IN THE HIGH COURT OF JHARKHAND AT RANCHI

F.A. No. 96 of 2024

… … Petitioner/Appellant

Versus

… … Respondent/Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant : Mr. Indrajit Sinha, Advocate
Mr. Ajay Kumar Sah, Advocate.
Ms. Peeya Bhatia, Advocate

For the Respondent : Mr. Sumeet Gadodia, Advocate
Mr. K.S. Nanda, Advocate
Mr. Prakhar Harit, Advocate
Mr. Anish Lal, Advocate

CAV/Reserved on 15.09.2026 **Pronounced on: 29.10.2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal under Section 19(1) of the Family Courts Act, 1984 is directed against the order/judgment dated 13.03.2024 passed by the learned Principal Judge, Family Court, Jamshedpur in Original Suit No. 829 of 2023, whereby and whereunder, the application filed under Section 25 of the Guardian and Wards Act, 1890 (hereinafter referred to as the Act, 1890) for custody of the minor son has been held to be not maintainable by showing the opinion that the petition ought to have been filed under Section 7 read with Section 17 of the Guardian and Wards Act.

Factual Matrix

2. The brief facts of the case as per the pleading as has been enumerated in the memo of appeal needs to be referred herein which is as under:-

2.1 The marriage of the parties was solemnized on 10.12.2017 at Wave International Hotel, Jamshedpur, in accordance with Hindu Rites and Customs which was followed by a reception ceremony hosted by the parents of the appellant at Gandhi Maidan, Chaibasa, on 14.12.2017.

2.2 One male child, namely, was born out of the aforesaid wedlock on 19.06.2020 at Cloud 09 Hospital, Chandigarh. The said child of the parties hereto is presently residing with the opposite party Jamshedpur within the jurisdiction of this Court.

2.3 Prior to the marriage of the parties, the appellant was residing at Chandigarh where the appellant was pursuing his M.S. in General Surgery from PGIMER, Chandigarh which course began on 28.06.2016. During such relevant time, while the opposite party was residing at Chaibasa at her matrimonial home, the appellant used to visit the opposite party at Chaibasa on frequent basis.

2.4 The opposite party started residing within the appellant from 18.05.2019 at the married doctor's hostel at Chandigarh. The opposite party had conceived in September, 2019. On 03.08.2022, the opposite party without any sufficient cause came back to Jamshedpur without informing the appellant and left their minor child back at Chandigarh in the house of the appellant and that too while the child was severely unwell and was under medication. Immediately after the opposite party came back to Jamshedpur within two days, the opposite party

instituted an F.I.R. being Bistupur P.S. Case No. 187 of 2022 on 06.08.2022 under Sections 498A, 506 and 34 of Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act with all kinds of false allegations and concocted stories made against the appellant and his parents, now pending before the Learned Court of Chief Judicial Magistrate at Jamshedpur.

2.5 After due investigation, the Police submitted final report in favour of the parents of the appellant and submitted charge sheet against the appellant under Sections 498A and 506 of the Indian Penal Code. During investigation in Bistupur P.S. Case No. 187 of 2022 by virtue of a direction of the Investigating Officer, the custody of the minor child who at the relevant time was residing with the appellant was returned by the appellant to the opposite party on 20.08.2022 at Bistupur Police Station, since when the minor child was removed from the custody of the appellant and he started residing with the opposite party-respondent at Jamshedpur.

2.6 On the aforesaid facts, the appellant had filed one original suit in the Court of Principal Judge, Family Court, at Jamshedpur, and the same was registered and marked as Original Suit Case No.829 of 2023.

2.7 During pendency of the Original Suit / Guardianship Case No. 829 of 2023, the appellant had filed a petition under Section 12 of the Guardian & Wards Act, 1890, for grant of visitation right of the child in the manner indicated in the petition.

2.8 The aforesaid original suit was heard and vide order dated 13.03.2024 passed in Original Suit No. 829 of 2023, the said suit has been

dismissed which was filed for custody of the minor son under Section 25 of the Act, 1890 holding the same to be not maintainable by showing the opinion that the petition ought to have been filed under Section 7 read with Section 17 of the Guardian and Wards Act.

3. The factual aspect as per the pleading made in the memo of appeal which is not in dispute is that the appellant is the father of the minor taken birth from the wedlock of the marriage solemnized in between the parties, who is aged about 03 years.

4. The case of the appellant before the learned Family Judge was that he is being deprived from the love of his child and as such, had prayed for visitation right of the minor child. The matter was heard by the learned Family Judge. The application filed under Section 25 of the Guardian and Wards Act 1890 has been held to be not maintainable which is under challenge.

Submission of the learned counsel for the appellant:

5. Mr. Indrajit Sinha, learned counsel for the appellant has taken the following grounds:

   (i) It has been submitted that the impugned judgment/order is bad in the eyes of law as the same has been passed without applying its judicial mind and without consideration of the facts in right perspective.

   (ii) It has also been submitted that the applicability of Section 7 of the Act, 1890 which provides for power of the Court to make order as to guardianship, will not be applicable as the appellant is a natural

guardian and Section 7 of the Act provides for appointing a guardian or declaring a person to be a guardian.

(iii) It has further been contended that section 8 of the Guardian and Wards Act, 1890 provides that who are the person entitle to apply for the order under section 7 and section 11 provides the procedure for admission of the application. Again, on the reading of both section 8 and section 11 it again suggests that there is not requirement for the natural guardian to be declare him or her as guardian under section 7 read with section 17 of the Guardian and Wards Act, 1890.

(iv) By referring aforesaid provisions, the learned counsel has submitted that a natural guardian is not required, in any case, to first obtain an order of appointment or declaration under Section 7 read with Section 17 before seeking appropriate relief concerning custody under Section 25 of the Act 1890.

(v) The learned counsel for the appellant in order to fortify his argument has relied upon the following judgments rendered by the Hon'ble Apex Court and Calcutta High Court:

(a) ***Shazia Aman Khan and Other versus State of Orissa and Another; 2024 (7) SCC 564*** *(relevant paragraphs 17, 18, 19 and 21),*

(b) Athar Hussain Vs. Syed Siraj Ahmed and Others (2010) 2 Supreme Court Cases 654*(relevant paragraphs 31 to 34),*

(c) Raj Kumar Gupta versus Barbara Gupta, 1988 SCC OnLine CAL 177 *(relevant paragraph 16),*

6. Learned counsel for the appellant, on the aforesaid grounds, has submitted that the impugned order, therefore, is not sustainable in the eyes of law and hence, is fit to be quashed and set aside.

Submission of the learned counsel for the respondent:

7. *Per contra*, Mr. Sumeet Gadodia, learned counsel for the respondent assisted by Mr. K.S. Nanda, learned counsel for the respondent on record, while defending the impugned judgment, has submitted that there is no infirmity in the impugned judgement rather an application ought to have been filed under Section 7 read with Section 17 of the Guardian and Wards Act.

8. While defending the impugned order, Mr. Gadodia, learned counsel for the respondent has submitted that for the purpose to make an order as to guardianship, the power has been conferred to be exercised by the Court as per the provision provided under Section 7. Herein, the issue of guardianship is involved and as such, the application ought not to have been filed under 25 of the Act, 1890 because the provision as contained under Section 25 is in different context to that of Section 7.

9. The power which is to be exercised under Section 25 of the Act, 1890 is to be exercised by the Court in a situation 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. As per the statement as referred under the provision as contained under Section 25, two things are important, i.e., “from the custody of a guardian” and “return to the custody of his guardian”.

10. Herein, the fact of the case is that the dispute is in between two guardians for the purpose of custody or visitation right, hence, a declaration is to be given by invoking the jurisdiction of this Court under Section 7 of the Act, 1890.

11. The learned counsel in order to buttress his limb of argument has placed his reliance on the judgment rendered by the Hon'ble Apex Court and Delhi high Court which are as follows:

(a) Githa Hariharan (Ms) And Another Vs. Versus Reserve Bank Of India And Another (1999) 2 Supreme Court Cases 228

(b) Ram Singh vs.Lila Devi 1969 SCC OnLine Del 59

12. Learned counsel for the respondent has submitted, on the aforesaid grounds, that the impugned order warrants no interference by this Hon'ble Court.

Analysis:

13. This Court has heard the learned counsel for the parties and gone through the impugned judgment 13.03.2024 passed by the learned Principal Judge, Family Court, Jamshedpur in Original Suit No. 829 of 2023, which is a brief order, as such, the same is being reproduced as under:

> ***"13.3.24*** *The record is placed for hearing on the point of admission of the present suit.*
>
> *Heard on the point of admission.*
>
> *On perusal of record it appears that present case has been filed u/s 25. Guardian and Wards Act, 1890 Section 25 entities a guardian to custody of the ward if such ward leaves or is removed from the custody of the guardian of his person.*

Learned Counsel for the petitioner in support of his contention relied upon the judgment as reported in (2015)8 SCC 318 and (1973)1 SCC 840. It has been held by the Hon'ble Court in the aforesaid judgment that the use of word 'ward' and 'guardian' leave little doubt that it is the guardian who. having the care of the person of his ward, has been deprived of the same and is in the capacity of guardian entitled to the custody of the such ward. that can seek the assistance of the Court for return of his ward to his custody. The guardian contemplated by this section includes every kind of guardian known to law. The learned Counsel for the petitioner further submitted that petitioner being the father of the child is the natural guardian as contemplated u/s 25 of the Act.

From the bare perusal as above it appears that section 25 of the Act contemplates appointment of a person as guardian to be prerequisite before the minor can be returned to the custody of such guardian.

Learned Counsel for the petitioner conceded that the petitioner has never been appointed as guardian by any order of Court and has sought return of the minor being the parent and natural guardian of the child. Learned Counsel further failed to appreciate that the child is in custody of mother who herself is a natural guardian being the other parent.

Thus, this Court is of considered opinion that the present petition ought to have filed u/s 7 r/w 17 of the Guardian and Wards Act while Counsel for the petitioner was not amenable to any suitable amendment/his petition. This Court, therefore, is left with no other option but to dismiss this petition as the same is not fit to be admitted. The suit accordingly dismissed.

14. From a perusal of the impugned order, it is evident that the learned Family Court has taken into consideration the scope and ambit of Section 25 of the Guardians and Wards Act, 1890 (herein referred as Act 1890) and has observed that the said provision proceeds on the premise that the person seeking restoration of custody is already recognized as a guardian in the eyes of law. Consequently, the learned Family Court, therefore, held that a claim for return of a minor under Section 25 of the Act 1890 presupposes the existence of a guardian to whose custody the ward is sought to be restored.

15. The learned Family Court further recorded that the petitioner himself had admitted that he had never been appointed or declared as a guardian by any competent court. It was also noticed that the petitioner's claim for custody was founded solely on his status as the father and natural guardian of the child. At the same time, the minor was admittedly residing with the respondent-mother, who is also a natural guardian and parent of the child.

16. The learned Family Court accordingly came to the conclusion that the foundational issue regarding guardianship and custodial entitlement was required to be adjudicated before any relief for custody could be granted. In such circumstances, the Court found that the appropriate remedy available to the petitioner was to invoke the jurisdiction under Section 7 read with Section 17 of the Act, 1890, rather than to directly maintain a petition under Section 25 thereof.

17. In the backdrop of the aforesaid factual matrix and the rival submissions advanced on behalf of the parties, the principal issue that falls for consideration before this Court is whether a petition filed by one parent seeking custody and consequential visitation rights in respect of a minor child is maintainable under Section 25 of the Guardians and Wards Act, 1890, or whether such relief can be granted only upon invocation of the jurisdiction of the Court under Section 7 read with Section 17 of the said Act.

18. Before adverting to the rival submissions, it would be apposite to refer to the relevant provisions of the Hindu Minority and Guardianship Act, 1956 (hereinafter referred to as the Act, 1956) which contains a provision under Section 2 which provides that the provision of this Act shall be in addition

to, and not, save as hereinafter expressly provided, in derogation of, the Guardian and Wards Act, 1890. For ready reference, the Section 2 of the Act, 1956 is being reproduced as under:

> *"**2. Act to be supplemental to Act 8 of 1890.—***
>
> *The provision of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardian and Wards Act, 1890 (8 of 1890)."*

19. The term "guardian" has been defined under Section 4(b) of the Act, 1956 which means a person having the care of the person of a minor or of his property or of both his person and property, and includes—(i) a natural guardian, (ii) a guardian appointed by the will of the minor's father or mother, (iii) a guardian appointed or declared by a court, and (iv) a person empowered to act as such by or under any enactment relating to any court of wards. Under Section 4(c) "natural guardian" has also been defined which means any of the guardians mentioned in Section 6.

20. It is evident from the provision as contained under Section 4(b) that guardian is having the notion meaning a person having the care of the person of a minor or of his property or of both his person and proper which also includes natural guardian.

21. The "natural guardian" has been defined under Section 6 of the Act, 1956 as provided therein that the natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are——(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother; (b) in case of an illegitimate boy

or an illegitimate unmarried girl—the mother, and after her, the father; (c) in the case of a married girl—the husband. Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—(a) if he has ceased to be a Hindu, or (b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). For ready reference, the provision of Section 6 of the Act, 1956 is being reproduced as under:

> *"**6. Natural guardians of a Hindu minor.—***
>
> *The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—*
>
> *(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;*
>
> *(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;*
>
> *(c) in the case of a married girl—the husband:*
>
> *Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—*
>
> *(a) if he has ceased to be a Hindu, or*
>
> *(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi)."*

22. It is thus evident that in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.

23. We are concerned with the provision as contained under Section 6(a) of the Act, 1956 for the present. The reference of the Act, 1956 is thus being made for the purpose of referring the decision of guardian as provided under Section 6 of the Act, 1956.

24. The Act, 1890 also contains the definition of "guardian" as under Section 4(2) thereof which means a person having the care of the person of a minor or of his property, or of both his person and property.

25. There is difference in between the definition of "guardian" as provided under Section 4(2) of the Act, 1890 and under Section 4(b) of the Act, 1956. In the Act, 1890, the definition of "guardian" is in restrictive sense while in the Act, 1956, the definition of "guardian" is in broader sense which also includes a natural guardian.

26. Section 7 of the Act, 1890 confers power upon the Court to make orders as to guardianship. For ready reference, Section 7 of the Act, 1890 is 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."*

27. It is, thus, evident from the provision of Section 7 of the Act 1890 that if any issue is being agitated before the Court and if 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.

28. Section 7(2) of the Act, 1890 confers power upon the Court that if such order has been passed, the same will imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

29. The provision as contained under Section 7, therefore, confers power upon the Court appoint a guardian of his person or property, or both, or declare a person to be such a guardian. Meaning thereby, the power of appointing a guardian as also declaration of a person to be such a guardian has been vested to the Court under Section 7 of the Act, 1890.

30. Section 8 of the Act, 1890 also needs to be referred herein which provides the entitlement of a person to apply for order. An order shall not be made under the last foregoing section except on the application of (a) the person desirous of being, or claiming to be, the guardian of the minor, or (b) any relative or friend of the minor, or (c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or (d) the Collector having authority with respect to the class to which the minor belongs. Section 8 of the Act, 1890 is being reproduced as under for ready reference:

> *"**8. Persons entitled to apply for order. An order shall not be made under the last foregoing section except on the application of***
>
> *(a) the person desirous of being, or claiming to be, the guardian of the minor, or*
>
> *(b) any relative or friend of the minor, or*

(c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs."

31. It is, thus, evident by conjoint reading of Sections 7 and 8 of the Act, 1890 that the person desirous of being, or claiming to be, the guardian of the minor, or any relative or friend of the minor, or the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or the Collector having authority with respect to the class to which the minor belongs can make an application for appointment as a guardian of the minor or his property or to get the declaration for getting to be such a guardian.

32. Section 25 of the Act, 1890 confers power upon the Court for holding the title of guardian to custody of ward. The said provision is being reproduced as under:

*"**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)] [Now see Section 97, Criminal Procedure Code, 1973 (2 of 1974).].

(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."

33. It is, thus, evident from the provision as contained under Section 25 of the Act, 1890 that if award 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.

34. The consideration of the word "ward", "a guardian", "his guardian" and "the guardian" is relevant for the purpose to decide the issue of maintainability.

35. "Ward" has been defined under Section 4(3) which means a minor for whose person or property, or both, there is a guardian. The "guardian" has been defined under Section 4(2) of the Act, 1890 which means a person having the care of the person of a minor or of his property, or of both his person and property, meaning thereby, for a ward, guardian is already there.

36. The word "guardian" or "his guardian" or "the guardian" connotes that if the custody of the ward is available with a guardian but if the ward leaves or is removed from the custody of a guardian, then, the Court by considering the prime issue of 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.

37. Thus, it is evident on comparative assessment of both the provisions as contained under Sections 7 and 25 of the Act, 1890 that the Section 7 confers power upon the Court to appoint a guardian or declare a person to be such a guardian while on the other hand, Section 25 deals with the entitlement to seek return of a ward to the custody of his or her guardian where the ward has left or has been removed from such custody. The

provision empowers the Court to direct the return of the ward if, upon consideration of the circumstances, it forms the opinion that such return would be conducive to the welfare of the minor.

38. Under Section 25 of the Act 1890, there is no need of a declaration of a guardian either to the mother or the father because prior to leaving of the ward or having removed by either of the guardian either the mother or father, the minor was under the care of guardian either the mother or the father. But, due to leaving of the ward or removal from the custody of a guardian, the other guardian is having the grievance, so in such situation, the other guardian, i.e., the mother or the father from whose custody the ward has left or removed, then, an application is required to be filed under Section 25 of the Act, 1890.

39. A conjoint reading of the aforesaid provisions makes it evident that the jurisdiction contemplated under Sections 7 and 25, though relating to the welfare and custody of a minor, operates in distinct statutory contexts. Section 7 concerns the appointment or declaration of a guardian, whereas Section 25 contemplates the return of a ward to the custody of a guardian in the circumstances specified therein.

40. It is, thus, evident that the maintainability of the application either under Section 7 or under Section 25 of the Act, 1890 is required to be considered on the basis of the facts and particularly the status of the petitioner and the respondent/wife.

41. It is not in dispute that the appellant is the father of the minor child born out of the wedlock between the parties. It is equally undisputed that, following

the events of August 2022, the minor child has been residing with the respondent/wife at Jamshedpur.

42. As evident from the impugned order as quoted and referred hereinabove, the learned Family Court has proceeded on the premise that, in the absence of an order appointing or declaring the appellant to be the guardian of the minor child under Section 7 of the Act, 1890, an application under Section 25 of the said Act is not maintainable.

43. But it is considered view of this Court based upon the statutory deduction and factual aspect of the particular case that such an approach does not sufficiently take into consideration the distinction between an application seeking appointment or declaration of guardianship and an application seeking restoration of custody of a minor who is alleged to have been removed from the custody of a guardian.

44. As discussed, and referred in the preceding paragraph that Section 7 of the Act, 1890 empowers the competent Court to appoint a guardian of the person or property of a minor, or both, or to declare a person to be such guardian, where the Court is satisfied that such an order is necessary for the welfare of the minor. Section 25 of the Act 1890, on the other hand, specifically deals with the entitlement of a guardian to seek the return of a ward who has left or has been removed from the custody of the guardian of his person, subject, of course, to the satisfaction of the Court that such return would be conducive to the welfare of the minor.

45. The two provisions, therefore, operate in distinct statutory situations. While Section 7 deals with the appointment or declaration of guardianship, Section 25 provides a remedy in relation to the custody of a ward in the

circumstances contemplated therein. The mere fact that both provisions concern the welfare of a minor does not justify importing into Section 25 an inflexible condition that a person seeking relief thereunder must, in every case, first obtain a separate order of appointment or declaration under Section 7.

46. In the present case, it is an admitted position that the appellant is the father of the minor child, born out of the wedlock between the parties. It is also the case of the appellant that the minor child was residing with him at Chandigarh until the events of August 2022 and that the child was thereafter handed over to the respondent pursuant to the direction of the police during the investigation of the criminal case instituted by the respondent against the appellant.

47. The aforesaid circumstances, as pleaded, disclose a dispute concerning the custody of the minor between his biological parents. The appellant asserts that the child was previously in his care and that he seeks restoration of custody. Whether the circumstances satisfy the statutory ingredients of Section 25, and whether restoration of custody would serve the welfare of the child, are matters requiring adjudication on the basis of the pleadings, evidence and all relevant circumstances.

48. At the stage of considering the maintainability of the petition, the Court is required to distinguish between the existence of a legally cognizable claim and the ultimate entitlement to the relief sought. The fact that the respondent-mother is also a natural guardian does not, by itself, extinguish the appellant's status as a natural guardian or render his claim incapable of examination under Section 25. The competing claims of the parents must

be adjudicated in accordance with law, with the welfare of the minor remaining the paramount consideration.

49. This Court is conscious of the provision contained in Section 6(a) of the Hindu Minority and Guardianship Act, 1956, under which the father and, after him, the mother are recognised as natural guardians of a Hindu minor boy or unmarried girl, subject to the statutory proviso that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The said provision, however, must be considered along with the other relevant provisions of law and the settled principle that the welfare of the minor is paramount.

50. The Court is of the considered opinion that Section 25 of the Act, 1890 is intended to provide a substantive remedy for restoration or regulation of custody where a ward has left or has been removed from the custody of a guardian. The provision does not, either expressly or by necessary implication, mandate that such guardian must necessarily be a court-appointed guardian.

51. The decision of the issue would, however, depend upon the nature of controversy involved in a given case. Where the very status of a person as guardian is disputed, or where rival claims requiring adjudication as to guardianship are involved, recourse to Section 7 may become necessary. However, where the applicant approaches the court in the capacity of a natural guardian recognized by law and seeks custody or ancillary reliefs concerning the minor, the petition cannot be rejected at the threshold merely on the ground that no prior declaration under Section 7 has been obtained.

52. In the instant case, the learned Family Court has dismissed the petition at the threshold solely on the ground that the appellant had not previously been appointed or declared a guardian under Section 7 read with Section 17 of the Act, 1890. The impugned order does not disclose an adjudication on the merits of the appellant's claim for restoration of custody or on the question whether the statutory requirements of Section 25 are otherwise satisfied.

53. In the considered opinion of this Court, the absence of a prior order appointing or declaring the appellant to be a guardian could not, in the present case, by itself constitute a sufficient ground for holding the petition under Section 25 to be not maintainable. The appellant's claim as a natural guardian and his assertion that the minor had previously been in his care required consideration in the light of the definition of guardian under Section 4(2) of the Act, 1890, the applicable law and the precise requirements of Section 25.

54. It is also relevant that the appellant had sought visitation rights during the pendency of the proceedings by filing an application under Section 12 of the Act, 1890. The question of visitation, including the frequency, duration and manner of interaction between the appellant and the minor, is likewise required to be considered in a manner that protects the child's welfare and preserves, to the extent appropriate, the child's relationship with both parents.

55. This Court, however, makes it clear that the present determination is confined to the question of maintainability. No finding is being recorded on the truth or otherwise of the allegations levelled by either party, nor is any final opinion being expressed as to which parent should have custody of the

minor child. Those questions must be decided by the competent Court upon consideration of the relevant evidence and circumstances.

56. In view of the foregoing discussion, this Court holds that the learned Principal Judge, Family Court, Jamshedpur, erred in dismissing Original Suit No. 829 of 2023 at the threshold solely on the ground that the appellant had not obtained an order of appointment or declaration of guardianship under Section 7 read with Section 17 of the Guardians and Wards Act, 1890. The impugned order, to that extent, cannot be sustained in law.

57. This Court, in view of the aforesaid discussion and applying the scope of Sections 7 and 25 of the Act, 1890 as discussed hereinabove on the facts of the case, is of the view that the application under Section 25 of the Act, 1890 has correctly been filed before the Court, hence, the impugned order dated 13.03.2024 passed in Original Suit No. 829 of 2023 needs interference.

58. Accordingly, the order dated 13.03.2024 passed by the learned Principal Judge, Family Court, Jamshedpur in Original Suit No. 829 of 2023 is hereby, quashed and set aside.

59. The Original Suit No.829 of 2023 is revived and restore to its original file for the purpose of adjudication of the issue by providing due opportunity to the parties.

60. It is made clear that the observations made in this judgment are confined to the issue of maintainability and shall not be construed as an expression of opinion on the ultimate entitlement of either party to custody or visitation.

The learned Family Court shall decide the matter independently on the basis of the material available on record and in accordance with law.

61. The learned Family Court shall also consider the pending application, if any, seeking visitation rights under Section 12 of the Act, 1890, and may pass appropriate interim directions for visitation or interaction, if warranted, after considering the circumstances of the parties and the welfare of the minor. Any interim arrangement shall be designed to avoid unnecessary disruption to the child's routine and emotional well-being.

62. In view of the aforesaid observation(s) and direction(s), the instant appeal is allowed, as such, stands disposed of.

63. Pending interlocutory application(s), if any, also stands disposed of.

I agree **(Sujit Narayan Prasad, J.)**

(Pradeep Kumar Srivastava, J.) **(Pradeep Kumar Srivastava, J.)**

29th October, 2026

Saurabh/**A.F.R.**

Uploaded on 30.10.2026