



2026:CGHC:31372-DB



CGHC010359722025



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NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

FA(MAT) No. 288 of 2025

1 - Smt. Anju Mahant D/o Sukdas Aged About 32 Years R/o Village Pandaripani
Post- Office- Bhilai Bazar Police Station Kusmunda, Tahsil- Haradi Bazar District-
Korba (C.G.)

... Appellant(s)

versus

1 - Maya Das S/o Sumran Das Aged About 38 Years R/o Ram Nagar Para, Near
Anganbadi Sarkhon Naila, District- Janjgir- Champa (C.G.)

2 - Dropati Bai W/o Shatruhan Aged About 40 Years R/o Ram Nagar Para, Near
Anganbadi Sarkhon Naila, District- Janjgir- Champa (C.G.)

3 - Minor Kunal Das S/o Mayadas Aged About 6 Years (Son) R/o Ram Nagar Para,
Near Anganbadi Sarkhon Naila, District- Janjgir- Champa (C.G.)

... Respondent(s)

For Appellant (s) : Shri Vishwanath Shriwas with Shri Parasmani
Shriwas, Advocate

For Respondent(s) : Shri Pawan Kumar Kashyap, Advocate

**DB : Hon'ble Shri Justice Parth Prateem Sahu
Hon'ble Shri Justice Sachin Singh Rajput**

Judgment on Board

Per Sachin Singh Rajput, J.

22/07/2026

The appellant has filed this appeal under Section 19 (1) of the Family Court Act, 1984 challenging the judgment and decree dated 17/04/2025 passed in Civil



MJC No.23/24 by the Additional Principal Judge, Family Court, Janjgir, District-Janjgir-Champa (CG) (for short 'Family Court').

2. **Facts** – An application under Section 6, 7 of Hindu Guardian and Wards Act, 1956 was filed by the appellant before the Family Court seeking custody of the minor son – Kunal Das, aged about 6 years. It is an admitted fact that the appellant and respondent No.1 were married in the year 2016 and out of their wedlock, their minor son Kunal Das (respondent No.3) was born, who at the time of filing of the application was aged about 6 years. It is also an admitted fact that 3 years prior to filing of the application, the appellant and respondent No.1 had dissolved their marriage by decree of divorce by mutual consent. Respondent No.1 is a driver.

3. As per the pleadings of the application, respondent No.1, after 2-3 months of the marriage used to abuse, assault the appellant and sent her to her parental house. In the meantime, she got pregnant and the minor son was born. The respondent No.1 never went to bring her back. Whenever she used to come back, she was filthily abused and assaulted by respondent No.1. Their minor son (respondent No.3) is forcibly kept by respondent No.1. As respondent No.1 is a driver, he is not in a position to take proper care of the minor son and he has been left with respondent No.2 i.e. sister of respondent No.1. Respondent No.1 has re-married and his second wife is giving step motherly treatment to the minor child and also threatening him and possibility of any untoward incident cannot be ruled out. The appellant is not allowed to meet his son and thus, she is deprived of bliss of motherhood. Thus, the application for seeking custody of the minor child was filed.

4. The respondents filed their written statement barring the admitted facts, denied the averments of the application. It was pleaded that the appellant was of free-spirited nature, she always used to quarrel with respondent No.1 and used to go to her parental house. Despite several requests, she refused to come back. Putting pressure on respondent No.1, the appellant got the decree of divorce. It has been pleaded that respondent No.1 is a driver earning Rs.500/- per day. He has taken good care of his minor son including his proper education. At the time he is out of home, his sister takes care of his minor son. The appellant has re-married with one Sureshdas Mahant and out of their wedlock she is blessed with a son. As the appellant has left the minor child and residing separately with her second husband, thus, there is possibility of step fatherly treatment with the minor child. Therefore, he prays for dismissal of the application.



5. Following issues have been framed by the learned Family Court -

Issues

1. *Whether non-applicants No.1 and 2 have failed in taking good and proper care of non-applicant No.3 – Kunal Das?*
2. *Whether the best interest of non-applicant No.3 lies in the custody of the applicant?*
3. *Relief and cost?*

6. The appellant examined 3 witnesses. Respondent No.1 examined 2 witnesses. On assessment of evidence, learned Family Court decided the issues against the appellant and dismissed the application, however, granted visiting rights to the appellant to meet the minor son on last Sunday of every month. It has also been observed that respondents shall not make any hindrance in meeting the appellant with her minor son which led to filing of this appeal.

7. Learned counsel for the appellant submits that the impugned judgment passed by the learned Family Court is bad, illegal and against the eyes of law. He further submits that the welfare of the child which is a paramount consideration is with his mother. The appellant is a driver. He does not give proper time for proper upbringing of the minor child. Thus, the impugned order deserves to be set aside. He further submits that respondent No.1 is already married and there is possibility that the second wife of respondent No.1 would give step motherly treatment to the minor child. He submits that the status of the appellant is better than respondent No.1 and therefore, proper upbringing and welfare of the minor child is with the appellant and he prays that the impugned judgment may be set aside and relief as prayed for in the application may be granted to the appellant.

8. On the other hand, learned counsel for respondents opposes the above submission and submits that learned Family Court has rightly assessed the evidence available on record and decided the issues in favour of the respondents and against the appellant. Learned counsel submits that the appellant had left the minor son 4–5 years back while he was very young and never showed any love or affection towards him. He submits that she has re-married and blessed with a son also, therefore, there is possibility of step fatherly treatment with his minor son by the second husband of the appellant. He further submits that respondent No.1 is properly providing due care and affection to the minor son including proper education and he is studying in Vinay



Vadini School, Tah.-Janjgir. Thus, he submits that the application may be rejected.

9. Heard learned counsel for the parties and perused the record.

10. Points for determination before this Court is that whether the impugned judgment and decree passed by the Family Court is justified in dismissing the application of the appellant and the impugned judgment and decree can sustain the scrutiny of this Court. The law with regard to custody of the child is no longer *res integra*. The welfare of the child is a paramount consideration which requires to be looked into while deciding the application of custody of the minor child.

11. Hon'ble Supreme Court in the case of **Nil Ratan Kundu and Another Versus Abhijit Kundu**, reported in **(2008) 9 SCC 413** has held in para 52 & 57, which are quoted below:-

“Principles governing custody of minor children

52. In our judgment, the law relating to custody of a child is fairly well-settled and it is this: in deciding a difficult and complex question as to the custody of minor, a Court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the



Court as to what is conducive to the welfare of the minor.

.....

57. In our opinion, in such cases, it is not the 'negative test' that the father is not 'unfit' or disqualified to have custody of his son/daughter that is relevant but the 'positive test' that such custody would be in the welfare of the minor which is material and it is on that basis that the Court should exercise the power to grant or refuse custody of minor in favour of father, the mother or any other guardian."

12. In the light of the above principles laid down by the Supreme Court, the facts of the case is required to be looked into. From perusal of the submission it appears that both the parties are claiming themselves to be the best person to look after the minor child and the welfare of the child is secured in their favour. The appellant and his witnesses deposed in the line of their pleadings and tried to substantiate that the welfare of the minor child is secured with the appellant whereas the witnesses of the respondents and their witnesses have also deposed in the line of reply/written statement and stated that the welfare of the child is secured with the respondents. At the time of filing of the application i.e. in the year 2024, the minor child was stated to be aged about 6 years and at present, he appears to be of 8-9 years old. Perusal of the impugned order reflects that since 1½ years, the minor son is residing with respondent No.1 and is studying in Class-I. Learned trial Court also found that respondent No.1 is taking care of the minor son, providing education to him. This is the statement which has been given by the appellant herself. On assessment of evidence, learned Family Court found that there is no material available on record that the minor child is happy and satisfied in the custody of his son and he has been given proper upbringing and education.

13. We have also interacted with the child in presence of learned counsel for the appellant. Upon interaction, the minor child showed his willingness to reside with his father. On being asked whether he has been properly treated in the house and proper attention is being given, he expressed that he has been given proper attention and proper care by his father and second wife of his father. The child has also expressed his denial to go with his mother.

14. From the facts circumstances of the case and available evidence, it is quite



vivid that the appellant has already married and blessed with a son. The minor child is being given proper treatment by the respondents. He is being given proper education also. He intends to live with his father. Thus, this Court is unable to accept the submission made by learned counsel for the appellant that the custody of the child should be given to the appellant. On assessing the balance of proper welfare of the child between the appellant and respondent No.1, this Court is of the view that the same tilts in favour of the respondents when the minor child himself is willing to live with his father. Thus, this Court does not find any illegality or irregularity in the finding so recorded by the learned Family Court. As the visiting rights have already been granted, there is no reason to interfere with the impugned order. Accordingly, the appeal *sans merit* and is hereby dismissed. Decree be drawn accordingly.

Sd/-

(Parth Prateem Sahu)
Judge

Sd/-

(Sachin Singh Rajput)
Judge