



2026:AHC:194610-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL DEFECTIVE No. - 669 of 2026

.....Appellant(s)

Versus

State of U.P. and 4 others

.....Respondent(s)

Counsel for Appellant(s)	: Nipun Singh (Sr. Advocate), Naman Agarwal
Counsel for Respondent(s)	: Udai Chandani, Ashutosh Mishra, Rajiv Singh, S.C.,

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This appeal is directed against order dated 07.09.2026 passed by learned Single Judge in Habeas Corpus Writ Petition No. 1174 of 2026, whereby the writ petition has been allowed and the corpus, a minor girl child, has been directed to be handed over to the respondent-father.

2. The petition was filed by the respondent-father *inter alia* seeking custody of the minor child from the appellant-mother primarily on the allegations that the child was studying at

Class-V, however, ever since the wife has left the matrimonial home along with the child, she is not attending the school.

3. On the part of the appellant, submissions were made that she was a teacher where she wants her daughter to be admitted and for lack of NOC from the respondent-father, she is unable to get her admitted at the said school.

4. Learned Single Judge interacted with both the parties as well as the corpus. It has been noticed in the order impugned that the child indicated that she was not attending any school as she was not yet admitted to another school, however, expressed her desire to reside with her mother.

5. The parents on interaction claimed to be possessed of sufficient means to take care of the child wherein the respondent-father claims his income at Rs. 10 Lakhs per year and the appellant claimed it at Rs. 70,000/- per

month. Both were living with their respective parents.

6. The learned Single Judge, came to the conclusion that the education of the child was presently getting adversely affected, which cannot be permitted to continue and as the respondent had undertaken before the Court to ensure regular education and proper care of the corpus and that on account of immediate requirement ensuring continuity in the education and welfare of child, the Court came to the conclusion that the same would be in best interest and welfare of the corpus to hand over her custody to her father i.e. the respondent.

7. The Court in order to ensure the emotional and psychological bond of the corpus with her mother, granted visitation rights wherein she was held entitled to visit the residence of the respondent and meet and interact with the corpus at reasonable times in a manner conducive to the welfare and convenience of the corpus. Apart from the aforesaid visitation rights, appellant was also held entitled to interact with the corpus daily through video conferencing on mobile phone between 6:00-9:00 p.m.

8. Further directions were made that the appellant would be entitled to have temporary custody of the corpus during school vacations and holidays, subject to the welfare and convenience of the corpus and shall be returned to the custody of the respondent on expiry of the period of temporary custody.

9. Counsel for the appellant made submissions that the learned Single Judge was not justified in directing handing over the corpus to the respondent despite her expressing the desire to reside with the appellant. Submissions have been made that the respondent is adamant in not giving the NOC for admission of the child at School where the appellant is working as a teacher and that in this regard, the appellant has filed an application under the Guardians and Wards Act, 1890 before the Family Court, Gautam Buddh Nagar.

10. On a query being put by the Court whether the appellant till such time that she is able to get the daughter admitted to Heritage School was prepared to send the child to School, where she was already studying and the distance of the residence etc., the counsel for the appellant, on instructions, submitted that the appellant was prepared to

permit the child to continue to study at _____ School subject to her succeeding in getting her admitted to _____ and that the school was not far away from her parental home.

11. Learned counsel for the respondent made vehement submissions that the welfare of the child is in staying with the respondent inasmuch as the conduct of the appellant is writ large wherein on leaving the matrimonial home, the child is not being permitted to attend the school and, therefore, the learned Single Judge was justified in coming to the conclusion that for the welfare of the child, the custody was required to be handed over to the respondent.

12. Submissions have been made that the child has again started going to the school and, therefore, apparently there is no reason for interfering with the order impugned.

13. We have considered the submissions made and have perused the material available on record.

14. It appears that due to the matrimonial acrimony between the appellant and the respondent, the appellant left the matrimonial home on 17.05.2026 and started residing with her parents along with the minor corpus. It is also an admitted fact that ever since the appellant started residing at her parents' home, the child has not attended the school on the purported reason that she was to be admitted to the _____ where the appellant was teaching.

15. The learned Single Judge, despite noticing the fact that minor child expressed her desire to reside with her mother, irrespective of the said circumstance and the girl child is only ten years of age, only on account of the fact that the study of the child was getting affected, ordered for handing over the custody of the minor girl child to the father.

16. We are of the opinion that the learned Single Judge was required to explore possibility of child to continue study at the Somerville School while continue to reside with the mother especially in view of her desire to reside with her mother, which option apparently has not been explored by learned Single Judge and when the said proposition was put by this

Court to the counsel for the appellant, the appellant readily agreed as noticed herein before.

17. In view of the fact that the reason for handing over the custody of the child to the respondent essentially has been the continuation of the study of the child, which now can continue even while in custody of the appellant as she has agreed to the proposition whereby the child would continue with her studies at Somerville School till she gets admitted to the Heritage School, the cause for filing the petition/seeking custody and the court agreeing to the same, apparently ends.

18. However, as the child would be with the appellant on handing over of the custody of the child back to the appellant, the respondent would have the visitation rights, wherein he would be free to visit the child at his in-laws house on alternative Sundays for a period of three hours.

19. The respondent would of course be free to get the temporary custody of the corpus during long school vacations for a period of five days at a stretch, at the end of which, it would be the responsibility of the respondent to hand over back the custody of the child to the appellant.

20. The respondent would also be free to interact with the corpus on Mobile Phone through audio/video for a reasonable time during the interregnum period.

21. The custody of the child shall be handed by the respondent to the appellant by tomorrow i.e. 17.09.2026 before 06.00 P.M. The S.H.O., P.S. Phase-I, District Gautam Buddh Nagar, Noida is directed to ensure that the custody of the child is handed over to the appellant without any disturbance being created by the either parties.

22. With the above directions, the order passed by learned Single Judge is set aside and the appeal stands **allowed**.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

September 16, 2026

Sandeep/SL