



2026:CGHC:2182-DB

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

First Appeal (MAT) No. 87 of 2022

Laxmikant Joshi S/o Bhushan Prasad Joshi Aged About 31 Years Occupation Panditai, R/o Village Kodwa, Police Station And Tahsil Saja, District : Bemetara, Chhattisgarh

... Appellant/Plaintiff

versus

1 - Lokeshwari @ Parmeshwari W/o Laxmikant Joshi Aged About 29 Years R/o Village Jhith, Police Station Amleshwar, Tahsil Patan, District : Durg, Chhattisgarh

2 - Kriparam Joshi S/o Laxmikant Joshi Aged About 7 Years Minor, Represented Through Mother Lokeshwari @ Parmeshwari, Wife Of Laxmikant Joshi, R/o Village Jhith, Police Station Amleshwar, Tahsil Patan, District : Durg, Chhattisgarh

... Respondents/Defendants

For Appellant : Mr. Bharat Rajput, Advocate

For Respondents : Mr. Aman Tamboli, Advocate

DB- Hon'ble Shri Justice Sanjay K. Agrawal
Hon'ble Shri Justice Arvind Kumar Verma
Judgment On Board
14.01.2026

Sanjay K. Agrawal, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and decree dated 21/04/2022 (Annexure A/1) passed by the Family Court, Bemetara in Civil MJC No. 05/2021 whereby the application filed by the appellant/plaintiff under Section 6 of the Hindu Minority and Guardianship Act, 1956 (hereinafter, "the Act of 1956") seeking custody of his minor son Master Yash Joshi, aged about 7 years (respondent No. 2 herein), has been dismissed finding no merit, against which the appellant/plaintiff has preferred this first appeal under Section 19(1) of the Family Courts Act, 1984.

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

(a) The marriage of the appellant/plaintiff/husband was solemnized with the respondent No. 1/defendant/wife on 13/05/2013 in accordance with the Hindu rites and rituals and they have been blessed with two sons namely Yash and Aayush, aged about 7 and 3½ years respectively.

(b) It is the case of the appellant/plaintiff that till one year of marriage the relationship between him and respondent/defendant No. 1 was fine, however, matrimonial discord arose between them thereafter and the respondent/defendant No. 1 threatened the

appellant/plaintiff to implicate him in dowry cases for which he made a complaint to the Superintendent of Police, Bemetara on 13/08/2019 and then on 06/10/2021, father of respondent/defendant No. 1 came to appellant/plaintiff's house and took respondent/defendant No. 1 and their younger son Aayush with him to her parental house. Meanwhile, respondent/defendant No. 2 namely Master Yash Joshi (as named before the Family Court) remained with the appellant/plaintiff. Thereafter, respondent/defendant No. 1 lodged a complaint before the Mahila Thana, Bhilai and in turn, the Sakhi Center, Durg called the appellant/plaintiff along with his elder son Master Yash Joshi and on 10/11/2021, the Officers of Sakhi Center, Durg handed over respondent/defendant No. 2 to respondent/defendant No. 1 which led the appellant/plaintiff to file application under Section 6 of the Act of 1956 seeking custody of respondent/defendant No. 2.

(b) Respondent/defendant No. 1 opposed the application and filed her written statement stating mainly that appellant/plaintiff has kept one Suman Joshi alias Lileshwari as his second wife, who is residing with him in his house, without getting any decree of divorce and

therefore, on account of his misconduct, he is not entitled for custody of their son respondent/defendant No. 2.

(c) Learned Family Court, Bemetara, by its impugned judgment and decree dated 21/04/2022 (Annexure A/1), rejected the application under Section 6 of the Act of 1956 filed by the appellant/plaintiff, by exercising its *parens patriae* jurisdiction, giving paramount consideration to the welfare of the minor, holding that since the appellant/plaintiff has brought one Suman Joshi alias Lileshwari who is residing with him in his house as his second wife, without obtaining any decree of divorce, constitutes cruelty and misconduct on the part of the appellant/plaintiff, and merely because he is financially better equipped than the respondent/defendant No. 1, he cannot be held entitled for custody of respondent/defendant No. 2.

3. Mr. Bharat Rajput, learned counsel for the appellant/plaintiff, would submit that the Family Court has wrongly dismissed the application filed by the appellant/plaintiff and refused to grant custody of respondent/defendant No. 2 to the appellant/plaintiff as his mother respondent/defendant No. 1 is not financially competent to take care of the child as she has no source of income, therefore, it is in the welfare of the child to be with his father i.e. the appellant/plaintiff. As such, the

impugned judgment and decree passed by the Family Court is liable to be set aside.

4. Per contra, Mr. Aman Tamboli, learned counsel for respondents/defendants, would support the impugned judgment and decree and submit that learned Family Court is absolutely justified in giving paramount consideration to the welfare of the child and thereby rejecting the application for custody of respondent/defendant No. 2 filed by the appellant/plaintiff as he, himself, has admitted that he is living with a woman named Suman Joshi alias Lileshwari as his second wife, therefore, the instant appeal is liable to be dismissed.
5. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.
6. The question that arises for consideration in this appeal is, “whether the Family Court is justified in rejecting the application filed by the appellant/plaintiff under Section 6 of the Act of 1956 seeking custody of respondent/defendant No. 2 namely Master Yash Joshi holding that the act of the appellant/plaintiff, of keeping Suman Joshi alias Lileshwari as his second wife without any decree of divorce from his first wife i.e. respondent/defendant No. 1, would disentitle him from

getting custody of minor Master Yash Joshi,
respondent/defendant No. 2 ?

7. In order to raise the plea at the Bar, it would be appropriate to notice the provision contained under Section 6(a) of the Act of 1956, which states 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;”

8. A careful perusal of Section 6(a) of the Act of 1956 would show that in case of a boy, father is the natural guardian and after him, the mother, however, the proviso states that custody of a minor, who has not completed the age of 5 years, stays with the mother. Though the natural guardians are enumerated in Section 6, the right is not absolute and the Court has to give paramount consideration to the welfare of the minor (See: **Smt. Mohini v. Virender Kumar**¹).

9. At this stage, it would be appropriate to notice the provision contained under Section 13 of the Act of 1956, which states as under :-

1 AIR 1977 SC 1359

“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 the opinion that his or her guardianship will not be for the welfare of the minor.”

10. Section 13(1) of the Act of 1956 clearly mandates that while appointing or declaring any person as a guardian of a Hindu minor by the Court, paramount consideration shall be given to the welfare of the minor. The welfare of the child is determined neither by the economic affluence nor a deep mental or emotional concern for the well being of the child. The answer depends on the balancing of all these factors and determining what is best for the child's total well being.

11. The Supreme Court, in the matter of **Sheoli Hati v. Somnath Das**², has held that purpose and object of the Guardians and Wards Act, 1890 is not mere physical custody of minor but due protection of ward's health, maintenance and education and the power and duty of the Court under this Act is welfare of minor. It has further been observed as under :-

“17. It is well settled that while taking a decision regarding custody or other issues pertaining to a

² (2019) 7 SCC 490

child, welfare of the child is of paramount consideration. This Court in *Gaurav Nagpal v. Sumedha Nagpal*³, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51: (SCC pp. 55-57)

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.

45. In *Saraswatibai Shripad Vad v. Shripad Vasanti Vad*⁴ the High Court of Bombay stated: (SCC OnLine Bom)

“... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration ...*”

46. In *Rosy Jacob v. Jacob A. Chakramakka*⁵, this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the

3 (2009) 1 SCC 42

4 1940 SCC Online Bom 77

5 (1973) 1 SCC 840

question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

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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 or 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.”

(emphasis in original)

18. Every child has right to proper health and education and it is the primary duty of the parents to ensure that child gets proper education. The courts in exercise of *parens patriae* jurisdiction have to decide such delicate question. It has to consider the welfare of the child as of paramount importance taking into consideration other aspects of the matter including the rights of parents also. In reference to custody of a minor, this Court had elaborated certain principles in *Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka* [*Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka*]⁶, wherein this Court again reiterated that the welfare of the child is of paramount importance. In para 17, following was laid down: (SCC p. 565)

“17. The principles of law in relation to the custody of a minor appear to be well-established. It is well-settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the court has a special responsibility and it is the duty of the court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a

6 (1982) 2 SCC 544

minor, the court has to be guided by the only consideration of the welfare of the minor.””

12. In the matter of **Shyamrao Maroti Korwate v. Deepak Kisanrao Tekam**⁷, their Lordships of the Supreme Court have held that father is the guardian of minor child until he is found unfit to be a guardian of minor, but in the matter of custody of a minor child, paramount consideration is welfare of minor and not rights of parents or relatives. It has been observed as under :-

“**22.** It is true that under the 1890 Act, the father is the guardian of the minor child until he is found unfit to be a guardian of the minor. In deciding such question, this Court consistently held that the welfare of the minor child is the paramount consideration and such a question cannot be decided merely on the basis of the rights of the parties under the law. This principle is reiterated in *Anjali Kapoor v. Rajiv Baijal*⁸.”

23. Though the father is the natural guardian in respect of a minor child, taking note of the fact that welfare of the minor to be of paramount consideration inasmuch as the respondent father got married within a year after the death of his first wife Kaveri and also having a son through the second marriage, residing in a rural village, working at a distance of 90 km and of the fact that the child was all along with the maternal grandfather and his family since birth, residing in a taluka centre where the child is getting good education, we feel that the District Judge was justified in appointing the appellant maternal grandfather as guardian of the minor child till the age of 12 years. The High Court reversed the said conclusion and appointed the father of the child as his guardian.”

⁷ (2010) 10 SCC 314

⁸ (2009) 7 SCC 322

13. In the instant case, in reply to the application filed by the appellant/plaintiff under Section 6 of the Act of 1956 for custody of respondent/defendant No. 2, respondent/defendant No. 1 came up with a plea stated in paragraph 4 of the written statement that appellant/plaintiff has brought one Lileshwari, daughter of Ashok Joshi, who is a resident of village Lakhanpur (Jhalap Patewa), and is residing with her as his wife in his house and though respondent/defendant No. 1 made serious objection but the appellant/plaintiff refused to oust her from his house. Furthermore, the appellant/plaintiff has himself admitted in his cross-examination that he is having a love affair with Suman Joshi alias Lileshwari and he also admitted that he has made statement before the Sakhi One Stop Center, Durg that he has gotten married with Lileshwari at Bhoramdev Temple. Not only this, respondent/defendant No. 1 has made similar statement in paragraph 3 of her affidavit under Order 18 Rule 4 CPC that appellant/plaintiff has kept Suman Joshi alias Lileshwari as his second wife, which has remained uncontroverted in the cross-examination made on behalf of the appellant/plaintiff. Relying upon the aforesaid statements, learned Family Court has recorded the finding that since appellant/plaintiff is residing with another woman and is

keeping her as his second wife, therefore, it would be inappropriate to grant custody of respondent/defendant No. 2 to the appellant/plaintiff and it would be in the best interest of the minor to stay with his mother.

14. The Supreme Court in the matter of **Athar Hussain v. Syed Siraj Ahmed and Others**⁹ has considered second marriage of father qua interim custody and held that second marriage of father is an important factor for consideration while granting custody of the child and denied the custody to the father where he has already entered into second marriage. It has been observed in paragraph 44 as under :-

“44. The second marriage of the appellant, though a factor that cannot disentitle him to the custody of the children, yet is an important factor to be taken into account. It may not be appropriate on our part to place the children in a predicament where they have to adjust with their stepmother, with whom admittedly they had not spent much time as the marriage took place only in March, 2007, when the ultimate outcome of the guardianship proceedings is still uncertain.”

15. Reverting to the facts of the present case in light of the aforesaid legal discussion, it is quite established that appellant/plaintiff is residing with Suman Joshi alias Lileshwari in his house for a fairly long time and the minor i.e. respondent/defendant No. 2, who is residing with his mother respondent/defendant No. 1, is getting love and

9 (2010) 2 SCC 654

affection from her and is in a good atmosphere. This Court cannot be oblivious of the future aspect that there is no certainty that the child will get better love and affection as also good atmosphere from her step-mother, in comparison to what he has been receiving from her mother since birth. Though it has been contended on behalf of the appellant/plaintiff that he is financially more capable to fulfill the needs of the minor child as the respondent/defendant No. 1 does not have any source of income, however, giving sole or more importance to the superior financial capacity of the appellant/plaintiff/father, as stated by him in his evidence, would not be proper (**See: Dhanwanti Joshi v. Madhav Unde**¹⁰). As noted and discussed above, welfare of the child depends upon balancing of all the factors – physical, mental and emotional and determining what is best for the child's total well being.

16. In view of the aforesaid legal analysis, we are of the considered opinion that learned Family Court has rightly rejected the application filed by the appellant/plaintiff under Section 6 of the Act of 1956 and refused to grant custody of Master Yash Joshi (respondent/defendant No. 2) in his favour. We do not find any merit in this appeal.

¹⁰ (1998) 1 SCC 112

17. Accordingly, this appeal is dismissed leaving the parties to bear their own cost(s).

SD/-

(Sanjay K. Agrawal)
JUDGE

SD/-

(Arvind Kumar Verma)
JUDGE

Harneet