

Misc 08 of 2025

Order dated 01-12-2025

Today is fixed for passing of order on petition dated 17-05-2025.

Heard both sides on the last date.

The O.P filed the petition challenging the maintainability of the application under S. 144 BNSS filed by the petitioner on behalf of his minor grandchildren.

The O.P is the mother of the minor children and the daughter in law of the petitioner.

That the petitioner who is the grandfather of the two minor children is not the natural guardian as per law. He is neither natural, testamentary or Court appointed guardian of these minor children. The O.P in her petition has stated that she has no means of livelihood and was driven out by the petitioner after her husband passed away. That her two minor children were forcibly taken from her custody and this case has been filed to harass her.

The Ld. Advocate for the petitioner during hearing submitted that OP being the mother abandoned two minor children and re-married. That she is legally bound to maintain her children. The petitioner relied upon the judgment of Hon'ble High Court Uttaranchal in Anshu Gupta – vs – Adwait Anand 2023 SCC Online Utt 916. In which it was held that “person” in section 125 of Cr.P.C and 126 of Cr.P.C would include both male and female in reference to minor child and therefore, the mother being a Govt Teacher with sufficient income is liable to maintain her minor child and accordingly upheld the judgment of the Family Court.

Section 144 of BNSS deals with order for maintenance of wife, children and parents. This provision being a beneficial legislation makes the husband or son lawfully responsible to maintain their wife, children or parents.

The Hon'ble High Court of Madras in Minor.Vikash, Rep. By his grandfather and guardian Karuppanan – Vs – Priya 2025 SCC Online Mad 9914 held that the grandfather was not a natural guardian of the minor. That the father was alive and providing for the minor child and the mother had remarried. Court held that therefore the petition for maintenance of the grandfather was not maintainable.

Here in this case, it was after the death of the husband that the mother allegedly driven out by the petitioner has remarried. She also claims not to have any source of independent income.

But considering the judgment relied upon by the petitioner the petition for non-maintainability of the application under 144 of BNSS is rejected.

To 07-01-2026 for hearing of interim maintenance and filing of W/O and W/S in the meantime.

Dict. & corrected by me

ACJM, Bishnupur

A.C.J.M., Bishnupur.

J.O Code WB01106