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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.10.2026

\# **CNR No. DLHC010496232026**

\+ MAT.APP.(F.C.) 389/2026

.....Appellant

Through: Mr. Ashutosh Upadhyay,Mr. Sushil Kumar, Mr Satyam Kumar Singh, Adv. with Appellant in person.

versus

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MS. JUSTICE RENU BHATNAGAR

JUDGMENT (ORAL)

CM APPL. 71517/2026 & CM APPL. 71518/2026- *Delay*

1. The present applications have been filed under Section 5 of the Limitation Act, 1963, read with Section 151 of the Code of Civil Procedure, 1908, seeking condonation of delay of 85 days in filing and 21 days in re-filing the present appeal.

2. For the reasons stated in the applications, the delay in filing and re-filing the present appeal is condoned.

3. Accordingly, the applications stand disposed of as allowed.

MAT.APP.(F.C.) 389/2026

4. The challenge in the present appeal filed under Section 19 of the Family Courts Act, 1984 is to the Judgment dated 15.05.2026

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whereby, the learned Family Court has declined the prayer of the appellant/grandfather seeking custody of his grandchildren.

5. Shorn of unnecessary details, the facts of the case leading to this appeal are as under:

a) The appellant is the paternal grandfather of and baby . The appellant's son was married to the respondent on 01.11.2006 as per Hindu rites and customs.

b) son of the appellant passed away on 01.12.2016 and the grandchildren stayed with the mother/respondent.

c) The appellant had approached the Family Court under Section 7, 8, 9, 10 read with Section 25 of the Guardians and Wards Act, seeking custody of his minor grandchildren.

d) It is the case of the appellant that when the marriage of the appellant's son with the respondent was solemnized on 01.11.2006, the couple was blessed with two children. The girl child was born on 07.07.2008 and the boy child on 04.06.2010.

e) The material on record indicates that all was not well between the couple leading to filing of a FIR being 205/2012 under Section 406/498-A of the IPC at P.S. Maurya Enclave, Delhi. The FIR was quashed in competent proceedings by this Court *vide* order dated 24.05.2013.

f) Further, material on record indicates that the children were living with their mother.

g) The son of the appellant passed unfortunately passed

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away on 01.12.2016 and it is the case of the appellant that the respondent is not permitting the children to meet the grandparents.

6. The appellant states that he wants to impart proper education to the children since the respondent i.e. the mother of the children is a working lady, she is not able to take care of both the children and is not giving proper atmosphere required for the minor children, further stating that welfare of the children is paramount and that the grandparents can give much more better and congenial environment, custody is being sought by the grandfather.

7. Since the respondent did not file the written statement, her right to file the written statement was stuck off. The appellant examined himself as PW-1.

8. The impugned order indicates that the Family Court interacted with the children. The order dated 05.03.2025 observes that the children for whose custody the present petition has been filed, could barely recognize the appellant herein and have no desire to have any contact with the appellant.

9. The children were almost 18 and 15 years of age at that time. The daughter has already become a major in the month of July, 2026. It cannot be said that the children at this age have been tutored. The children have their own independent mind and they have expressed their desire that they want to continue to live with their mother.

10. There is nothing on record which would indicate that the mother is not bringing up the children properly. The fact as to whether the respondent committed cruelty on the appellant's son is not a matter

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which has to be discussed or decided in the present proceedings under the Guardians and Wards Act.

11. The respondent is an Income-Tax Officer, financially independent and having her own accommodation, taking care of the children.

12. It is well settled that the natural guardian has a superior claim than grandparents. The right of the mother who is the natural guardian to her children would have a better right to the custody of the children and takes precedence over others, unless and until the Court is satisfied that the mother is unfit, incapable or has been negligent for the custody of the children. The respondent/mother cannot be deprived of the children and the children cannot be deprived of their mother.

13. In ***Vivek Kumar Chaturvedi &Anr. v. State of U.P. &Ors.***, (2025) 4 SCC 342, the Hon'ble Supreme Court, while considering a father's claim for custody of his minor child vis-à-vis the maternal grandparents, observed in paragraph 9 that the grandparents could not have a better claim than the father, who was the natural guardian. The Court, upon finding no circumstances disentitling the father from exercising his parental rights, held that the welfare of the child, in the facts of that case, would be best served by granting custody to the father. The decision thus reiterates that, while the welfare of the minor remains the paramount consideration, the claim of a natural guardian cannot be displaced merely because the child has been residing with the grandparents. The relevant portion is reproduced herein below-

> *"9. We cannot but observe that the learned Single Judge has not endeavoured to elicit the*

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> *child's attitude towards his father. Admittedly, the child, after his birth, was with his parents for about 10 years till the death of his mother. He was separated from the father in 2021 and has been living with his grandparents, who cannot have a better claim than the father, who is the natural guardian. There is no allegation of any matrimonial dispute when the mother of the child was alive nor a complaint of abuse perpetrated against the wife or son. The father, the natural guardian, we reiterate, is well employed and educated and there is nothing standing against his legal rights; as a natural guardian, and legitimate desire to have the custody of his child. We are of the opinion that the welfare of the child, in the facts and circumstances of this case, would be best served if custody is given to the father.*

14. In view of the fact that the Family Court had interacted with the children who were 17 and 14 years of age at the time of passing of the impugned Order are capable of rational thinking and the daughter has already attained majority, the decision of the Family Court in not awarding custody to the grandparents does not require any interference.

15. After attaining majority, it is always open for the granddaughter if she wishes to, she can visit the grandparents. The Court in any event cannot force either the grandchild to meet their grandparents or restrain her from meeting their grandparents.

16. However, it is always open to the appellant herein to move appropriate application before the Family Court for the purposes of visitation rights, which shall be considered by the Family Court on its own merits after eliciting the willingness of the grandchildren.

17. The order of the Family Court is well reasoned. Accordingly,

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the appeal stands dismissed. Pending application, if any, also stands disposed of.

SUBRAMONIUM PRASAD, J

RENU BHATNAGAR, J

OCTOBER 13, 2026*/pr/KZ*

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