

Misc. Case No: 242 of 2024 (VIII)
CNR No: WBNP01-008249-2024

Present: Sri. Ajayendra Nath Bhattacharya
Additional District Judge, 2nd Court, Barasat (I/C)
JO Code: WB00819

Order dated: 02-06-2026

Today is fixed for passing order in respect of an application preferred by the petitioner in terms of Order XII, Rule 06 of the Code of Civil Procedure, 1908 [*hereinafter referred to as the CPC*].

Both the sides are present by filing attendance through their respective Ld. Advocates.

Perused the petition under Order XII, Rule 06 CPC as preferred by the petitioner and considered the same in the light of the materials on record as well as the submissions made by Ld. Advocates for both the sides.

The Ld. Advocate for the petitioner has submitted that the petitioner has preferred the present case in terms of S. 08 of the The Guardians and Wards Act, 1890 [*hereinafter referred to as the GW Act*] whereby she had prayed for an order directing her appointment as the guardian of the person and property of her minor son together with the custody of the said minor son. It is submitted that the Opposite Party has preferred a Written Statement in the present case and has admitted the said claim of the petitioner. As such, the Ld. Advocate for the petitioner has urged to pass an order on the basis of such admission made by the Opposite Party. It is also submitted that the matrimonial tie between the parties to this case has already been dissolved by a decree of divorce.

On the other hand, the Ld. Advocate for the Opposite Party has submitted that the Opposite Party has no objection is the petitioner is appointed as the guardian of the person and property of her minor son and given the custody of the said minor son.

On perusal of the application under S. 08 of the GW Act, it is found that it is the case of the petitioner that the marriage of the petitioner and the Opposite Party was registered on 11-08-2013 in accordance to the provisions of the Special Marriage Act, 1954 [*hereinafter referred to as the SM Act*] and the said marriage was duly

consummated. Out of the said wed lock, the petitioner gave birth to a male child on 28-11-2016. It is further case of the petitioner that the Opposite Party was always very ataractic and nonchalant towards the minor child and never took the responsibilities of being a father and he lacked any emotional bonding with the minor child. The petitioner had further alleged that after experiencing neglect from the Opposite Party both as a husband as well as a father, the petitioner was compelled to leave her matrimonial house and took shelter at her paternal house along with her child. It is the case of the petitioner that since 01-04-2023, the parties to this case are staying separately from each other and since then the minor child is in the custody and care of the petitioner, who is a school teacher and thereby financially independent and capable of maintaining the child. It is also the case of the petitioner that since the separation, the Opposite Party never bothered to take care or information about the child and as such the prayer has been made for appointment of the petitioner as the guardian of the person and property of the child and granting the custody of the child to the petitioner.

In response to the above claim of the petitioner, the Opposite Party had preferred a Written Statement wherein and whereby he had denied all the allegations of the petitioner, save and except the marital status of the parties and the paternity of the child. In para 11 – 17 of the Written Statement, the Opposite Party has denied the allegation of being apathetic or indifferent to the child and on the other hand has claimed to be a very responsible father having deep love in his heart for the child. It has been alleged by the Opposite Party that the petitioner had left her matrimonial house with the minor child at her own sweet will and though the Opposite Party has made several attempts to bring back the petitioner and her child but all such attempts failed due to rigid attitude of the petitioner and when all possibility of reconciliation and reunion failed, the parties to the suit preferred an application for decree of divorce on mutual consent. The Opposite Party has also alleged that since the separation, the petitioner has not allowed the Opposite Party to meet with the minor son. However, in para – 18 of the Written Statement, the Opposite Party has asserted that in spite of the false allegations leveled against him, he has agreed that the child should be with the petitioner as because he is of a tender age and the same will serve the best interest of the child and he is ready to bear the educational and medical expenses of the child during his minority. The Opposite Party, has also asserted in para – 21 of the Written Statement that the prayer of the petitioner is to be rejected and on the other hand

has made a counter claim for visitation rights in respect of the said child.

Now, the mere fact that the Opposite Party had made a statement in his Written Statement to the effect that he agrees to the fact that the child should remain with the petitioner cannot amount to an admission so as to attract the provision of Order XII, Rule 06 of CPC. In the case of **Mridula Roy v. Kamalesh Chandra Chakroborty** as reported in ***2025 (2) ICC 308 (Cal)***, the Hon'ble Calcutta High Court has observed that the provision of Order XII, Rule 06 CPC provides a discretionary power to Court to pass judgment on admission of fact made in pleading or otherwise and such power should be exercised cautiously and only when admissions are clear, unequivocal, unambiguous and unconditional. The Hon'ble Court has further observed that it is not every statement made in pleadings or during proceedings constitute an admission for the purpose of Order XII, Rule 06 CPC and the statement must of such a nature so as to inspire the confidence of the Court to pass a judgment without a full trial. In another case of **Sova Shaw and others v. Partha Santra** as reported in ***2025 (2) ICC 241 (Cal)***, the Hon'ble Calcutta High Court has reiterated the fact that admissions must be clear, unambiguous and unconditional in order that such admission should relieve the opponent from the burden of proof of facts said to have been admitted. The Hon'ble Court further observed that admissions cannot be inferred or interpreted, and they must be evident from the pleadings or evidence. In the case at hand, it cannot be said that the statement of the Opposite Party in the Written Statement that in spite of all his allegations against the petitioner, he agrees that the child should remain in care of the petitioner is a clear, unambiguous and unconditional admission. On the contrary, it is found that the Opposite Party has put forward conditions regarding demand of his visitation rights in respect of the child while he remains in the custody of the petitioner while putting counter allegations against the petitioner. Even if, for the sake of argument, it is considered by this Court that the Opposite Party has admitted that the child should be given in custody of the petitioner, there is no clear admission regarding appointment of the petitioner as the guardian of the child, which is the primary prayer of the petitioner.

In the light of the above discussion, this Court is of the considered opinion that the prayer of the petitioner to pass an order in her favour on the basis of admission has no legal legs to stand upon. This Court could have considered the application of the petitioner under Order XII Rule 06 CPC to be an application under Order XXIII, Rule 03

CPC, to pass an order on the basis of compromise; but fails to do so on the ground that there has been no assertion on the part of the Opposite Party regarding the prayer of the petitioner to appoint her as the guardian of the minor along with other terms and conditions of the deemed compromise between the parties.

In the circumstances, this Court has no other option but to reject the prayer of the petitioner to pass an order on the basis of admissions made by the Opposite Party.

Hence, it is

ORDERED

that the application filed by the petitioner in terms of Order XII, Rule 06 CPC on 09-01-2025 stands **rejected**.

To **03-08-2026** for hearing of the Misc Case.

However, the parties are given the liberty to prefer a formal application under Order XXIII, Rule 03 CPC, if they so desire and the facts and circumstances of the case so require.

Dictated and Corrected By:

ADJ, 2nd Court,
Barasat (I/C).

ADJ, 2nd Court,
Barasat (I/C).