

Misc. Act VIII case no.2 of 2025.

CNR No.WBBD 11 000059 2025

Nirmal Shil petitioner

Misti Shil Respopndent.

order no.11 dt.14.07.2026

Petitioner files advocate's hazira.

Today is fixed for passing ex parte order in respect of the petition u/s.25 of the Guardians and Wards Act 1890 for the custody of the minor son of the petitioner.

It was the case of the petitioner that his marriage with OP was solemnized on 18.07.2020 as per Hindu rites and customs and a male child was born to them on 18.20.2021.

After birth of the child OP started to put pressure on the petitioner to stay in her paternal house as domesticated son-in-law to which petitioner disagreed. Subsequently, the relationship in between the parties got strained and OP left her matrimonial house with her minor son. Subsequently the parties filed a petition of mutual divorce on 19.03.2024 and it was agreed that OP will get the custody of the child while petitioner will get visitation rights. However, the suit could not be disposed according to the desire of the parties and thereafater OP told the petitioner that he would not be able to meet the child in future. Thereafter in spite of repeated attempts petitioner failed to meet with the child and since the petitioner was in a better position to maintain the child both financially and socially, he filed the present application to get the custody of the child.

OP appeared in the present case on 27.03.2025 but subsequently did not contest the case for which it was heard ex parte.

In order to establish his case petitioner examined himself as PW1 and he also proved his Aadhar Card as Exhibit-1.

In the present case both parties are Hindus and being the parents of the minor child, they are the natural guardian of the minor as per Sec.6 of the Hindu Minority and Guardianship Act. As per Sec.6(a) of the said Act custody of a minor who has not completed the age of five years shall ordinarily be with the mother. In the present case the child was born on 18.10.2021 suggesting that he is yet to complete five years age. Apart from that petitioner did not furnish any document in support of his contention that he is financially and socially in a better position than the OP. In every case relating to the custody of the minor, welfare of the minor to be paramount consideration. In absence of any compelling circumstances, to suggest that welfare of the child shall be at stake if the child remains with her mother, I am unable to allow the prayer of the petitioner and in my opinion, custody of the child shall remain with OP, although the petitioner shall be entitled to visitation right.

It is therefore,

ORDERED

that the petition u/s.25 of the Guardians and Wards Act praying for custody of the minor is refused but the petitioner is granted visitation right of the child. Petitioner shall be able to meet the child on every Sunday as well as on birth day of the child at a time and place to be mutually fixed by the parties.

The petition is thus disposed of.

A copy of this order be handed over to the petitioner free of cost.

D/C

Addl. District Judge, Kalna.

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