

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 1216 of 2025**

Ankur Kumar, aged about 37 years, son of Mr. Kishore Sah, resident of 1604, Shell Tower, Runwal Pearl, Behind R-Mall, Manpada, P.O. & P.S.-Manpada, Dist.-Thane, State-Maharashtra

.... Petitioner

Versus

Snigdha Kumar @ Snigdha Chourasia, daughter of Shri Ashok Chourasia, aged about 36 years, presently residing at Aamore Hotel and Resort Chanchani Colony, P.O. & P.S.-Bhelatand, Dist.-Dhanbad, premanent resident of House No. 22/23, HIG Housing Colony, Near Bus Stand, Bartand, P.O. & P.S.-Dhanbad, Dist.-Dhanbad

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner

.....
: Mr. Kashish Tiwary, Advocate

: Mr. Akhouri Awinash Kumar, Advocate

For the Opposite Party

: Mr. Sudershan Srivastava, Advocate

: Mr. Manoj Kumar No.3, Advocate

: Mr. Pratyush, Advocate

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By the Court:-

I.A. No.5924 of 2026

1. Heard the parties.
2. This interlocutory application has been filed with the prayer for early hearing of this civil miscellaneous petition.

3. Since, hearing of this civil miscellaneous petition is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

C.M.P. No. 1216 of 2025

1. Heard the parties.
2. Vide order dated 17.02.2026 in this civil miscellaneous petition notice was issued to the opposite party keeping the issue of maintainability open.
3. At the outset, the learned counsel for the opposite party submitted that the issue of maintainability be decided first before further proceeding with the case.
4. It is submitted by the learned counsel for the opposite party that since the power has been exercised vide the impugned order either under Section 7 or under Section 25 of Guardians and Wards Act, 1890 so, in view of Section 47 of Guardians and Wards Act, 1890 an appeal shall lie to the High Court from an order made by a Court under Section 7 or under Section 25 of the Act.
5. It is next submitted by the learned counsel for the opposite party that in view of the specific remedy of the appeal, it is not open for this Court to exercise the power under Article 227 of the Constitution of India and in this respect, the learned counsel for the opposite party relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Mohamed Ali vs. V. Jaya & Ors.** reported in **(2022) 10 SCC 477**, wherein, the Hon'ble Supreme

Court of India relied upon its own judgment in the case of **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai vs. Tuticorin Educational Society** reported in (2019) 9 SCC 538, wherein, it was observed and held by the Hon'ble Supreme Court of India that whenever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under CPC will deter the High Court and therefore, the High Court shall not entertain a revision under Article 227 of the Constitution of India especially in a case where a specific remedy of appeal is provided under the CPC itself and went on to hold in paragraph no.19 as under:-

"19. Applying the law laid down by this Court in the aforesaid decision to the facts of the case on hand, the High Court ought not to have entertained the revision petition under Article 227 of the Constitution of India against the ex parte judgment and decree passed by the learned trial court in view of a specific remedy of appeal as provided under the Code of Civil Procedure itself. Therefore, the High Court has committed a grave error in entertaining the revision petition under Article 227 challenging the ex parte judgment and decree passed by the learned trial court and in quashing and setting aside the same in exercise of powers under Article 227 of the Constitution of India."

6. In this respect, the learned counsel for the opposite party also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Shalini Shyam Shetty & Anr. vs. Rajendra Shankar Patil** reported in (2010) 8 SCC 329 wherein, the Hon'ble Supreme Court of India has summarized the principles on the exercise of the High Court's jurisdiction under Article 227 of the Constitution of India in paragraph no.49 of which reads as under:-

“49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

- (a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by the High Court under these two articles is also different.
- (b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of superintendence on the High Courts under Article 227 and have been discussed above.
- (c) High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of the court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.
- (d) The parameters of interference by High Courts in exercise of their power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* [AIR 1954 SC 215] and the principles in *Waryam Singh* [AIR 1954 SC 215] have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.
- (e) According to the ratio in *Waryam Singh* [AIR 1954 SC 215] , followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can interfere in order only to keep the tribunals and courts subordinate to it, “within the bounds of their authority”.
- (f) In order to ensure that law is followed by such tribunals and courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.
- (g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of the tribunals and courts subordinate to it or where there has been a gross and manifest failure of justice or

- the basic principles of natural justice have been flouted.*
- (h) *In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.*
 - (i) *The High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] and therefore abridgment by a constitutional amendment is also very doubtful.*
 - (j) *It may be true that a statutory amendment of a rather cognate provision, like Section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.*
 - (k) *The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.*
 - (l) *On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.*
 - (m) *The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.*
 - (n) *This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be*

directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

- (o) *An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality.*

7. Learned counsel for the opposite party next relied upon the judgment of a Full Bench of Delhi High Court in the case of **Dr. Geetanjali Aggarwal vs. Dr. Manoj Aggrawal** reported in **(2024) 4 High Court Cases (Del) 451**, wherein, the Full Bench was constituted to consider whether an order under Section 12 of the Guardians and Wards Act passed during the pendency of proceedings before the Family Court would be an interlocutory order and would consequently, not be appealable under Section 19(1) of the Family Courts Act, 1984 (hereinafter referred to as “FC Act”). The Full Bench of the Delhi High Court considered that since the provisions of the Family Court Act has an overriding effect over and above the other statutes including the Guardians and Wards Act, 1890 and the word interlocutory order has not been defined anywhere in the Family Court Act and also taking into consideration that Section 20 of the Guardians and Wards Act, 1890 (hereinafter referred to as “GW Act”) not only impact the rights of the parties, but also have a huge impact on the minor child and further such orders can be passed by the Family Court only after examining the merits of the rival submissions of the

parties and are, therefore, necessarily adjudicatory in nature and also considering the fact that the impact of the orders passed under Section 12 of the GW Act can have on the parties as also on the minor child; went on to hold that FC Act cannot be controlled by the provisions of GW Act, accordingly the description of an order as an interlocutory order under section 12 of the GW Act, cannot, be a ground to treat the said order as an interlocutory order for the purposes of the FC Act. In that case, the Delhi High Court also relied upon the observation made by the Hon'ble Supreme Court of India in the case of **Amar Nath vs. State of Haryana** reported in (1977) 4 SCC 137, in paragraph no.6, which is to the effect that interlocutory orders merely denotes orders of a purely interim or temporary nature, which do not decide or touch the important rights or the liabilities of the parties and went on to hold that merely because the order despite affecting the vital rights of the parties, is labelled as an interlocutory order under a particular statute, cannot imply that the same must always be treated as an interlocutory order and went to purposively interpret Section 19 of the FC Act to include within its ambit all those orders which touch upon matters of moment and have trappings of finality and thus, went on to hold that earlier decision of the Delhi High Court in the case of **Ramesh Pal Singh vs. Sugandhi Aggarwal** reported in (2019) SCC OnLine Del 12380 wherein, it was held that the order passed under Section 12 of GW Act would not be appealable under Section 19 of FC Act, does not

laid down correct law and answered the reference by holding that orders passed under Section 12 of GW Act would be appealable under Section 19 of FC Act.

8. Learned counsel for the opposite party drawing attention of this Court to voluminous petitions of interlocutory application upon which the order was passed and the original interlocutory application is about 40 pages consisting of chronological 79 paragraphs and as the petition has become so voluminous, that the chronology of the paragraphs could not be maintained thereafter by the petitioner and after paragraph no.79 again, the paragraph no. 4 starts and it went up to paragraph no. 9 and the said voluminous petition was further supplemented by filing application of the petitioner for additional interim relief which again goes to 27 pages consisting of 27 paragraphs and numerous sub paragraphs and adjudication of such a nature cannot be termed as an interlocutory order. It is further submitted that once it is held that the impugned order is not an interlocutory order, this application urging upon this Court to exercise the power under Article 227 of the Constitution of India is not maintainable more so in view of this specific remedy of appeal provided under Section 47 (a) and (c) of the GW Act. Hence, it is submitted that it be held that this petition is not maintainable.
9. The said contention of the opposite party is countered by the learned counsel for the petitioner. Learned counsel for the petitioner relied upon the judgment of the Division Bench of

Gujarat High Court in F.A. No. 3311 of 2023 dated 06.09.2023 in the case of **Rajan Ankleshwaria vs. Vinni Ankleshwaria** wherein, in the facts of that case in a petition seeking interim and temporary injunction filed invoking the jurisdiction of the Family Court under Section 7, 17 and 25 of the GW Act, Section 13 of the Hindu Minority and Guardianship Act read with Section 7 of the Family Court Act as well as under Order XXXIX of Code of Civil Procedure; the Family Court on 04.07.2023 passed order allowing the application in part holding that applicant-father shall have visitation rights every Sunday of each calendar month for four hours and the opponent-mother shall handover the custody of the minor son to the applicant-father during visiting hours and the applicant shall return the custody of the minor son to the opponent-mother after completion of visiting hours. The Gujarat High Court formulated the issue that whether the said order dated 04.07.2023 is to be construed as interlocutory or interim order and whether the same is amenable to Section 96 of Code of Civil Procedure or Section 19 of the Family Court Act to prefer First Appeal.

10. The Gujarat High Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **V.C. Shukla vs State** reported in **AIR 1980 (SC) 962** as well as the judgment of the Hon'ble Supreme Court of India in the case of **Madhu Limaye vs. State of Maharashtra** reported in **(1977) 4 SCC 551** as also the judgment of the Hon'ble Supreme Court of India in the case of

Honnaiah T.H. vs. State of Karnataka & Ors. reported in **2022 LiveLaw (SC) 672** and went on to hold that so long as the relief of seeking return of the child is not finally decided by virtue of impugned order, the same cannot be said to be an interim order, but is merely an interlocutory order; since the said impugned order has neither finally decided the right of the applicant about custody nor terminating the main application and since that be the situation, it is not possible to construe the impugned order as not an interlocutory order. The Gujarat High Court has also referred to the judgment of Delhi High Court in the case of **Ramesh Pal Singh vs. Sugandhi Aggarwal** (supra) as by that time the judgment of larger Bench i.e. the Full Bench had not come and went on to hold that first appeal is not maintainable and dismissed the first appeal.

11. It is submitted by the learned counsel for the petitioner that since the main application filed under GW Act has not been pronounced so, all the orders till such final order is passed is to be treated as interlocutory order; therefore, it is submitted that the impugned order being the interlocutory order, this application urging upon this Court to exercise its jurisdiction under Article 227 of the Constitution of India is maintainable. Hence, it is submitted that the order be passed on the merits of the petition.
12. On being asked by this Court to the learned counsel for the petitioner as to under which provision of law the impugned order

has been passed, the learned counsel for the petitioner candidly submits that it is an order passed under Section 25 of GW Act.

13. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that the word 'Court' has been defined in Section 4(5) of GW Act which reads as under:-

Definitions.—*In this Act, unless there is something repugnant in the subject or context, –*

(5) "the Court" means –

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application –

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under Section 4-A, the Court of the officer to whom such proceeding has been transferred;

14. Section 7 of FC Act confers the jurisdiction upon the Family Court to have and exercise all jurisdictions exercisable by any District Court or any civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the explanation and clause (g) of the explanation refers to the statute in relation to guardianship of a person or the custody of, or access to, any minor.

15. So, in the considered opinion of this Court after enactment of FC Act, the provisions of FC Act is to be read in conjunction with the provisions of the GW Act.
16. Section 47 of Guardians and Wards Act, 1890 which reads as under :-

“47. Orders appealable. – An appeal shall lie to the High Court from an order made by a 29[* *] Court, –*
(a) under Section 7, appointing or declaring or refusing to appoint or declare a guardian; or
(b) xxxxx
(c) under Section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or
Xxxxx

has in no uncertain manner has defined the orders appealable and provides that the appeal shall lie to the High Court from the order made by a Court under Section 25 making or refusing to make an order for the return of a ward to the custody of his guardian.

17. The undisputed fact remains that the impugned order is an order as has been referred to under Section 47 of the GW Act. It has fairly been submitted by the learned counsel for the petitioner that the said order is an order passed under Section 25 of GW Act. Under such express provision under Section 47 of GW Act, this Court has no hesitation in holding that the impugned order is an appealable order hence, an appeal shall lie. So, once, this Court holds that an appeal will lie in view of the judgment of Hon'ble Supreme Court of India in the case of **Mohamed Ali vs. V. Jaya & Ors.** (supra), this Court has no hesitation in holding that an

application for exercise of the power under Article 227 of the Constitution of India is not maintainable.

18. Accordingly, this civil miscellaneous petition is dismissed being not maintainable.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 4th May, 2026
AFR/Gunjan/-

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