



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

D.B. Civil Miscellaneous Appeal No. 556/2025
CNR: RJHC010153492025 | URN: CMA / 1288U / 2025

1.

2.



----Appellants

Versus

----Respondent

For Appellant(s)	:	Ms. Apeksha Chhangani (Through VC) Ms. Anjali Garg
For Respondent(s)	:	Mr. Praveen Dayal Dave Ms. Ruchi Padiyar Mr. Pradyum Patel Mr. Rajendra Singh

**HON'BLE MR. JUSTICE MUNNURI LAXMAN
HON'BLE MRS. JUSTICE SANGEETA SHARMA**
Order

06/08/2026

1. By this appeal, the challenge was made to the judgment and decree dated 16.01.2025 passed by learned Family Court No.2, Udaipur, whereunder the application filed by the respondent, being the natural father, for grant of custody of the minor child was allowed. Consequently, the appellants were directed to hand over the custody of the child to the respondent. Aggrieved by the same, the present appeal has been filed.



2. The case of the respondent/father is that he is the biological father of the child and is financially well and the welfare of the child better in his custody. He stated that the custody should be shifted to the respondent, who is the legal guardian as the child will live in the joint family which will be better for his welfare. However, it is also stated that the appellants are the maternal grandparents and they have two unmarried sons and if they get married, it will be very difficult for the child to live in that family. In the said circumstance, he prayed for shifting of the custody of the child.
3. The appellant's case is that the respondent though being the natural father, the welfare of the child is better in the custody of grandparents as they are financially well and the child has been with them for nearly a long time and shifting the custody would be detrimental to the interest of the minor. It is also pleaded by them that the respondent is drunkard; he may not give the appropriate attention to the child and if custody is given, there is every possibility that the child will be impacted and it is not in the interest of the child to shift the custody. To support his case, the appellant has relied upon Exhibit 1 to Exhibit 5. The appellant also examined DW-1 to DW-3 and relied upon the FIR.
4. The Family Court having gone through evidence on record found that the welfare of the child is better in the hands of the respondent as compared to the appellants and consequently, directed the change of custody from grandparents to natural father.



5. Heard both sides.
6. The submissions of the learned counsel for the appellants is that the child is with them from last seven years and he is not willing to go with the natural father and it is also contended that the appellants are grandparents, therefore, the welfare of the child is better in their hands as they have good means for the welfare of the child, also the atmosphere in their family will be advantageous for the well-being of the child. It is also contended that if the child is handed over in the custody of the respondent, it will cause a great amount of disturbance to the child and it will not be in the interest of the child to shift the custody. It is also contended that the respondent has no financial means and is also not of good character as he is addicted to alcohol.
7. We have gone through the evidence placed on record. The admitted facts are that from the birth of the child, the child is with the grandparents. The application for custody was filed after one year of the birth of the child. There was no immediate shift of the custody during the pendency of the custody proceedings from the grandparents to the natural father. As of now the child is aged seven years. It is needless to observe that the right of a guardian to have a custody is sub-servant to the welfare of the child. The sudden and abrupt shift of the child after having stayed with grandparents for the last seven years would definitely result into the mental disturbance to the child and it is not in the interest of the child to shift the custody to the father at this juncture. Further, the father has not developed the access to





the child for more than seven years for one or other reasons. In this situation, the child may not be inclined to shift the custody to the father.

8. We found that shifting the custody at this juncture is not in the interest of the minor. There is no evidence on record to show that, till the filing of the appeal, the father has given any financial aid to the child. The child is maintained solely through the financial and family support of the grandparents alone. On the directions of this Court, the respondent also deposited Rs.25,000/- to show his bonafides and to show that he has sufficient means to maintain the child. He also produced evidence to the effect that he is running a family business and earning an annual income of Rs.6 lakhs. No doubt, the father may be financially sound, but the legal right of the father and his financial ability are not the sole criteria for determination of the welfare of the child. The surrounding family environment in which the child has grown up is also a relevant factor and the time period spent by the child with the grandparents is also relevant and the same cannot be ignored.
9. Considering the overall circumstances, we are of the view that shifting abruptly the custody of the child at this juncture to the natural father would result in unforeseen consequences which would impact the mental condition of the child. Therefore, we are inclined to interfere with the impugned order with certain modifications.
10. The appellants cannot deny the father's right to have access to the child. He is the natural father of the child and he has





every right to create an atmosphere of bonding so that later, he can also influence the mind of the child to shift the custody. The family bonding can only be developed by creating a certain congenial atmosphere like giving visitations and giving some temporary custody so that the child develops rapport with the natural father.

11. Learned counsel for the appellants submits that the child is not willing to go with the father even for temporary custody which cannot be accepted. At the initial stage, the child may not go abruptly, but during the course of development of family bonding, the child may show the inclination to join the father. This can only happen when an atmosphere is created to develop the bonding between the father and the son.
12. In the said circumstances, the present appeal is partly allowed as follows:-
 - (i) The direction of the Family Court granting the custody to the respondent is set aside and the custody shall be with the grandparents only.
 - (ii) The respondent shall have the visitation rights for every alternative Sunday between 10:00 AM to 12:00 noon for six months. After six months, the respondent shall be entitled to two days temporary custody during the winter holidays and five days during the summer holidays.
 - (iii) After one year, if any modification is required, the respondent is given liberty to make an appropriate application before this Court.



- (iv) The respondent shall continue to deposit the arrears as well as the maintenance of Rs.2,000/- as directed by this Court on or before the 5th day of the succeeding month. If any default is committed in paying the monthly installment, the respondent shall lose the right of visitation as well as the temporary custody.
- (v) The appellant is directed to furnish his bank account details and the respondent shall deposit the said amount into the said account on or before the time stipulated above.
- (vi) It is further directed that if the appellant causes any disturbance during the visitation period or creates any nuisance, the respondent shall be at liberty to move an appropriate application before this Court and the Court will take into consideration the shifting of the custody of the child also.
- (vii) It is also made clear that the respondent shall not be in an intoxicated condition while visiting the child and during the temporary custody period, the respondent shall at all times remain free from any type of intoxication.
- (viii) Both the parties are at liberty to file appropriate applications in case any of the conditions mentioned hereinabove are violated by either of the parties.
- (ix) Pending applications, if any, shall stand disposed of.

(SANGEETA SHARMA),J

(MUNNURI LAXMAN),J

11/Archit Pareek

