not being maintained and cared for solely by the respondents.

17. The minor has been residing with the respondents for the past about two years and nine months, but at the same time, we also need to look into the future prospects of the minor. The appellant no. 1 is presently about 35 years old and has no dependents to take care as on date, other than the minor daughter. On the other hand, the respondent no.1 is presently aged about 62 years and is largely dependent upon his sons. Besides, the sons and daughter of the respondent no.1 are all married and have their own families to maintain. Thus, it is difficult to understand as to who would bear the responsibility of taking care of the minor with the passage of time, as the respondent no. 1 grows older. Hence, though we are cognizant of the fact that the minor daughter would face difficulties in adjusting with the appellant and his family, but at the same time, we also are mindful of the fact that the future prospects of the minor daughter do not seem to be very secure and stable if she is allowed to stay with the respondents. Better future prospects of the minor cannot be jeopardized at the cost of difficulties she is going to face on account of the changed circumstances, if her custody is given to the appellant.

18. Besides, the minor daughter is only about 4 years old and, as such, is not old enough to form an intelligent preference, which may be taken into consideration by this court while passing orders in respect of her custody.

19. The Apex Court in the case of **Mausami Moitra Ganguli v. Jayant Ganguli (2008) 7 Supreme Court Cases 673** while handing over the custody of the minor son to the father in respect of the welfare of the minor had held as under:-

“22. In Halsbury's Laws of England (4th Edn., Vol. 13), the law pertaining to the custody and maintenance of children has been succinctly stated in the following terms:

"809. Principles as to custody and upbringing of minors. Where in any proceedings before any court, the custody or upbringing of a minor is in question, the court, in deciding that question, must regard the welfare of the minor as the first and paramount consideration, and must not take into consideration whether from any other point of view the claim of the father in respect of such custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the father. In relation to the custody or upbringing of a minor, a mother has the same rights and authority as the law allows to a father, and the rights and authority of mother and father are equal and are exercisable by either without the other."

23. Having bestowed our anxious consideration to the material on record and the observations made by the courts below, we are of the view that in the present case there is no ground to upset the judgment and order of the High Court. There is nothing on record to suggest that the welfare of the child is in any way in peril in the hands of the father. In our opinion, the stability and security of the child is also an essential ingredient for a full development of child's talent and personality. As noted above, the appellant is a teacher, now employed in a school at Panipat, where she had shifted from Chandigarh some time back. Earlier, she was teaching in some school at Calcutta. Admittedly, she is living all alone. Except for a very short duration when he was with the appellant, Master Satyajeet has been living and studying in Allahabad in a good school and is stated to have his small group of friends there. At Panipat, it would be an entirely new environment for him as compared to Allahabad.”

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25.....

26. Under these circumstances and bearing in mind the paramount consideration of the welfare of the child, we are convinced that the child's interest and welfare will be best served if he continues to be in the custody of the father. In our opinion, for the present, it is not desirable to disturb the custody of Master Satyajeet and, therefore, the order of the High Court giving his exclusive custody to the father with visitation rights to the mother deserves to be maintained. We feel that the visitation rights given to the appellant by the High Court, as noted above, also do not require any modification. We, therefore, affirm the order and the aforeextracted directions given by the High Court. It will, however, be open to the parties to move this Court for modification of this order or for seeking any direction regarding the custody and well-being of the child, if there is any change in the circumstances.”

20. Further the Apex Court in the case of **Lahari Sakharmuri v. Sobhan Kodali AIR 2019 SC 2881** while considering the question of welfare of the minor while deciding the case of custody had held as under:-

“49. The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.

50. While dealing with the younger tender year doctrine, Janusz Korczar a famous Polish-Jewish educator & children's author observed: children cannot wait too long and they are not people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they are meant to be the unknown person inside each of them is our hope for the future.”

Child rights may be limited but they should not be ignored or eliminated since children are in fact persons wherein all fundamental rights are guaranteed to them keeping in mind the best interest of the child and the various other factors which play a pivotal role in taking decision to which reference has been made taking note of the parental autonomy which courts do not easily discard.”

21. Thus in view of the facts narrated above and the law as laid down by the Apex Court we are of the view that the welfare of the minor would be best ensured, if the custody of the minor is given to her father-appellant.

POINT No. 2

22. In view of the provisions of Section 6 of the Hindu Minority and Guardianship Act, 1956, the father has a paramount right to the custody of the children, he cannot be deprived of the custody of the minor child unless it is shown that he is unfit to be her guardian. Thus, we have to look into the fact as to whether any such circumstances are made out in the present case, which may make the appellant unfit to be the guardian of his minor daughter,

23. In this regard, the contention of the respondents is largely to the effect that _____ was harassed and physically abused in her matrimonial home for dowry. Besides, the respondents had at the time of marriage given a car, household goods, jewellery, and cash as dowry. It is also contended that it is during these acts of physical abuse that _____ had sustained a head injury resulting in her illness.

24. As far as the question of dowry at the time of marriage and subsequent thereto is concerned, there is little documentary evidence available on record except for allegations and counter-allegations. As far as the car being given in dowry is concerned, the appellant No. 1 himself admits that the respondents, out of their own sweet will, had given an amount of Rs. 2 lakhs for the purchase of the car at the time of marriage, the rest of the amount was paid by the appellant, and even the monthly installments in respect thereof are being paid by the appellant, The said fact is also evident from the bank statement of the appellant which is on record.

25. The case of the respondents is also that the appellant did not take good care of his wife, _____, and did not visit the doctor for her treatment while she was unwell. It has been specifically pleaded by the appellant that his wife was initially suffering from a skin ailment and he had visited Dr. Shashank Rastogi on 20.03.2023. Dr. Sudha Yadav and other doctors, and also Prakriti Clinic and Neuro Centre, Prayagraj, on 29.11.2023, the day on which the respondents had taken away _____ and the minor daughter from the house of the appellant. In this regard, the prescriptions of Dr. Shashank Rastogi dated 20.03.2023 and 15.05.2023, that of Dr. Sudha Yadav dated 11.10.2023 and 12.11.2023, and that of Prakriti Clinic and Near Centre dated 29.11.2023 are on record. Thus, it cannot be said that the appellant did not visit doctors for the treatment of his wife.

26. As far as the allegation regarding harassment of _____ and she being subjected to physical abuse is concerned, this Court finds that the marriage of the appellant was solemnized on 21.04.2019, the couple largely stayed together up to 29.11.2023, a duration of about four and a

half years. During this period admittedly, no police complaint was made in respect of the physical abuse that [redacted] was allegedly being subjected to, which said fact has also been admitted by the respondent no.1 during his cross examination. In fact, the Court of Chief Judicial Magistrate, Prayagraj, while dismissing the application under Section 175(3)BNSS filed by the respondents after the demise of [redacted], vide order dated 25.09.2024 had held that no case of harassment and physical abuse for dowry was made out and [redacted] had passed away on account of tuberculosis meningitis.

27. The medical records in respect of the illness of [redacted] that have been brought on record reveal that she was suffering from Tubercular Meningitis Stage III with Hydrocephalus and had expired due to Brain Stem Herniation and Shock on the 29.02.2024. It is relevant to state here that tuberculosis meningitis is a life-threatening infection caused by the bacteria “Mycobacterium Tuberculosis”, which spreads from the lungs to the central nervous system. Thus, it is difficult to understand as to how an alleged head injury could have led to tuberculous meningitis, moreso when the records reveal that [redacted] was keeping unwell for the past about one year and her earliest medical prescriptions in respect of her illness pertain to March 2023.

28. Besides, the respondents were also very much aware of the illness of [redacted], the respondent no.2 on 29.12.2023 gave his consent for the surgery of [redacted], wherein he had acknowledged the fact that she had only 50 percent chances of survival. The respondent No. 4 in his cross-examination also admits the fact that he was aware that [redacted] was suffering from brain TB. Hence, there is nothing on record to substantiate the allegation that [redacted] fell ill and passed away on account of the head injuries sustained during physical abuse in the hands of the appellant and his family.

29. The fact is that there is nothing on record to demonstrate that there was any discord between the appellant and his wife, late [redacted]

30. The Apex Court in similar circumstances in the case of **Tejaswini Gaud and others v. Shekhar Jagdish Prasad Tewari and others (2019) 7 Supreme Court Cases 42** wherein the wife was detected with breast cancer in May, 2017 and the minor girl child was born on 14.08.2017 while the wife was undergoing treatment, on 29.11.2017 the wife was diagnosed with Tubercular Meningitis and Pulmonary Tuberculosis, while the wife was undergoing treatment her sister , and the husband of had taken the wife along with minor to Mumbai for continuation of treatment. Subsequently the wife along with the minor had shifted to her parental home in Pune but were again shifted back to the house of in Mumbai. The wife succumbed to her illness on 17.10.2018 and the minor continued to remain in the custody of her maternal aunt. Subsequently the father of the minor had filed a petition seeking her custody. The Apex Court in the said case had held as under:

“32. In the case at hand, the father is the only natural guardian alive and has neither abandoned nor neglected the child. Only due to the peculiar circumstances of the case, the child was taken care of by the appellants. Therefore, the cases cited by the appellants are distinguishable on the facts and cannot be applied to deny the custody of the child to the father.

33.....

34. As observed in Rosy Jacob earlier, the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The welfare of the child shall include various factors like ethical upbringing, economic well being of the guardian, child's ordinary comfort, contentment, health, education. etc. The child Shikha lost her mother when she was just fourteen months and is now being deprived from the love of her father for no valid reason. As pointed out by the High Court, the father is a highly educated person and is working in a reputed position. His economic condition is stable.

35. The welfare of the child has to be determined owing to the facts and circumstances of each case and the Court cannot take a pedantic approach. In the present case, the first respondent has neither abandoned the child nor has deprived the child of a right to his love and affection. The circumstances were such that due to illness of the parents, the appellants had to take care of the child for some time. Merely because, the appellants being the relatives took care of the child for some time, they cannot retain the custody of the child. It is not the

case of the appellants that the first respondent is unfit to take care of the child except contending that he has no female support to take care of the child. The first respondent is fully recovered from his illness and is now healthy and having the support of his mother and is able to take care of the child.

36. The appellants submit that handing over of the child to the first respondent would adversely affect her and that the custody can be handed over after a few years. The child is only 1½ years old and the child was with the father for about four months after her birth. If no custody is granted to the first respondent, the Court would be depriving both the child and the father of each other's love and affection to which they are entitled. As the child is in tender age i.e. 1½ years, her choice cannot be ascertained at this stage. With the passage of time, she might develop more bonding with the appellants and after some time, she may be reluctant to go to her father in which case, the first respondent might be completely deprived of her child's love and affection. Keeping in view the welfare of the child and the right of the father to have her custody and after consideration of all the facts and circumstances of the case, we find that the High Court was right in holding that the welfare of the child will be best served by handing over the custody of the child to the first respondent.

37. Taking away the child from the custody of the appellants and handing over the custody of the child to the first respondent might cause some problem initially; but, in our view, that will be neutralised with the passage of time.”

31. Further the Apex Court in the case of **Gautam Kumar Das v. NCT of Delhi and others (2024) 10 Supreme Court Cases 588** where the wife had passed away due to Covid-19 leaving behind two minor children and the husband took the help of his sister-in-law in taking care of his children as an interim solution. However after sometime the custody of the minor son was given back to the father but the sister-in-law sought to keep the minor daughter and thereafter started refusing the father to meet his minor daughter. It is under such circumstances that the father had filed a petition under the Gurdian and Wards Act, 1890, and the Apex Court while granting the custody of the minor to the father had held as under:-

“23. In our opinion, merely because of the unfortunate circumstances faced by the appellant as a result of which, Respondents 5 and 6 were given the temporary custody of the minor child Sugandha Das and only because they looked after her for few years, the same cannot be a ground to deny the custody of the minor child to the appellant, who is her only natural guardian.

24. Insofar as the allegations made against the appellant by Respondents 5 and 6 are concerned, it appears that they have been made only as an afterthought, and especially after the appellant started asserting his claim for the custody of his minor daughter Sugandha Das. Insofar as the judgments of this Court on which Respondents 5 and 6 have relied upon, we can only say that there cannot be any straitjacket formula in the matters of custody.

*25. Recently, this Court, in *Nirmala* in para 27 has also observed that no hard-and-fast rule can be laid down insofar as the maintainability of the habeas corpus petition in the matters of custody of minor child is concerned. It has been held that as to whether the writ court should exercise its jurisdiction under Article 226 of the Constitution of India or not will depend on the facts and circumstances of each case.*

26. However, it is to be noted that a common thread in all the judgments concerning the custody of minor children is the paramount welfare of the child. As discussed hereinabove, we find that, apart from the appellant being the natural guardian, even in order to ensure the welfare of the minor child, she should live with her natural family. The minor child is of tender age, and she will get adapted to her natural family very well in a short period. We are therefore inclined to allow the appeal”

32. Thus, in view of above this court holds that the appellant being the natural guardian of his minor daughter, is entitled for the custody of his daughter.

POINT No.3

33. A perusal of the impugned judgment and decree reveals that although it runs into 22 pages but the larger part of the judgment contains reproduction of the pleadings of the parties and the evidences of the six witnessess produced. The reasons assigned by the learned trial court while dismissing the suit filed by the appellant is that the minor had been residing with her maternal grand father since long, and there was nothing material on record to show that the minor is not being well taken care of. Moreover, the impugned judgment and decree is based upon the judgment of the Apex Court in the case of *Somprabha Rana and others v. State of M.P.*

34. A perusal of the judgment reveals that no reasons have been assigned by the learned trial court while deciding issue nos. 2 and 3, while the issue no.1 has been decided by solely relying upon Section 6 of

Hindu Minority and Guardianship Act, 1956. Hence, the judgment on the face of it is unreasoned and non speaking. The learned trial court has neither given any reasoning or finding in respect of question of paramountcy of welfare of the minor even though the learned trial court has adverted to the provisions of Section 17 of the Gurdian and Wards Act, 1890. Further the learned trial court has also failed to assign any reasons and finding that made the appellant unfit to be given custody of the minor, while dismissing the suit.

35. In this regard the provision of Order XX Rule 5 CPC are relevant and provide that the Civil Court is required to decide each issue framed by stating its findings or decision with reason therefor. The provisions read as under

“5. Court to state its decision on each issue.- In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issue is sufficient for the decision of the suit”

36. Insofar as the reliance placed upon the case of Somprabha Rana (supra) is concerned we find that the facts of the case are totally different from those involved in the present controversy. In the said case the unnatural death of the mother had occurred on account of hanging. Subsequently an FIR was lodged against the father who was arrested in connection with the offence and was subsequently granted bail and a charge sheet was also filed. It is under such circumstances that the Apex Court had granted the custody of the minor to the maternal grand parents, and also, in view of the fact that High Court had failed to consider the question of welfare of the minor while granting custody of the child of the father.

37. We fail to understand as to how the said judgment would be applicable in the facts and circumstances of the present case. In this regard it is settled that the Courts should not place reliance on decision without disclosing as to how factual situation fits in with the facts and circumstances on which reliance is placed. The observation of Court should neither be read as Elucids theorem nor as the provisions of a statute and

that too taken out of their context. Thus the observations must be in the context in which they appear to have been stated. However, the learned trial court has completely overlooked this settled principle of law.

38. It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. However, the learned trial court while applying the judgment in the case of Som Prabha Rani (Supra) has completely overlooked the factual aspects of the controversy involved in the said case.

39. Thus, we can very well conclude that the impugned judgment and decree has been passed without assigning reasons and findings and is liable to be set aside on this ground.

40. In view of the above, the judgment and decree dated 31.05.2025 passed by the learned trial court in case No. 793 of 2024 (Abhishek Yadav v. Khemraj and 3 others) is set aside. The respondents are directed to hand over the custody of the minor, to her father-appellant within one month from today. We are also aware that the minor has been residing with the respondents for the past two years and nine months, hence, the respondents are given visitation rights to meet the minor between 2 pm to 5 pm at District Legal Services Authority, Prayagraj. It shall be open for the parties to move to the learned trial court, if they want to change the venue of visitation.

(Sudhanshu Chauhan,J.) (Saral Srivastava,J.)

August 21, 2026

Nadeem