IN THE HIGH COURT OF JHARKHAND AT RANCHI

First Appeal No. 335 of 2026

Dr. Sangeeta Vishwakarma @ Sangeeta Vishwakarma, aged about 50 years, D/o Late N.R. Vishwakarma, W/o Rahul Ranjan, R/o Flat No.201, Soumya Apartment, Lake Road, Noora, Opp. D.C. Bungalow, P.O-Hazaribagh, P.S-Lohsinghna, Dist.:Hazaribagh, 825 301.

.....… Petitioner/Appellant

Versus

Rahul Ranjan, aged about 44 years, S/o Ram Niwas Sharma, R/o 58, Manti Niwas, Near Janaki Apartment, Matwari, Near Gandhi Maidan, P.O-Hazaribagh, P.S-Sadar, Dist.-Hazaribagh-825301

…… Respondent/Respondent

CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Ms. Shreesha Sinha, Advocate
Mr. B.K. Prasad, Advocate
Mr. Adil Ali, Advocate
Mr. Niraj Kumar, Advocate
Mr. Vijay Shankar, Advocate

For the Respondent : Mr. Abhishek Kumar Dubey, Advocate
Ms. Akriti Aprajita, Advocate

C.A.V on 01.09.2026 **Pronounced on 07/09/2026**

Per Sujit Narayan Prasad, J.

1. The instant appeal, preferred under Section 19(1) of the Family Courts Act, 1984, is directed against the order dated 27.11.2025 passed in Original Suit No.68 of 2025 by the learned Principal Judge, Family Court, Hazaribagh (hereinafter referred to as 'the Family Judge'), whereby the petition filed by the appellant-mother under Section 12 of the Guardians and Wards Act, 1890, seeking interim custody of the minor female child, namely, Miss Ekanshi Sharma, aged about four years, has been rejected, and consequently, the prayer for grant of interim custody in favour of the appellant-mother stood declined. Further the appellant/mother in the

present appeal, has prayed for grant of interim custody of the minor female child, Miss Ekanshi Sharma, in her favour.

2. The brief facts of the case as pleaded in the plaint needs to be referred herein as:

(i) The marriage of Appellant and respondent was solemnized on 16th of May 2017 according to Hindu customs at Dhanbad in presence of all the family members from both the sides. It is also pertinent to mention that it is the 2nd marriage of both, the appellant and respondent, and that the first marriage of the respondent ended in divorce and his first wife took the custody of her child born from the respondent. However, the appellant did not bear any child from her first marriage.

(ii) Both the appellant and respondent are currently working as Asst. Professor in Vinobha Bhave University, Hazaribagh.

(iii) It has been alleged that from the very beginning of her marriage, the appellant was being subjected to ill-treatment and harassment majorly due to demand of dowry. The respondent even forcibly took away appellant's Bank's credit and ATM cards. The appellant even endured physical and mental abuse for her looks and caste. Initially, the appellant remained silent in order to give a chance to her new marriage. However, tired of being tortured every day, the appellant eventually filed a Police Complaint on 03/11/2020 against the respondent, resulting into appellant being thrown away from her Matrimonial house and, hence, she is forced to live separately in a rented apartment in Hazaribagh.

(iv) It is stated that by intervention of friends and family members, the respondent made promise not to harass the appellant and agreed to visit her place of stay.

(v) Both the appellant and respondent mutually agreed to extend their family and resorted to the IVF procedure which led to Appellant giving birth to a daughter, namely, Ekanshi Sharma on 08/03/2022.

(vi) It has been alleged that the appellant anticipated that the respondent now would mend things and would take her to her matrimonial house during this period. However, it was utter shock that the respondent's family never visited to see the new born girl child neither extended any physical, emotional or financial support to the appellant in raising her new born girl child. The respondent did not even take the appellant and their daughter to his residence despite several requests.

(vii) It is stated that when the daughter turned 2 years 3 months old, the respondent after abusing the petitioner, forcibly took away the daughter with him. However, the respondent couldn't manage to take care of their daughter, since, the daughter kept asking for her mother (the appellant) therefore the respondent had to put forth a condition before the appellant that if she wants to see her daughter, she would have to come and live with him at his parent's home to which the appellant agreed at once and moved to her in law's place on 02/09/2024. However, the respondent and his family made her stay on the 2nd floor with pathetic accommodation and kept the daughter with themselves in the 1st floor.

(viii) It is stated that during this period, the appellant was constantly being obstructed in spending time with her daughter and was again being subject to physical assault, verbal abuse, that too in front of her daughter.

(ix) It has been alleged that the daughter was being taught by respondent's Family that the appellant is a "*Bhootni*" and that she would kill her if she stays with her.

(x) It is stated that the daughter is at her primitive years being less than 5 years old and the conduct of the respondent is against the welfare of the child causing mental trauma not only to the appellant but also to the child, who is deprived of the basic care required specially in the case of a girl child.

(xi) The appellant could not see the child in such manner, approached Mahila Thana, Sadar, Hazaribagh wherein a notice was issued for Mahila Thana P.S Case No. 46/2025 dtd. 02/03/2025 for appearance of both the parties on 17/03/2025 for mediation which failed miserably.

(xii) The appellant even approached the Child Welfare Committee, Hazaribagh, where a summon dtd.18/03/2025was issued to the respondent to produce the child before the members of the Committee at the earliest but the respondent dodged the appearance on health grounds.

(xiii) The appellant even approached DSLA, Hazaribagh due to excessive fights and violence by the respondent and not letting the appellant meet her child.

(xiv) The appellant was finally driven out of the matrimonial house on 17/03/2025 and since then, the respondent individually has the custody of the daughter, depriving the girl child of mother's care, affection and bonding.

(xv) It is stated the respondent has absolutely no regard with the sentiments or the welfare of the child. The respondent very often used to exhibit aggressive and abusive behavior in front of the daughter causing the minor child to be in constant fear and tears.

(xvi) It has been stated that the respondent remains out of the house whole day leaving the child with old and ailing grandparents. The respondent always refuses the request of video calls or making proper visits of the appellant.

(xvii) It is stated that the appellant had no other remedy than to approach the Hon'ble Family Court, Hazaribagh by filing the Original Suit No. 68 of 2025 u/s 7 & 25 of Guardianship and Wards Act 1980 r/w section 6 of the Hindu Minority and Guardianship Act, 1956 before Principal Judge, Family Court, Hazaribagh, on 22.03.2025, wherein the respondent has already appeared and filed his written reply.

(xviii) The appellant also filed several petitions for minor child's custody vide petitions dated 22.03.2025, 28.04.2025, and 19.05.2025. Petition dated 04.11.2025 has been filed for considering the objection raised by the petitioner for meeting her daughter at the residence of the respondent.

(xix) The appellant in her own right and in the interest of the child, approached the court for interim custody, bringing on record facts

relating to emotional alienation of the child, hostile environment, and denial of her access to the minor girl child.

(xx) The respondent filed his reply to the above-mentioned petitions vide reply dated 15/06/2025 and 11/11/2025 stating that the several prayers of the appellant are not maintainable in the eyes of law and the petitioner is not entitled of these reliefs.

(xxi) The respondent in his re-joinder denying all the allegations levelled against him as pleaded in the plaint. It has been stated that as soon as the mother/appellant knew that her husband filed guardianship case she also filed this case on the basis of concocted story. The respondent has denied that he ever tortured or abused the petitioner/mother for her looks and caste. It is stated that after long treatment when it came to knowledge of the respondent that the petitioner is unable to conceive pregnancy and, hence, both the parties decided to get the child from IVF and they contacted INDIRA IVF Centre, Ranchi for the same. Thereafter, the petitioner conceived through test tube process after preserving semen of the respondent and one female child born on 08.03.2022. It is stated that the baby child, namely, Ekanshi Sharma is residing with the respondent and his parents since January 2023.

(xxii) It is alleged that from very beginning the petitioner/wife never providing necessary care, love and guidance for development of minor female child. He has totally denied the allegation of demand of dowry from the petitioner and on non-fulfillment the same, he tortured the petitioner on various ways. He has denied that it is not fact that during pregnancy the petitioner remained alone, rather the

fact is that the respondent and his parents always cared the petitioner during her pregnancy. It is stated that due to her high temperament, the petitioner is residing separately since September, 2024 till 20.03.2025 in the 2nd floor of his parental house.

(xxiii) The respondent has stated in his re-joinder that he and his parents are very careful regarding physical and mental development of minor child. They never trying to poison the mind of the minor child, rather the respondent and their parents always love with minor child. It is stated that though the petitioner and the respondent are employees of Vinoba Bhave University, Hazaribagh in same faculty but the economic condition of the respondent is very sound as compared to the petitioner. It is stated that the respondent and his parents are very careful regarding physical and mental development of minor child and now the minor child is studying in nursery grade of a reputed school at Hazaribagh and she has been promoted with good grades from pre-nursery.

(xxiv) It is stated that the respondent and his parents are taking all care of the minor for her upbringing whereas the petitioner is never taking any care to her and left the minor child on the mercy of illiterate female servant. Hence, the respondent is fully entitled the custody of the minor girl child.

(xxv) Thereafter, upon hearing both parties, the learned Principal Judge, Family Court, Hazaribagh, proceeded to pass the impugned order dated 27.11.2025, whereby the prayer of the appellant-mother for interim custody of her minor female child, aged about four years, has been declined and the learned Family Judge directed an

arrangement of visitation rights, subject to certain conditions and stipulations.

(xxvi) It is the case of the appellant that as per the settled position of law it is amply clear that in relation to custody of "Female Hindu Minor" who has not completed the age of 5 years, shall ordinarily be with the mother but even the interim custody of daughter of the petitioner/appellant has not been granted in her favour.

3. Being aggrieved and dissatisfied by the order dated 27.11.2025 passed by the learned Principal Judge, Family Court, Hazaribagh, the instant appeal has been filed by the mother/petitioner/appellant.

Submission on behalf of the appellant:

4. Ms. Shreesha Sinha, the learned counsel appearing for the appellant has taken the following grounds while challenging the impugned judgment:

(i) It has been contended that the learned Family Judge has not taken into consideration that the appellant is the mother and, as such, she is having better claim over the minor who needs guardianship/custody.

(ii) The learned trial Court has committed a gross error by not taking into consideration the issue of welfare of the child who can better be nourished by the mother and ignoring the said fact has dismissed the petition filed under section 12 of the Guardian and Wards Act, 1890 for interim custody which is not at all permissible in law.

(iii) It has been contended that the learned Family Judge had failed to consider that the minor child is of tender age, and as per

the provisions of law, custody and care of a child of such age ordinarily lies with the mother.

(iv) The learned Family Judge has overlooked several facts pleaded to show that the welfare of the minor girl child is not being taken care of by the respondent and thus, the learned Family Court failed to give the interim custody of the minor girl child aged about 3 years 9 months to the appellant.

(v) It has been contended that the learned Family Judge has not taken into consideration that the appellant being the mother of the minor girl child can take her care for her better upbringing but the learned Family Court has failed to decide it and no finding is given as to why the interim custody of the minor girl child should be allowed to remain with the respondent, against the mandate of the law.

(vi) It has been contended that the learned Family Judge has failed to consider the allegations put forth by the appellant with regard to parental alienation, hostile behaviour of the respondent, and the emotional distress caused to the child due to prolonged separation from the mother.

(vii) The learned Family Judge has committed grave error in placing undue reliance on the fact that the minor girl child was found comfortable in the lap of her father without appreciating that such comfort is a result of prolonged deprivation of mother access and cannot override long term welfare of the child which is the intent of the legislature.

(viii) The learned Family Judge has erred in ignoring the vital fact that the minor child Ekanshi had been completely in the care and custody of the appellant since her birth until the respondent forcefully took her away when she was 2 years and 3 months old. The appellant was solely responsible for the care and wellbeing of the minor child for that duration of time.

(ix) It has been contended that the learned Family Judge has passed the impugned order without appreciating the fact that the respondent has time and again shown hostile behavior towards the child and her daughter leading to filing of multiple cases by the appellant against the respondent and that the respondent has also evaded the verbal direction passed by the learned Family Court.

(x) The learned Family Judge has failed to appreciate the fact that the visitation right so granted, is granted in an intimidating and hostile atmosphere and the same defeats the very purpose of bonding and is contrary to child centric jurisprudence.

(xi) It has been contended that if the impugned order is allowed to sustain it in all cause will hamper further trial of the guardianship case as the minor child is constantly being brainwashed without being allowed any proper interaction with her mother.

(xii) The learned Family Court has failed to consider the fact that in matters relating to interim custody and guardianship of the minor the paramount consideration is of the welfare of the child

which has not taken into consideration while passing the impugned order.

(xiii) The learned Family Court has failed to take into consideration that the appellant being the biological mother and natural guardian has been completely denied access to her minor child either physically or through any virtual mode of communication which has resulted in immense mental agony and emotional distress to the appellant.

5. The learned counsel based upon the aforesaid grounds has submitted that the impugned order, therefore, is perverse and not sustainable in the eyes of law which requires interference by this Court.

Submission on behalf of the respondent:

6. On the contrary, Mr. Abhishek Kumar Dubey, the learned counsel appearing for the respondent-husband has taken the following grounds to defend the impugned order:

(i) There is no error in the impugned order as the learned Family Judge has rightly considered the entire issue for better upbringings of the minor child and has passed the order impugned and, as such, the same may not be interfered with.

(ii) It has been contended that the issue of welfare is well to be looked into by the respondent, who is biological father of the minor child and under his guardianship the minor child is being looked after properly.

(iii) It has been contended that the mother has taken no care rather she has left the house on her own and the minor is

living with the respondent and his parents, hence, it is the respondent and his parents to be more concerned with the welfare of the minor.

(iv) It has been contended that the minor child is at present residing with the respondent at Hazaribagh who is studying in a reputed school and, as such, the learned Family Court has rightly rejected the prayer for interim custody of the minor and the petitioner/appellant who has no concern with the proper upbringing and welfare of the minor as the minor was to look after by an illiterate maid when she was with the appellant.

7. Learned counsel has submitted that the learned Family Judge on consideration of the aforesaid fact has denied the interim custody of the minor to be given in favour of the appellant herein, hence, the impugned order/judgment needs no interference.

Analysis:

8. We have heard the learned counsel appearing for the parties, gone through the impugned judgment/order as well as the Trial Court Records.

9. It is evident from the factual aspect that the instant appeal filed against the order dated 27.11.2025 passed in Original Suit No.68 of 2025 by the Family Court, Hazaribagh, whereby the learned Family Court has not allowed the appellant's (wife) application filed under section 12 of the Act 1890 seeking interim custody of her minor daughter, Ekanshi Sharma.

10. Petitioner/appellant is the mother of minor Ekanshi Sharma aged about 3 years 9 months when the order impugned was passed. The

appellant's marriage with respondent was solemnized on 16.05.2017 though it was second marriage of both parties. The petitioner has alleged physical and mental torture meted out at the hand of the respondent due to non-fulfilment of demand of dowry and lastly driven her out of the matrimonial house.

11. It has been alleged by the petitioner that respondent allegedly denied access to minor child and kept her away from the appellant and even did not allow her to meet the minor child. The petitioner asserts child's welfare is compromised without mother's care and seeks custody and guardianship and filed the suit before the learned Family Court, Hazaribagh.

12. Respondent appeared on notice and filed written statement and admits marriage and child but denied all the allegations alleged against him by the appellant.

13. He had claimed that the petitioner voluntarily left matrimonial home in the year 2025 after abandoning child. Respondent has denied cruelty and alleged that petitioner's violent behaviour and abusive conduct. He had further asserted that petitioner lodged false criminal cases for extortion.

14. The respondent had stated that he is employed in Vinoba Bhave University and his family has stable income and provides proper care to minor child. He had further stated that minor named "Ekanshi Sharma" admitted in reputed school at Hazaribagh and thriving under respondent's custody. The respondent had contended that the custody change would harm child's psychological and physical development and respondent as natural guardian ensures holistic growth of the minor.

15. In the aforesaid factual background, the following issues have to be decided by this Court:

(i) *Whether the impugned order passed by the learned Family Court suffers from element of perversity, warranting interference by this Court*

(ii) *If the finding on Issue (i) is in the affirmative, what relief is required to be granted to the Petitioner/Appellant in the facts and circumstances of the case."*

16. At this juncture this Court needs to refer herein that the original suit filed under Sections 7 and 25 of the Guardians and Wards Act, 1890 is pending and the same is being contested by the parties herein. This Court being conscious with the fact that the suit is pending and as such, without causing prejudice to the parties, is to deal with the issue of interim custody which has been dealt with by the learned Family Judge by passing an order dated 27.11.2025 as appended to the present memo of appeal.

17. This Court thinks it proper to refer the underlying provisions as continued in Guardians and Wards Act, 1890 with its object and intent as also the Hindu Minority and Guardianship Act, 1956.

18. The Guardians and Wards Act has been enacted being a pre-independence law, i.e., way back in the year 1890 to consolidate and amend the law relating to Guardian and Ward. The underlying object is to consider the issue of the handing over the custody, the guardianship issue and property related rights. Section 7 confers power upon the Court to make order as to guardianship while Section 25 confers power upon the Court to give a declaration regarding title of guardian to custody of ward. For ready reference, Sections 7 and 25 are 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.

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 2Code of Criminal Procedure, 1882 (10 of 1882).

(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."

19. The reference of Hindu Minority and Guardianship Act, 1956 (Act 1956) also needs to be made herein in view of the provision as contained under Section 2 thereof wherein it has been provided that the provisions of this Act (the Act of 1956) shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890 (Act 1890). The aforesaid provision, thus, stipulates that the harmonious construction is to be taken in between the Guardians and Wards Act, 1890 and Hindu Minority and Guardianship Act, 1956 is not in conflict with each other in achieving the object and intent for which these Acts have been enacted.

20. As per Section 13 of the Hindu Minority and Guardianship Act, 1956, the welfare of the minor shall be the paramount consideration. The statutory command thus makes it clear that in matters relating to custody and guardianship, the determinative factor is not the legal right of the parties but the welfare and best interest of the child, which must override all other considerations, for ready reference Section 13 of the Act 1956 is being quoted herein which reads as under:

> ***"13. Welfare of minor to be paramount consideration. —*** *(1)In the appointment or declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.(2)No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor"*

21. Further, Section 12 of the Guardian and Wards Act, 1890 confers power upon the learned Family Judge to pass an order for production of minor and interim protection of person and property. It has been provided therein that the Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property 13 of the minor as it thinks proper. Sub-Section (2) thereof provides that if the minor is a female who ought not to be compelled to appear in public, the direction under sub section (1) for her production shall require her to be produced in accordance with the customs and manners of the country. For ready reference, Section 12 is being referred here as under:-

> *"12. Power to make interlocutory order for production of minor and interim protection of person and property.—*

(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise— (a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or (b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property."

22. It is thus, evident from bare reading of the provision of Section 12 that the Court has power to make order for production of minor and interim protection of person and property only in proceeding for appointing or declaring him guardian. The Court has also been conferred with the power that the Court may direct the person, if any, having the custody of the minor shall produce him and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper. The wider amplitude has also been asserted in the said provision that depending upon the situation the learned Court may pass an order for the temporary custody and protection of the person or property of the minor as it thinks proper. Meaning thereby, Section 12 is having wider power being conferred upon the learned Family Judge to be looked into at the ad-interim stage, i.e., for production of the minor or depending upon the situation the temporary custody of the minor.

23. Further, the law is well settled that even though the father is the natural guardian as stipulated in the statute but the paramount

consideration in the matter of handing over the custody of the child is welfare of the child.

24. The law relating to custody of minors has received an exhaustive consideration by the Hon'ble Apex Court in a series of pronouncements. ***In the case of Gaurav Nagpal v. Sumedha Nagpal (2009) 1 SCC 42*** the principles of English and American law in this regard were considered by Hon'ble Apex Court to hold that the legal position in India is not in any way different. Noticing the judgment of the Bombay High Court in ***Saraswatibai Shripad Ved v. Shripad Vasanji Ved [AIR 1941 Bom 103], Rosy Jacob v. Jacob A. Chakramakkal (1973) 1 SCC 840*** and ***Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka (1982) 2 SCC 544***, the Hon'ble Apex eventually concluded in paras 50 and 51 which reads as under:-

> *"50. That when the court is confronted with conflicting demands made by the parents, each time it has to justify the demands. The court has not only to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. The court then does not give emphasis on what the parties say, it has to exercise a jurisdiction which is aimed at the welfare of the minor. As observed recently in Mausami Moitra Ganguli case [Mausami Moitra, the court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted. They are equal if not more important than the others.*
>
> *51. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its parens patriae jurisdiction arising in such cases."*

25. Thus, the Hon'ble Apex Court has categorically held that while considering the issue of custody of the minor child the court has not only

to look at the issue on legalistic basis, in such matters human angles are relevant for deciding those issues. Further, it has been held that the Court should not emphasis only on what the parties say rather the welfare of the minor should be paramount consideration. Further, the Hon'ble Apex Court has opined that the Court has to give due weightage to the child's ordinary contentment, health, education, intellectual development and favourable surroundings but over and above physical comforts, the moral and ethical values have also to be noted.

26. The Hon'ble Apex Court in the aforesaid Judgment interpreted the word "welfare" used in Section 13 of the Act 1956 and has observed that it must be taken in its widest sense, though the provisions of the special statutes which govern the rights of the parents and guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its "parens patriae jurisdiction" arising in such cases.

27. It needs to refer herein that in child custody matters, the court's "parens patriae" jurisdiction empowers the Court to act as a guardian for the child, prioritizing their best interests above all else. This principle, allows the court to intervene and make decisions that protect the child's welfare, even if it means overriding the wishes of the parents or guardians.

28. In the case of ***Nil Ratan Kundu v Abhijit Kundu, 2008 (9) SCC 413*** the Hon'ble Apex Court has held that 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 wellbeing 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.

29. In the case of ***Yashita Sahu v State of Rajasthan, (2020) 3 SCC 67***, the Hon'ble Apex Court has propounded that the welfare of the child is paramount in matters relating to custody. In this context, we may refer to para 22 thereof, which reads as follows:-

> *"22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if*

> *one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.'*

30. In the case of ***Gaytri Bajaj v. Jiten Bhalla, (2012) 12 SCC 471,*** the Hon'ble Apex Court has observed that it is the welfare and interest of the child and not the rights of the parents which is the determining factor for deciding the question of custody and the question of welfare of the child has to be considered in the context of the facts of each case and decided cases on the issue may not be appropriate to be considered as binding precedents. For ready reference, the relevant paragraph of the aforesaid judgment is being quoted as under:-

> *"14. From the above it follows that an order of custody of minor children either under the provisions of the Guardians and Wards Act, 1890 or the Hindu Minority and Guardianship Act, 1956 is required to be made by the court treating the interest and welfare of the minor to be of paramount importance. It is not the better right of either parent that would require adjudication while deciding their entitlement to custody. The desire of the child coupled with the availability of a conducive and appropriate environment for proper upbringing together with the ability and means of the parent concerned to take care of the child are some of the relevant factors that have to be taken into account by the court while deciding the issue of custody of a minor. What must be emphasised is that while all other factors are undoubtedly relevant, it is the desire, interest and welfare of the minor which is the crucial and ultimate consideration that must guide the determination required to be made by the court."*

31. It is settled position of law that there cannot be any straitjacket formula in the matters of custody. "Welfare of the child" is of paramount importance, reference in this regard may be taken from the judgment rendered by the Hon'ble Apex Court in the case of ***Gautam Kumar Das v. State (NCT of Delhi), (2024) 10 SCC 588.***

32. In the case of ***Shazia Aman Khan v. State of Orissa, (2024) 7 SCC 564*** the Hon'ble Apex Court while referring the ratio of ***Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413*** has observed that welfare of the children is to be seen and not the rights of the parties, the relevant paragraph of the aforesaid judgment is being quoted as under:-

> *"19. In Nil Ratan Kundu v. Abhijit Kundu [Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413] , this Court laid down the principles governing custody of minor children and held that welfare of the children is to be seen and not the rights of the parties by observing as under : (SCC pp. 428-29, paras 52 & 55) "Principles governing custody of minor children*
>
> *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 minor, a court of law should keep in mind 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.*
>
> *55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents." (emphasis supplied) 21. This Court in Roxann Sharma v. Arun Sharma [Roxann Sharma v. Arun Sharma, (2015) 8 SCC 318 : (2015) 4 SCC (Civ) 87] , opined that the child is not a chattel or ball that it is bounced to and for the*

parents. Welfare of the child is the focal point. Relevant lines from para 18 are reproduced hereunder : (SCC p. 328)

"18. ... There can be no cavil that when a court is confronted by conflicting claims of custody there are no rights of the parents which have to be enforced; the child is not a chattel or a ball that is bounced to and for the parents. It is only the child's welfare which is the focal point for consideration. Parliament rightly thinks that the custody of a child less than five years of age should ordinarily be with the mother and this expectation can be deviated from only for strong reasons."

20. This Court has consistently held that welfare of the child is of paramount consideration and not personal law and statute. In Ashish Ranjan v. Anupma Tandon [Ashish Ranjan v. Anupma Tandon, (2010) 14 SCC 274 : (2011) 4 SCC (Civ) 948], this Court held as under : (SCC p. 282, para 19)

"19. The statutory provisions dealing with the custody of the child under any personal law cannot and must not supersede the paramount consideration as to what is conducive to the welfare of the minor. In fact, no statute on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor."

22. Another principle of law which is settled with reference to custody of the child is the wish of the child, if she is capable of. Reference Gowda v. State can of be made to Rohith Thammana Karnataka [Rohith Thammana Gowda v. State of Karnataka, (2022) 20 SCC 550 : 2022 SCC OnLine SC 937] case. It was held as under : (SCC para 18)

"18. We have stated earlier that the question "what is the wish/desire of the child" can be ascertained through interaction, but then, the question as to "what would be the best interest of the child" is a matter to be decided by the court taking into account all the relevant circumstances. A careful scrutiny of the impugned judgment would, however, reveal that even after identifying the said question rightly the High Court had swayed away from the said point and entered into consideration of certain aspects not relevant for the said purpose. We will explain the raison d'etre for the said remark."

33. Thus, from the aforesaid settled position of law it is evident that the consideration governing the custody of children is the welfare of the children and not the rights of the parties. Further, the welfare of child is

determined neither by economic affluence nor a deep mental or emotional concern for the wellbeing of the child. The answer depends on the balancing of all these factors and determining what is best for child's total wellbeing.

Re: issue No.(i)

34. In the backdrop of the aforesaid settled position of law and the factual aspects of the case, this Court now re-adverts to the impugned order to examine whether the same suffers from the element of perversity, warranting interference in appellate jurisdiction.

35. From perusal of impugned order, it is manifest that there has been no proper consideration whatsoever on the issue of interim custody in favour of the appellant-mother. The minor female child, namely, Miss Ekanshi Sharma, was aged about three years and nine months on the date when the order impugned came to be passed, yet the claim of the appellant-mother for interim custody has not been addressed in the manner required under law.

36. Further, from a perusal of the impugned order/judgment, it appears that the learned Family Judge has swayed away on an erroneous consideration, inasmuch as the issue under Section 12 of the Guardians and Wards Act, 1890, relating to the handing over of interim custody, has not been adjudicated. Instead, the learned Court has concluded by granting visitation rights to the appellant-mother, on the reasoning that the minor child is in need of the love and affection of both parents.

37. While arriving at the aforesaid conclusion, the learned Family Judge has failed to advert to the mandate of Section 12 of the Act of 1890, which confers power upon the Family Court to hand over interim custody

in favour of either parent, i.e., mother or father, by passing an order based upon the evidence adduced during trial.

38. The learned Family Judge has not disputed the plea advanced on behalf of the appellant-mother, premised upon Section 12 of the Act of 1890, which squarely applies to the facts of the present case. The minor child was aged about three years and nine months on the date of the impugned order, and in such circumstances, the prevailing preferential right would ordinarily vest in the mother. However, there has been no consideration of the aforesaid statutory provision while deciding the application filed under Section 12 of the Act of 1890.

39. The learned Family Judge has further failed to take into account the vital consideration that a minor child, particularly a female child of tender age, stands in greater need of the affection, care, and nurturing of the mother. This aspect, which bears directly upon the welfare of the child, has not been adverted to in the impugned order.

40. It is not in dispute that the minor child stands in need of the affection of both parents, mother as well as father. However, merely on the basis of such consideration, as has been adverted to by the learned Family Judge, the adjudication cannot be said to be just and proper. The statutory mandate is required to be taken into account in exercise of the power conferred under Section 12 of the Guardians and Wards Act, 1890. In the present case, as per the pleadings and as intimated by learned counsel appearing for the respondent, this Court finds that a specific prayer had been made for interim custody of the minor child, and not merely for visitation rights

41. The learned Family Judge ought to have adjudicated the issue on the basis of the pleadings advanced on behalf of the appellant-mother. However, the learned Court has wholly deviated from the pleadings and has instead proceeded to consider the question of visitation rights, thereby failing to address the specific prayer for interim custody under Section 12 of the Act of 1890.

42. This Court, during the course of hearing, posed a specific query to learned counsel for the respondent to point out from the impugned judgment/order whether the issue of interim custody, as exercisable under the conferment of power under Section 12 of the Act of 1890, had been adjudicated by the learned Family Judge. In all fairness, learned counsel for the respondent submitted that there is no finding to that effect in the impugned order/judgment.

43. On the basis of the discussion made hereinabove and upon due consideration of the settled position of law as adverted to in the preceding paragraphs, this Court is of the view that it was not open to the learned Family Judge, being the trial Court, to deviate from the pleadings while adjudicating the issue of custody. Rather, it was the bounden duty of the adjudicator, namely, the learned Family Judge, to decide the issue primarily on the basis of the pleadings advanced either way. The Family Court is being not permitted in law to travel beyond or deviate therefrom.

44. It is settled position of law that if there is deviation from the pleadings or law, any finding so recorded by way of order/judgment would fall within the fold of perversity. It is well-settled in law that a perverse order or judgment cannot be sustained in the eyes of law. In this regard, reference may be made to the pronouncement of the Hon’ble Supreme

Court in ***Arulvelu and Another v. State, represented by the Public Prosecutor, and Another*****, (2009) 10 SCC 206**, wherein the Hon'ble Apex Court has categorically held that it is, no doubt, true that if a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as so to suffer from the vice of irrationality incurring the blame of being perverse, then, the finding is rendered infirm in law. Relevant paragraphs, i.e., paras-24, 25, 26 and 27 of the said judgment reads as under:

> *"24. The expression "perverse" has been dealt with in a number of cases. In Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501] this Court observed that the expression "perverse" means that the findings of the subordinate authority are not supported by the evidence brought on record or they are against the law or suffer from the vice of procedural irregularity.*
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> *25. In Parry's (Calcutta) Employees' Union v. Parry & Co. Ltd. [AIR 1966 Cal 31] the Court observed that "perverse finding" means a finding which is not only against the weight of evidence but is altogether against the evidence itself. In Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665 : AIR 1994 SC 1341] the Court observed that this is not a case where it can be said that the findings of the authorities are based on no evidence or that they are so perverse that no reasonable person would have arrived at those findings.*
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> *26. In M.S. Narayanagouda v. Girijamma [AIR 1977 Kant 58] the Court observed that any order made in conscious violation of pleading and law is a perverse order. In Moffett v. Gough [(1878) 1 LR 1r 331] the Court observed that a "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence. In Godfrey v. Godfrey [106 NW 814] the Court*

defined "perverse" as turned the wrong way, not right; distorted from the right; turned away or deviating from what is right, proper, correct, etc.

27. The expression "perverse" has been defined by various dictionaries in the following manner:

1. Oxford Advanced Learner's Dictionary of Current English, 6th Edn. "Perverse.—Showing deliberate determination to behave in a way that most people think is wrong, unacceptable or unreasonable."

2. Longman Dictionary of Contemporary English, International Edn. Perverse.—Deliberately departing from what is normal and reasonable.

3. The New Oxford Dictionary of English, 1998 Edn. Perverse.—Law (of a verdict) against the weight of evidence or the direction of the judge on a point of law.

4. The New Lexicon Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn.) Perverse.—Purposely deviating from accepted or expected behavior or opinion; wicked or wayward; stubborn; cross or petulant.

5. Stroud's Judicial Dictionary of Words & Phrases, 4th Edn. "Perverse.—A perverse verdict may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence."

45. Thus, from the aforesaid it is evident that if any order made in conscious violation of pleading and law then it will come under the purview of perverse order. Further, "perverse verdict" may probably be defined as one that is not only against the weight of evidence but is altogether against the evidence.

46. Thus, "perversity" refers to a finding or decision so unreasonable or irrational that no reasonable person acting judicially could have reached

it. It signifies a gross and unreasonable assessment of evidence or law by a court.

47. Further, perversity is a high threshold for intervention, distinguishing it from a mere error of fact or law. The "safest approach on perversity is the classic approach on the reasonable man's inference on the facts but inadequacy of evidence or a different reading of evidence is not perversity, reference in this regard be made to the judgment rendered by the Hon'ble Apex Court in the case of ***Damodar Lal v. Sohan Devi, (2016) 14 SCC 197.***

48. This Court, upon due consideration of the legal connotation of the term *"perversity"* and in light of the foregoing discussion, is of the considered view that the impugned order/judgment fall squarely within the ambit of perversity.

49. Issue no (i) answered accordingly.

Re: issue no. (ii)

50. Since, upon a comprehensive appraisal of the discussion hereinabove, this Court has observed that the learned Family Judge, while declining the prayer for interim custody in favour of the appellant-mother, notwithstanding the fact that the minor female child was aged about three years and nine months at the time of passing of the impugned order, failed to adhere to the settled position of law, the order so passed stands vitiated by perversity. The question, therefore, that arises for consideration is as to what relief the petitioner/appellant is entitled to in the facts and circumstances of the case.

51. As discussed hereinabove, the governing consideration in matters of custody of minor child is the welfare of the child, and not the competing rights of the parties. The welfare of the child is determined neither solely by economic affluence nor merely by emotional concern, but by a balancing of all relevant factors to secure the child's total well-being.

52. While considering custody, the Court cannot adopt a purely legalistic approach; human angles are of paramount relevance. The expression 'welfare' in Section 13 of the Hindu Minority and Guardianship Act, 1956 must be construed in its widest sense. Though statutory provisions governing parental rights may be taken into account, they cannot fetter the Court's exercise of its *parens patriae* jurisdiction. In custody matters, the Court's *parens patriae* jurisdiction empowers it to act as guardian of the child, prioritizing the child's best interests above all else.

53. In ***Nil Ratan Kundu v. Abhijit Kundu*** **(supra)**, the Hon'ble Supreme Court emphasized that custody cases are not to be decided solely by interpreting legal provisions but require a humane approach. The Court, while exercising its *parens patriae* jurisdiction, must consider the child's ordinary comfort, contentment, health, education, intellectual development, and favorable surroundings, together with moral and ethical values.

54. In the case ***Gaytri Bajaj v. Jiten Bhalla*** **(supra),** the Hon'ble Apex Court reiterated that it is the welfare and interest of the child, and not the rights of the parents, which is the determinative factor. The welfare of the child must be assessed in the context of the facts of each case, and decided cases may not serve as binding precedents in custody disputes.

55. Further, it needs to refer herein that Section 6(a) of the Hindu Minority and Guardianship Act, 1956 provides that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother.

56. In the instant case, the minor female child is aged about four years and six months. At such tender age, she is in dire need of motherly affection and love, and is not in a position to form an intelligent preference. It is an admitted fact that the child was born through IVF and the petitioner/appellant has endured the pain and sacrifice associated therewith.

57. In view of the statutory provisions, particularly upon a conjoint reading of Sections 6(a) and 13 of the Hindu Minority and Guardianship Act, 1956 with Section 12 of the Guardians and Wards Act, 1890, and considering the factual matrix of the case, this Court is of the considered view that, until disposal of the suit, the interim custody of the minor child shall be handed over to the petitioner/appellant-mother.

58. Accordingly, issue no.(ii) answered.

59. So far, the contention of the learned counsel appearing for the respondent, is concerned that the main *lis* being Original Suit No.68 of 2025 filed by the appellant is pending for the purpose of deciding the issue of custody and, as such, the order passed by the learned Family Court under section 12 of the Act of 1890, impugned herein, may not be quashed and set aside.

60. This Court is of the considered view that the argument advanced by learned counsel for the respondent carries no force. The issue of custody is indeed one to be adjudicated under the conferment of powers contained

in Sections 7 and 25 of the Guardians and Wards Act, 1890. However, when the mandate of Section 12 has also been expressly incorporated in the statute, its basic purpose is to enable the Court to decide the issue of interim custody. It is not open to either party to contend that merely because the lis for permanent custody is pending, no order may be passed on the issue of interim custody.

61. Once the statutory mandate confers power upon the adjudicator to decide the issue, it is impermissible for any party to urge that, merely because the main *lis* relating to custody is pending, the concerned Court is absolved from passing an order on interim custody. The conferment of jurisdiction under Section 12 is distinct and independent, and must be exercised when invoked.

62. In the present case, the factual position is otherwise, inasmuch as the learned Family Judge has entertained the petition filed under Section 12 of the Act of 1890, evidence has been laid, and thereafter the impugned order has been passed. Thus, the issue of interim custody stood squarely before the Court for adjudication.

63. The instant appeal has been preferred against the aforesaid order/judgment, it is the statutory duty of this Court, exercising appellate jurisdiction, to examine the legality and propriety of the findings recorded by the Family Court. In the event this Court finds infirmities in the impugned order or judgment, it is incumbent upon the appellate Court to set the judgment right and to restore the position in accordance with law.

64. In view of the foregoing discussion and upon a conjoint reading of Sections 6(a) and 13 of the Hindu Minority and Guardianship Act, 1956 together with Section 12 of the Guardians and Wards Act, 1890, and

considering the factual matrix of the case, this Court finds that the impugned order of the learned Family Court declining interim custody in favour of the appellant-mother suffers from perversity and cannot be sustained.

65. On the basis of discussion made hereinabove, the order impugned dated 27.11.2025 passed in Original Suit No.68 of 2025 by the learned Principal Judge, Family Court, Hazaribagh is hereby quashed and set-aside.

66. In consequence thereof, the interim custody of the minor female child, aged about four years and six months, shall be handed over to the petitioner/appellant-mother, until the disposal of the main guardianship/custody proceedings pending before the Family Court.

67. The respondent-father shall, however, be entitled to visitation rights. He may meet the child on weekends between 10:00 AM and 5:00 PM at a place mutually agreed upon by the parties, or as directed by the learned Family Court. It is further directed that such visitation shall be arranged in a manner ensuring that the studies of the minor child are not hampered.

68. The Family Court shall remain at liberty to regulate, modify, or vary the terms of visitation, if circumstances so warrant, keeping in view the paramount consideration of the welfare of the child.

69. The instant appeal is accordingly allowed to the extent indicated above.

70. Being the appellate Court, this Court has only gone into the material as available on record as well as the trial Court records and the impugned order so as to assess as to whether the finding recorded by the

learned trial Court suffers from an error being apparent on the order, nothing more nothing less.

71. Since the suit remains pending, this Court directs the learned Principal Judge, Family Court, Hazaribagh, to decide the same expeditiously and without granting any unnecessary adjournments.

72. It is made clear that the learned Principal Judge, Family Court, Hazaribagh while adjudicating the issue of custody will not be prejudiced by any observation contained in this order, which is confined to the question of interim custody alone.

73. The learned Family Court is hereby directed to take all effective steps, in accordance with law, to ensure compliance of the order/direction passed by this Court as above during pendency of the suit, so as to maintain the statutory mandate of Section 12 of the Guardians and Wards Act, 1890, by handing over the interim custody of minor female child, namely, Miss Ekanshi Sharma in favour of the appellant/mother namely Dr. Sangeeta Vishwakarma @ Sangeeta Vishwakarma within a week.

74. With the aforesaid direction and observation, the instant appeal stand disposed of.

75. Pending I. A(s), if any, stand disposed of.

(Sujit Narayan Prasad, J.)

I Agree.

(Sanjay Prasad, J.)

(Sanjay Prasad, J.)

Sudhir
Dated:07/09/2026
Jharkhand High Court, Ranchi
AFR

Uploaded on 08/09/2026.