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HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on: 04-11-2026

Judgment delivered on: 17-11-2026

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SAIFAN KHAN Digitally signed by SAIFAN KHAN

FA(MAT) No. 346 of 2025

{Arising out of judgment and decree dated 25-08-2025, passed in Civil Suit No.17A/2024 (Santosh Kumar Bhardwaj v. Smt. Bhorlaxmi Bhardwaj) by the Family Court, Bilaspur (CG)}

Dr. Santosh Bhardwaj, S/o Gorelal Bhardwaj, aged about 41 years, R/o MIG 09, Face-1, Rajendra Prasad Nagar, Niharika, PS Rampur, District Korba (C.G.)

(Plaintiff)
... Appellant

Versus

Smt. Bhorlaxmi Bhardwaj, W/o Santosh Bhardwaj, aged about 38 years, R/o MIG 195, Geetanjali City, Face-2, Sarkanda, PS Sarkanda, Tehsil & District Bilaspur (CG)

(Defendant)
... Respondent

For Appellant	**:**	Mr. Sunil Verma, Advocate.
For Respondent No.1	**:**	Mr. Tarun Dansena, Advocate.

Division Bench: -
Hon'ble Shri Parth Prateem Sahu and
Hon'ble Smt. Sushma Sawant, JJ.

CAV Judgment

Sushma Sawant, J.

1. Invoking the appellate jurisdiction of this Court under Section 19(1) of the Family Courts Act, 1984, the **appellant herein/plaintiff father**

Dr. Santosh Bhardwaj has preferred this appeal challenging the judgment & decree dated **25-8-2025** passed by the Principal Judge, Family Court, Bilaspur, District Bilaspur in **Civil Suit No.17-A/2024** (**Dr. Santosh Bhardwaj v. Smt. Bhorlaxmi Bhardwaj**), by which the application filed by the appellant herein/plaintiff father under **Sections 7 & 10** of the **Guardians and Wards Act, 1890**, for custody of the minor son, namely, **Aarav Bhardwaj**, has been rejected finding no merit.

2. The aforesaid challenge has been made on the following factual backdrop: -

(For the sake of convenience, parties hereinafter will be referred as per their status shown and ranking given in the civil suit before the Family Court.)

-:Factual Matrix:-

-:Admitted Facts:-

3. It is an admitted fact that the marriage between the appellant/plaintiff father **Dr. Santosh Bhardwaj** and the respondent/defendant **Smt. Bhorlaxmi Bhardwaj** was solemnized on 23.01.2011 at Korba, Chhattisgarh, and the minor son **namely, Aarav Bhardwaj** was born from the said wedlock. It is also admitted that ,the said marriage was dissolved by a decree of divorce dated 29.04.2023. It is further admitted that, in the Lok Adalat held on 13.05.2023 before the Family Court, the parties agreed that the appellant/plaintiff father would pay maintenance of **₹15,000/- per month** for the minor son **namely,**

Aarav Bhardwaj and that he would be entitled to meet the minor son every Sunday as per the terms of the settlement.

-:Case of the Appellant herein/Plaintiff- father before the Family Court:-

4. The case of the **appellant herein/plaintiff father** before the Family Court, in brief, is that his **minor son, namely, Aarav Bhardwaj,** was born on 22.05.2013 and is presently in the custody and guardianship of his **maternal grandfather, Tikaram Ratre, and maternal grandmother, Sarojini Ratre,** both of whom are approximately 75 years of age and residents of M.I.G. 195, Geetanjali City, Phase-II, Police Station Sarkanda, Tehsil and District Bilaspur, Chhattisgarh, because the minor's mother, namely, **respondent/defendant Bhorlaxmi Bhardwaj,** is employed in government service as a Doctor at the Community Health Centre (CHC), Police Station Khamhariya, District Bemetara, and has consequently left the minor in the care and custody of her parents, i.e., the maternal grandparents of the minor.

5. It is further averred by the **appellant/plaintiff father** that the **respondent/defendant mother** has never complied with the settlement arrived at in the Lok Adalat. Instead, she has left the minor in the care and custody of her aged parents and proceeded to Khamhariya, District Bemetara, in connection with her government employment. It is pleaded that the maternal grandparents, being approximately 75 years of age, are not physically capable of providing proper care and attention to the minor. It is also averred that the

respondent/defendant mother has failed to make adequate arrangements for the proper education of the minor, Aarav Bhardwaj, thereby adversely affecting his future. For want of proper guidance and educational support, the minor secured a 'C' grade in Class V, which has caused serious concern to the appellant/plaintiff.

6. It is further pleaded that the appellant/plaintiff father is fully capable of taking care of the minor's overall welfare, including his health, medical treatment, education and other needs. He is a qualified person holding a degree in B.A.M.S. and is a Doctor by profession, having sufficient income and financial capacity to provide the minor with proper education and a secure future. On these grounds, the appellant/plaintiff father sought his appointment as the legal guardian of the minor and a direction for handing over the minor's custody to him, with visitation rights to the respondent/defendant mother.

-:Written Statement/Reply of Respondent herein/Defendant-mother before the Family Court:-

7. The respondent/defendant mother, in her reply to the application, pleaded that the minor had been left in the care and custody of his maternal grandparents for his convenience and proper upbringing, so that he would not suffer any inconvenience during her official duties. She further pleaded that the minor's future would remain insecure in the custody of the appellant/plaintiff, as he, being a Doctor, remains occupied with his professional duties and is unable to devote adequate time and attention to the minor. She asserted that she is capable of providing proper care, upbringing and education to the minor.

8. It was further pleaded that the minor is presently residing with the respondent/defendant, who is properly looking after him and ensuring his education. She also averred that the appellant/plaintiff has not been regularly paying the agreed maintenance of ₹15,000/- per month and that she has filed an application under Section 125(3) of the Code of Criminal Procedure before the competent Court, which is pending adjudication. She accordingly maintained that she alone is taking care of the minor's food, education and other necessities and that entrusting his custody to the appellant/plaintiff would not be in his welfare and best interests.

9. The respondent/defendant, in her additional pleadings, further stated that the minor is residing in a joint family comprising his maternal grandparents, maternal uncle and maternal aunt, where he is receiving proper care and enjoying a better standard of living. She stated that the minor is studying in Class VI at **Loyola School, Bilaspur**, and that his continued residence with her is essential for his welfare, as a child requires the care and affection of his mother. She further pleaded that the appellant/plaintiff, despite depositing maintenance, makes no inquiries regarding the minor's welfare and provides no financial assistance towards his medical treatment, medicines, school fees or other expenses. She also alleged that the appellant/plaintiff files applications on false grounds to harass her, keeps another woman with him and, being occupied with his professional duties, is unable to provide proper care and attention to the minor. It was further pleaded that the appellant/plaintiff's parents are also aged and incapable of

looking after the minor. On these grounds, she prayed for dismissal of the application.

-:Proceedings before the learned Family Court:-

10. The Family Court after appreciating oral and documentary evidence available on record, framed following issues and answered the issues as under:-

S.No.	Issues	Finding
1.	Whether the welfare and proper development of the minor child, Aarav Bhardwaj, would be ensured if he remains in the custody of the plaintiff?	"NO"
2.	Whether the welfare and proper development of the minor child, Aarav Bhardwaj, are being ensured in the custody of the defendant?	"Yes"
3.	Whether the Applicant is entitled to obtain custody of the minor child, Aarav Bhardwaj, from the defendant?	"No"
4.	Relief and Costs?	"As per sub-paragraph (1) of the operative portion of the judgment."

-: Details of evidence and documents available before the amily Court:-

Evidence led by appellant/plaintiff:-

11. Before the Family Court, though appellant/plaintiff father **Santosh Bhardwaj** has examined himself as **PW-1,** however **no documents** has been exhibited in evidence.

Evidence led by respondent/defendant:-

12. Similarly, on behalf of the respondent/defendant, she herself- **Bhorlaxmi Bhardwaj** has examined herself as **DW-1** and exhibited as many as two documents **Exs.D-1 & D-2** which were admitted in evidence.

-:Finding and Judgment of Family Court :-

13. Parties were given opportunity to adduce evidence and after completion of trial, the suit/application of the appellant herein/plaintiff father has been dismissed vide **Judgment dated 25.08.2025**, being aggrieved against which, this appeal has been filed on the following grounds:-

(i) That, the impugned order of the learned court below is arbitrary, illegal and contrary to the law applicable to the facts and circumstances of the case.

(ii) That, the learned court below has failed to appreciate the evidence as well as material available on record and impugned order passed by the court below is perverse and contrary in the eye of law.

(iii) That, the learned Court below has failed to properly appreciate the statement of the appellant/plaintiff recorded before it.

(iv) That, the learned family court below has passed the judgment in mechanical manner for the reason that the impugned order is not based on correct appreciation of facts and is based on perverse findings hence cannot be allowed to sustain.

(v) That, the learned family court failed to appreciate that the respondent was not able to prove that he was subjected to cruelty and

any wilful desertion by the respondent/mother and mother of Aarav Bhardwaj.

(vi) That, the respondent/mother was not allowing the appellant/father to meet his minor son.

(vii) That, the learned family court without properly appreciating the evidence and material available on record, reject the application filed by the appellant/father.

(viii) That, the learned Family Court has failed to properly appreciate the pleadings and evidence on record and has also not considered the written arguments advanced on behalf of the appellant. Hence, the impugned order is liable to be set aside.

(ix) That, the learned Court below has failed to consider the settled position of law laid down by the Hon'ble Supreme Court that, while adjudicating a matter, the Court must endeavour to advance substantial justice to all the parties and that procedural technicalities should not come in the way of doing substantial justice or perpetuate an illegality arising from the impugned judgment.

-: Proceeding before the Appellate Court :-

14. Heard on the Appeal. In the context of the appeal and arguments, evidence and documents, available on record of the Family Court were examined.

15. It is pertinent to mention that, on the date of final hearing, both the parties were directed to remain present before this Court along with the minor. Accordingly, both parties appeared along with the minor, and

this Court heard the submissions of both parties as well as interacted with the minor.

-:Points for Determination:-

16. Considering the entire facts of the case, the following two points would emerge for determination of the issue: -

    1. **Whether the appellant/plaintiff father has made out sufficient grounds for his appointment as guardian of the person of the minor son, namely, Aarav Bhardwaj, under Section 7 of the Guardians and Wards Act, 1890?**

    2. Whether the impugned order passed by the learned Family Court calls for interference in the present appeal?

-:Argument of the Appellant/Plaintiff Father:-

17. Learned counsel for the appellant/plaintiff father , in line with the grounds raised in the memo of appeal, has advanced detailed submissions assailing the findings recorded by the learned Family Court. The appellant/plaintiff, father while personally appearing before this Court, additionally emphasised that the respondent/defendant mother frequently travels to another city in connection with her employment and, therefore, is unable to provide adequate care and attention to the minor. He further submits that the minor is not under proper supervision and control of his maternal grandparents and that his educational standard is continuously deteriorating. It is, therefore, submitted that the welfare and future of the minor would be better served by entrusting his custody to the appellant/plaintiff father.

-:Argument of Respondent/Defendant Mother:-

18. Learned counsel for the respondent/defendant mother submits that the learned Family Court has rightly rejected the application seeking appointment of the appellant/plaintiff as guardian of the minor. The respondent/defendant,mother while personally appearing before this Court, submitted that she is properly looking after the minor and that there is no deficiency in his care, upbringing or education. She further stated that she has never restrained the appellant/plaintiff father from meeting or interacting with the minor. Hence, no ground is made out for interference with the impugned order and the appeal deserves to be dismissed.

-: Finding and Analysis of the Appellate Court :-

19. Points for determination Nos.1 and 2 are taken up together for consideration, as they are interconnected.

20. It is evident from the record that both the parties have adduced oral as well as documentary evidence in support of their respective cases. However, upon perusal of their pleadings and evidence, it is apparent that, pursuant to the settlement arrived in the Lok Adalat on 13.05.2023, the appellant/plaintiff father was already granted visitation rights to meet the minor son every Sunday. It further appears from the documents **Ex.D.-1** and **Ex.D.-2** that certain unpleasant situations had also arisen between the parties during the course of such meetings.

21. Thus, despite having visitation rights to meet and interact with the minor, the appellant/plaintiff father has instituted the present

proceedings seeking his appointment as guardian of the minor under **Section 7** of the **Guardians and Wards Act, 1890,** along with a prayer for entrustment of the minor's custody to him. Therefore, the present dispute between the parties is not confined merely to the appellant/plaintiff father's visitation rights but essentially concerns the guardianship and custody of the minor.

22. It is well-settled by the Hon'ble Supreme Court that, in matters concerning the custody of a minor or appointment of a guardian, the paramount consideration is the welfare and best interests of the child, and not the preferential or legal rights of either parent. In this regard, in ***Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413,** the Supreme Court has reiterated that the welfare of the child is the paramount consideration in determining questions of custody and guardianship. Accordingly, while considering an application under **Section 7** of the **Guardians and Wards Act, 1890,** the Court is required to be guided primarily by the welfare of the minor.

23. In addition to the aforesaid settled principle, the Hon'ble Supreme Court, in ***Nil Ratan Kundu v. Abhijit Kundu*, (2008) 9 SCC 413,** has also, in paragraph **52**, specifically elucidated the approach to be adopted by the Court while deciding complex questions relating to the custody of a minor. The relevant paragraph is reproduced hereinbelow:

> **"52.** In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights

> flowing therefrom. But such cases cannot be decided *solely* by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising *parens patriae* jurisdiction and is expected, *nay* bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

24. In the light of the aforesaid settled principles, it would be appropriate to examine the facts and circumstances of the present case. In the present matter, the appellant/plaintiff father has questioned the respondent/defendant mother's ability to provide proper care and attention to the minor on the ground that she remains occupied with her government employment and is required to travel to another place in connection with her official duties. However, the said circumstance, by itself, cannot be considered sufficient to conclude that the respondent/defendant mother is unable to look after the minor.

25. Significantly, the appellant/plaintiff father is also a Doctor by profession, and the evidence on record indicates that he is engaged in professional practice at both **Korba** and **Raipur**. Thus, the circumstance of professional engagements and consequent paucity of time is not confined to the respondent/defendant mother alone. Therefore, the aforesaid ground does not constitute a sufficient basis for appointing the appellant/plaintiff father as guardian and disturbing the existing arrangement.

26. The appellant/plaintiff father has also raised an objection regarding the alleged deterioration in the educational standard of the minor. However, no cogent documentary evidence has been brought on record to establish that the minor's academic performance has deteriorated or that his education is being neglected by the respondent. A mere reference to the grade obtained by the minor in a particular academic session, without any supporting material demonstrating neglect or adverse impact upon his education, cannot be treated as sufficient ground for changing his existing arrangement of care and upbringing.

27. It is also relevant that the minor is now of an age where he is capable of expressing an intelligent preference. On the date of final hearing, the minor appeared before this Court along with his mother(respondent/defendant) and, upon interaction, expressed his unwillingness to go with his father.

28. Although the preference of the minor cannot, by itself, be the sole determining factor, the same deserves due consideration along with the

other circumstances of the case. Further, keeping in view the paramount consideration of the welfare of the minor, it is noteworthy that, in the present case, no such material has been brought on record to establish that the respondent/mother is neglecting the minor or that his physical, educational or emotional welfare is being adversely affected while residing with her.

29. On the contrary, the minor, who is presently about 14 years of age, has expressed his unwillingness to reside with his father. At this age, he is sufficiently mature to understand the circumstances and the relationship between his parents. In such circumstances, abruptly changing his custody merely on the appellant/plaintiff father's apprehension, unsupported by any cogent material, that the minor is not being properly looked after, may adversely affect the minor's mental and emotional well-being.

30. Merely to satisfy the appellant/plaintiff father's desire for custody, it would not be appropriate to expose an adolescent child to such emotional distress, particularly when the respondent/defendant mother has no objection to the appellant/plaintiff father meeting and interacting with the minor. Thus, no sufficient ground is made out to disturb the existing custody arrangement in the absence of any demonstrated advantage to the welfare of the minor.

31. In the present case, no sufficient ground has been established warranting the appointment of the appellant as guardian under Section 7 of the Act or the consequential transfer of custody of the minor to him.

The learned Family Court, therefore, cannot be said to have committed any illegality or material irregularity in rejecting the application. Accordingly, this Court finds no sufficient ground to interfere with the impugned order.

-:Final Conclusion :-

32. Consequently, the appeal, being devoid of merit, is **dismissed** and the impugned order passed by the learned Family Court is hereby affirmed. There shall be no order as to costs.

33. However, since the respondent/defendant mother has expressed no objection to the appellant/plaintiff father exercising his visitation rights, the appellant/plaintiff father shall be at liberty to meet and spend time with the minor on special occasions, such as the minor's birthday, festivals and during long vacations, subject to the minor's prior willingness and mutual convenience of the parties, keeping in view the minor's educational schedule and comfort.

34. A decree be drawn up accordingly.

Sd/-
(Parth Prateem Sahu)
JUDGE

sd/-
(Sushma Sawant)
JUDGE

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