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2026 INSC 1260

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(ARISING OUT OF SLP (CIVIL) NO. 30284 OF 2024)

[redacted] **…APPELLANT**

VERSUS

[redacted] **… RESPONDENT**

J U D G M E N T

APARESH KUMAR SINGH, J.

Leave granted.

2. The custody of two minor sons, now aged 16 and 14 years has been granted by the Family Court, Madurai in favor of the respondent-father under the Guardians and Wards Act,1890 *(hereinafter "**the Act**")* in Case No. G.W.O.P. No.36 of 2015 vide judgment dated 19.11.2018 by the Family Court, Madurai and affirmed by the High Court in C.M.A. (MD) No.17 of 2019 vide impugned judgment. Aggrieved thereby the mother has preferred the instant appeal.

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3. The issue before this Court, in the facts and circumstances of the case, is whether the custody of the children who have lived continuously with their mother since 05.05.2014, be transferred to the father who is a natural guardian and against whom no disqualification has been established before the Family Court and the High Court?

4. Both the parties are Christians, whose marriage was performed on 23.08.2009 at Our Lady of Fatima Church, Gandhipuram, Coimbatore. Both Sons were born in Madurai, the maternal home of the appellant on 10.07.2010 and 26.05.2012.

5. Marital dispute led to institution of 4 cases. The divorce case instituted by the respondent being I.D.O.P. No.86/2014 was decreed by dissolution of marriage on the grounds of cruelty and has attained finality as the appellant-wife did not appeal against the judgment dated 19.11.2018 by the Family Court.

6. On the same date the maintenance case being M.C. No.100/2014 instituted by the appellant was allowed with a direction to the respondent to pay Rs. 6,000/- per month for each child.

7. The custody matter being G.W.O.P. No.36 of 2015 was allowed in favor of the respondent-father by directing the appellant to hand over the children to the respondent after that year's final school examinations, with visitation rights

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to the father during Pongal and half-yearly vacations and on the second Saturday and Sunday of every month at the Gandhi Museum, Madurai, reciprocal visitation to the appellant thereafter.

8. All the three judgments were delivered separately on the same date by the same Family Court on 19.11.2018.

9. The appellant had lodged a complaint under Section 498-A, 294(b) and 506 of Indian Penal Code, 1860 *(for short "IPC")* against the respondent and six members of his family. The offences under Section 294 and 506 of the IPC were dropped by the High Court against accused Nos. 1 to 5 and 7 and the case against accused No. 6 stood abated on account of her death during trial in Crl.O.P. No. 17164 of 2016, by the judgment dated 10.12.2019.

10. Accused Nos. 1 to 5 and 7 were acquitted vide judgment dated 22.03.2022 passed in C.C. No. 22 of 2016 of the charges under Section 498-A by the Ld. Judicial Magistrate, Additional Mahila Court, Madurai.

11. The appellant herein preferred appeal before the High Court being C.M.A. (MD) No. 17 of 2019 against the judgment of the Family Court granting custody in favor of the respondent-father. The appeal was admitted on 09.01.2019 and status quo was directed, preserving the visitation rights of the respondent-father at Gandhi Museum, Madurai.

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12. By the impugned judgment, the High Court upheld the judgment of the Family Court granting custody in favor of the father on the grounds that there was no material to support the allegations that the respondent was a mentally retarded person.

13. The respondent had argued that he had suffered depression on account of mental torture inflicted by the appellant during subsistence of the marriage, for which he took treatment. His final capacity was not in dispute. He, being the biological father was a natural guardian who could not be disqualified unless he was shown to have acted against the children's interest.

14. The High Court also recorded that even after the order of the Family Court and despite the interim order passed by the High Court, she has not permitted the respondent to see the minor children.

15. It is also pertinent to mention that the challenge to the maintenance order by the respondent in Crl.R.C. (MD) No.26 of 2019 was dismissed by the High Court taking into note that he had admitted earning nearly Rs. 1 lakh per month from his father's business.

16. This Court, vide order dated 24.01.2025, while issuing notice on the Special Leave Petition preferred by the appellant-mother granted interim stay of the impugned judgment. The respondent appeared and filed I.A. No.225338 of 2026,

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seeking vacation of the stay and alleged that the visitation rights granted to him were being denied.

17. Upon directions of this Court, the appellant along with both the children as well as the respondent appeared before this Court. Their views and preferences were ascertained.

18. During the interaction with the parties, this Court observed that mother holds a master's degree in food and nutrition and is currently pursuing a Ph.D. She has been working with Abbott India for the past three years in the sales department in the Madurai region.

19. According to her, the respondent is engaged in the automobiles business and runs a mechanic workshop of his own. He is also involved in a financing business, including lending money on interest. He resides in Coimbatore, whereas the appellant-mother, along with her children and her parents, reside in Madurai. It was only after their marriage that she found out that the respondent had studied up to class 8, as against his representation before marriage that he possessed the qualification of bachelor's in business administration. She also stated that it was an arranged marriage. She stated that the parties separated in the year 2014.

20. The respondent also admitted during interaction that the parties have been living in separation since 2014 and the appellant has not permitted him to meet

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the children. He also stated that he has completed education up to Class 10 and thereafter joined his father's business dealing in imported motorcycles. He earns approximately Rs. 1.5 lakhs per month and has a work strength of 20 employees in his business which includes automobile and construction-related activities.

21. When asked whether he had contributed towards their education, he stated that the mother had never permitted him to do so. He further expressed his willingness to support the children in higher education.

22. Interactions were held with both the children aged 16 and 14 years without the presence of both the parents. They were comfortable during the interaction. They disclosed their names, age and the class in which they were studying. On being asked, they stated that they had met their father approximately four to five times. They clearly expressed their inclination to reside with their mother. They also stated that they live with their maternal grandparents, who stay along with their mother. They further stated that during their childhood, they had lived with their father for only about two years. On being asked, the children stated that the respondent does not send them gifts on festivals and other occasions, although he wished them on their birthdays. They denied being on regular telephonic contact with him. Both the minor sons appeared to be grown up and

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confident in their answers. They expressed their unwillingness to live with their father.

23. This Court observed that the appellant-mother has been able to singularly support the upbringing and education of the two minor sons since the parties have been residing separately. Both the children are studying in good schools. The appellant was not inclined to take any assistance from the respondent-father towards the upbringing of the two children, though the respondent appeared to be ready and willing to extend the financial support for their future education and upkeep.

24. This Court also felt that the respondent had complaints about not being permitted to have the company of his sons for all these years despite having succeeded before the Family Court as well as the High Court.

25. The attendant facts and circumstances which are borne out from the pleadings on record and observed during the interaction with the parties and the two minor sons born out of their wedlock indicate that both the minor children are healthy and in a normal state of mind, having been brought up by the appellant-mother with all the material support.

26. The respondent stays with his father and has enough means from his business to support his children. The welfare of the minor is the paramount

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consideration before the Court while appointing the guardian. While doing so the Court has to keep regard to the age, sex and religion of the minor and the character and capacity of the proposed guardian. If the minor is old enough to form an intelligent preference the Court may consider that preference under Section 17 (3) of the Act. It is well settled that the Court should be guided by the sole consideration of the welfare of the minor. The welfare of the minor depends upon the facts and circumstances of each case. Father is the natural guardian of the minor, and so is the mother, as per the amended Section 19(b) of the Act. The rule that a father should get custody of a child is always subject to exceptions and not universally applicable. In the claim of custody between the mother and father, the Court can deny him custody if he is found to be unfit. In the absence of the mother too, the father can be denied custody if the welfare lies either with the grandparents or other relatives of the child.

27. The object and purpose of the Act is not merely physical custody of the minor, but due protection of the right of the ward's health, maintenance and education. When the Court is confronted with conflicting demands made by the parents, it has not only to look at the issue on a legalistic basis. In such matters human factors are also relevant for deciding the issues. It is often said that children are not mere chattels, nor are they toys for their parents.

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28. The parties have been living separately since the year 2014. Their marriage stood dissolved in the year 2018. Despite the orders granting custody in favor of the respondent-father, the children have remained in custody of the appellant-mother all along. The upbringing of the minor by the mother, even after divorce, on her own does not appear to suffer from lack of adequate love and care. She has been taking care of the studies of the children by providing quality education in good schools. The children have developed a strong emotional bond with their mother, having remained with her since their birth. During the interaction with this court, the children appear to be mature enough to express their preferences. They have consciously expressed their willingness in favor of living with their mother. In such a case the rights of the respondent-father, who is also a natural guardian, are to be weighed vis-à-vis the welfare of the child.

29. What would best serve the welfare and interest of the child is the sole and predominant criterion while exercising the power vested in the Court under Section 17 of the Act.

30. The removal of the minor children from the custody of the mother in such a case might upset the natural environment in which the children have grown up in the company of their mother and maternal grandparents, though the appellant-

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mother has not been able to establish that the respondent-father suffers from any disentitling factors towards custody of the minor children.

31. The question is whether it be proper to direct the appellant to hand over the custody of the minor children to the respondent is to be decided by not merely considering the legal rights of the parties, but also on the predominant criterion of what would best serve the interest and welfare of the child.

32. This Court in ***"Anjali Kapoor (SMT) Vs. Rajiv Baijal (2009) 7 SCC 322"*** this Court allowed the custody of the child to remain with the grandmother with whom she had remained for a long time and was growing up well in an atmosphere conducive to its growth. This Court felt that it may not be proper at that stage for diverting the environment to which the child is used to. Therefore, it was felt desirable to allow the grandmother to retain custody of the child.

33. The principles underlying such consideration rendered by this Court in ***Anjali Kapoor (supra)*** are extracted hereinunder:

> *"15. Under the Guardians and Wards Act, 1890, the father is the guardian of the minor child until he is found unfit to be the guardian of the minor female child. In deciding such questions, the welfare of the minor child is the paramount consideration and such a question cannot be decided merely based upon the rights of the parties under the law. [See Sumedha Nagpal v. State of Delhi (SCC p. 747, paras 2 & 5).]*
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> *16. In Rosy Jacob v. Jacob A. Chakramakkal this Court has observed that: (SCC p. 847, para 7)*

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> *"7. ... the principle on which the court should decide the fitness of the guardian mainly depends on two factors: (i) the father's fitness or otherwise to be the guardian, and (ii) the interests of the minors."*

This Court considering the welfare of the child also stated that: (SCC p. 855, para 15)

> *"15. The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society...."*

17. *In Elizabeth Dinshaw v. Arvand M. Dinshaw[3] this Court has observed that whenever a question arises before court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child.*

19. *In McGrath (infants), Re it was observed that; (Ch p. 148)*

> *"...The dominant matter for the consideration of the court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded."*

20. *In American Jurisprudence, 2nd Edn., Vol. 39, it is stated that:*

> *"... An application by a parent, through the medium of a habeas corpus proceeding, for custody of a child is addressed to the discretion of the court, and custody may be withheld from the parent where it is made clearly to appear that by reason of unfitness for the trust or of other sufficient causes the permanent interests of the child would be sacrificed by a change of custody. In determining whether it will be for the best interest of a child to award its custody to the father or mother, the court may properly consult the child, if it has sufficient judgment."*

21. *In Walker v. Walker & Harrison the New Zealand Court (cited by British Law Commission, Working Paper No. 96) stated that:*

> *"Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a*

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> *pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place, they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents."*

34. In the facts and circumstances of the case, we are of the considered opinion that the children should not be separated from their mother with whom they have developed a strong natural bond over the years keeping into account the predominant criterion of paramount consideration of the welfare of the child. The children are also mature enough to convey their preferences in favor of their mother. Removing their custody at this stage from the environment in which they have lived with their mother and grandparents would not be conducive to their mental and physical well-being and their education despite the fact that the respondent has not been found unfit for having their custody. Having said so, we also feel that the children ought not be denied the love and affection of the respondent-father, which is also essential to their proper and balanced growth. The respondent has shown sincere willingness to support the children in their upbringing and career, though the mother has been able to adequately take care of their upbringing and education.

35. The respondent-father also deserves the company of his children who are the victims of a fractured marriage. The High Court had preserved the visitation rights to the respondent-father at the Gandhi Museum, Madurai, while admitting

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the appeal. Though, he was able to meet them only four to five times in the last 10 to 12 years. Therefore, taking a comprehensive view of the matter keeping the paramount welfare of the children under consideration, we are of the view that the custody of the minor children presently with the mother should not be disturbed. At the same time since the minor children require love and affection of both parents as a matter of basic human right, we deem it proper to confer visitation rights in favor of the respondents to be exercised at regular intervals in the following manners:

i. The respondent-father shall be permitted to meet the children on the second Saturday and Sunday of every month as directed by the Family Court, at the Gandhi Museum, Madurai between 10:00 am to 02:00 pm.

ii. The appellant-mother would facilitate the exercise of visitation on such date and time as directed hereinabove.

iii. The respondent-father would also be allowed to meet the children during Pongal and half-yearly vacations, either at the place of stay of the appellant or at the Gandhi Museum, Madurai during the same timings with prior intimation by the respondent to the appellant through telephone or WhatsApp Messages.

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iv. The respondent-father should be ready and willing to share the future educational expenses of the children, if asked for by the appellant-mother.

36. The arrangements made hereinabove is with the purpose and object to ensure that the children develop an emotional attachment with their father also in their life and the respondent-father also derives a sense of comfort and fulfillment towards his children with the hope that the children grow up as mature and balanced individuals.

37. In view of the reasons recorded hereinabove and, in the facts and circumstances of the case, the impugned judgment is set aside.

38. The appeal stands allowed in the manner indicated hereinabove.

39. Pending application(s), if any, shall stand disposed of.

..... J.
[VIKRAM NATH]

..... J.
[APARESH KUMAR SINGH]

NEW DELHI
NOVEMBER 23, 2026