

Misc. Case No. 75 of 2026
CNR No. WBHW01 001785 2026
Present: Subhash Kumar Kar,
District Judge, Howrah.
J.O. Code – WB00592

Order No. 07 dated 07.07.2026.

Parties have taken the respective steps.

The record is taken up for order on the petition under Section 12 of the Guardians and Wards Act, 1890 filed by the petitioner.

The petitioner namely, Smt. Antara Gupta, mother of the minor, filed this petition against her husband Karan Gupta, the opposite party herein, on the premises that presently, the petitioner is residing along with her minor son under the care and control of her parents in the address given in the cause title and the opposite party who is the husband of the petitioner married her on 27.05.2018 according to Hindu rites and customs and after the marriage for some days they resided at 106, Girish Ghosh Road, P.S. Belur, Dist. Howrah and at Mohali, Punjab and thereafter they moved to USA and started residing at New Jersey and the minor son, the ward herein, was born to them on 30.10.2020 in the State of New Jersey, USA and during their visit to India in the year 2022, the opposite party exposed the petitioner to brutal torture both physically and mentally and she was compelled to come to her father's residence along with her minor son, the ward herein and since then they are living there though the petitioner tried to settle her marital life with the opposite party, but the opposite party was not willing to stay with her as he is living in adultery and a police case was initiated at Belur P.S. against him.

It is further agitated that since the minor son is a citizen of USA he holds the US Passport which was going to expire on 26.04.2026 and the petitioner intimated the opposite party on and from 1st November, 2025 to 8th December, 2025 for several times through email and his whatsapp number but no response came from the opposite party or his family members and the petitioner applied for renewal of passport of the minor on 24.03.2026 and on 06.04.2026 it was intimated by the US Passport issuing authority that an order from the Court is required to

proceed with the application as single parent as per the Passport Norms of USA and hence, this petition.

Opposite party appeared through his constituted attorney and filed a written objection against the said petition under Section 12 of the Guardians and Wards Act, 1890 wherein he denied and disputed all the allegations levelled against him and inter alia stated that the minor is a student of class 1 and for any purpose the passport is not required for the minor and opposite party apprehends that the petitioner will leave India along with the minor if the consent is given by the opposite party and it will be hard task for the opposite party to give consent to the petitioner who is not the single parent at present and the present petition is not maintainable.

Section 12 of the Guardians and Wards Act, 1890 conferred power upon the Court to make interlocutory order for production of the minor and interim protection of the person and property.

At the time of hearing, learned Advocate appearing for the petitioner submitted that the petitioner being the mother is entitled to act as guardian of the minor and there is no reason to restrain her from making any application before the competent authority for renewal of the passport of the minor as a single mother where the opposite party is not giving consent to such petition and if the passport is not renewed the petitioner will suffer irreparable loss and injury. It is further submitted that the judgement of a foreign Court with regard to the custody of the child is not binding upon the Court and it is open for the Court to decide the custody of the minor considering the facts and circumstances of the case and in this regard reliance is placed upon the judgement of the Hon'ble Supreme Court reported in **2011 (6)SCC 479**.

Learned Advocate appearing for the opposite party submitted that the petition filed by the petitioner is not at all maintainable and the facts remain that the petitioner removed the minor from his lawful guardianship without any reasonable cause and she cannot be allowed to act as single parent where the opposite party/ father has not refused or is not legally incapacitated to act as guardian of the minor and it is prayed to reject the petition.

On perusal of the documents it appears to me that an online

application for US Passport has been made by the petitioner on behalf of the minor and it appears from the information dated 06.04.2026 issued by the US Embassy Consulate General at Kolkata that a complete copy of a Court order that gives the applying parent authority to obtain the passport is required as the Code of Federal Regulations, Title 22, Section 51.28 requires all parents and legal guardians to consent for issuance of a passport.

Now, the question comes whether such relief can be granted to the petitioner under Section 12 of the Guardians and Wards Act, 1890.

For the purpose of brevity of discussion the text of Section 12 of the Act is reproduced herein below:

“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.”

From the above text it is clear that Section 12 of the Act empowers the Court to make interlocutory order for production of minor and interim protection of person and property and the legislature’s intention behind the said provisions is to grant interim custody and interim relief towards the person and property of the minor and other interlocutory

order like appointment of receiver in respect of the minor's property, appointment of temporary guardian and other interlocutory order of like natures but the provision does not confer any power to issue any direction upon any competent authority to issue or renew of the passport of the minor and Court cannot pass any order where any parallel procedure is prescribed under any law of the land for the time being in force or which is within the domain of any law of the foreign state.

Therefore, the relief as prayed for cannot be granted under Section 12 of the Act.

O r d e r e d

that the instant petition under Section 12 of the Guardians and Wards Act is rejected on contest but without any costs.

Fix 12.08.2026 for hearing of Misc. Case.

Dictated & corrected by me.

D. J.

District Judge, Howrah.