

**In the Court of Additional District Judge, 2<sup>nd</sup>**  
**Court, Uluberia, Howrah**

Present: Atrayee Manna Chowdhury, A.D.J. 2<sup>nd</sup> Court,  
Uluberia (J.O. Code :WB 00848)

**Mat Suit No.191/23 (CIS Reg. no. 191/23)**

**CNR NO.WBHW09-000690-2023**

**Order No.22, dated:18.11.25:**

Today is fixex for passing order in respect of petition dated 14.09.2023.

Petitioner files hazira.

No step taken by respondent.

Record is taken up for passing order.

Perused the materials on record.

The present application arises in Matrimonial Suit No. 191 of 2023 instituted by the petitioner under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights. The marriage between the parties, solemnised on 14 July 2021 according to Hindu rites and customs, is undisputed. It is also admitted by both sides that a male child was born out of the wedlock during the subsistence of their cohabitation. The petitioner asserts that the respondent resided with him for a period of time and that on 29 October 2022 he brought her and their child back to the matrimonial home, from where she left again on 02 November 2022 along with the child. He states that despite repeated attempts, including a final attempt on 12 November 2022, the respondent refused to return to the matrimonial home. During the pendency of the suit, the petitioner invoked Section 26 of the Act and filed the present application seeking visitation rights in respect of the minor child.

The respondent appeared and filed a written objection, wherein she denied the allegations of desertion and abandonment. She alleged that she was subjected to physical and mental cruelty in her matrimonial home, that she was

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deprived of basic comforts and dignity, and that on 7 April 2023 the petitioner, accompanied by his sister and brother-in-law, visited her paternal home and falsely accused her of having stolen a bag containing money and jewellery, doing so publicly in front of villagers. She also claimed maintenance of ₹10,000 per month. After filing her written objection, however, the respondent stopped appearing in court and took no further steps in the matter.

The record reveals that neither party has produced any documentary evidence to substantiate their respective versions. None of the allegations of cruelty, deprivation or attempts at reconciliation finds support from any independent material. Significantly, the child has never been produced before this Court by the respondent, nor has the petitioner produced any proof of financial support or maintenance to the child. An important aspect that further complicates adjudication is that the petitioner, who now seeks the exercise of visitation rights, has not even disclosed in his application the name of the child or the date of birth of the child. In matters concerning custody or visitation, these details are not mere clerical particulars but foundational facts necessary for the Court to ascertain the identity, age, welfare needs, and developmental requirements of the minor. The petitioner's failure to mention even these essential particulars indicates a certain casualness or lack of due diligence on his part and raises legitimate concerns regarding the depth of his involvement with, or knowledge about, the child whose visitation he now seeks.

Such omissions, though serious, must be assessed in the larger context of the legal principles governing the rights of parents and, more importantly, the welfare of the child. Section 26 of the Hindu Marriage Act mandates that the Court must make such provisions as it deems just and proper concerning the custody, maintenance and education of minor children, always

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subordinating the rights of parents to the welfare of the minor. It has been consistently held that the welfare of the child is the paramount consideration, transcending the legal entitlements of either parent. Even when spouses are in deep conflict, a child ordinarily benefits from the affection and emotional contact of both parents, and courts, therefore, tend to permit reasonable and structured visitation unless there is cogent material indicating that such interaction would be detrimental to the child's wellbeing.

Petitioner's omission to mention the child's name and date of birth reflects poorly on the seriousness with which he has approached this proceeding and may cast doubt on the depth of his engagement with the child.

Be that as it may, the materials available in the record is not sufficient to form any opinion about the well being of the child in the context of the visitation right sought to be exercised by the petitioner. All the more so, when this court had no opportunity to interact with the child. No basic details about him are available for forming any opinion in this regard. Absence of respondent is not of any help. There is absolutely nothing in the record that the petitioner was concerned about the well being of the child at any point of time. In such view of the matter, I am not in a position to allow the prayer of the petitioner. Hence the prayer stands rejected in view of the forgoing discussions.

To **10.03.2026** for ex parte hearing of the suit.

Dictated & Corrected by

Additional District Judge,  
2<sup>nd</sup> Court, Uluberia, Howrah

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