2025:DHC:10117-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Judgment reserved on: 28.10.2025***

***Judgment pronounced on: 18.11.2025***

\+ MAT.APP.(F.C.) 255/2024, CM APPL. 46006/2024, CM APPL. 60829/2024, CM APPL. 70567/2024, CM APPL. 47323/2025 & CM APPL. 47324/2025

[redacted] .....Appellant

Through: Ms. Malavika Rajkotia, Mr. Mayank Grover and Ms. Sara Singh, Advocates with Appellant in person.

versus

[redacted] .....Respondent

Through: Mr. Prashant Mendiratta, Ms. Neha Jain, Ms. Vidhi Bangia, Ms. Sneha Mathew, Ms. Avni Soni, Ms. Aamya and Ms. Vaishnavi Saxena, Advocates with Respondent in person

**CORAM:**
**HON'BLE MR. JUSTICE ANIL KSHETARPAL**
**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR**

**J U D G M E N T**

**ANIL KSHETARPAL, J.**

1. The issue which arises for consideration in the present Appeal is whether the interim custody and visitation arrangements in respect of the parties' two minor children, as directed by the Family Court, stand vitiated by failure to apply the paramount welfare test, or by material omission to record and properly weigh the wishes of the

children, so as to require appellate interference under Section 19 of the Family Courts Act, 1984 [hereinafter referred to as "FC Act"].

2. The present Appeal assails the correctness of order dated 07.08.2024 [hereinafter referred to as "Impugned Order"] passed by the learned Family Court, whereby interim custody of the two minor children of the parties was directed to be with the Respondent-mother, subject to conditions contained therein, while granting defined visitation rights to the Appellant-father.

## FACTUAL MATRIX

3. The brief facts leading to the filing of the present Appeal, as pleaded, are that the marriage between the parties was solemnized on 03.03.2009 in accordance with Hindu rites and ceremonies. Out of the said wedlock, two children were born namely [redacted] born on 17.07.2010, an[redacted]orn on 11.08.2016. The parties resided together at the matrimonial home situated at A-20, Ansal Villa, Sat Bari, Chhattarpur, New Delhi, along with the paternal grandparents of the children. Marital discord surfaced between the parties around the year 2023, leading to the filing of a petition under Section 13(1)(i) and (ia) of the Hindu Marriage Act, 1955, by the Appellant before the Family Court at Saket, seeking dissolution of marriage.

4. Along with the divorce petition, the Appellant moved multiple interlocutory applications under Sections 26 and 151 of the Code of Civil Procedure, 1908, and under Section 7 of the FC Act, seeking directions for interim custody of the children, regulation of visitation

and also a direction to the Respondent to shift to alternate accommodation. Parallelly, the Respondent filed her own applications under Section 26 of the Hindu Marriage Act, 1955, seeking interim custody of both children and vacating of earlier interim directions restricting her visitation.

5. During the pendency of these proceedings, and prior to adjudication of the rival applications, the Appellant shifted from the matrimonial home to another apartment bearing Flat No.14A, Tower-24, Belgravia, Central Park-2, Sector 48, Gurugram, taking both children along with him. The Respondent alleged that this act was unilateral, motivated, and intended to alienate the children from her company, whereas the Appellant asserted that the same was necessitated due to ongoing tension at the matrimonial home.

6. On 18.03.2024, the Family Court interacted with both children in chambers to ascertain their wishes. Meanwhile, as an interim arrangement for the forthcoming festival of Holi, the Family Court *vide* order dated 21.03.2024 permitted the Respondent to have overnight visitation with the children on 24.03.2024 and 31.03.2024. It is an admitted position that this arrangement was not implemented, as the Appellant took the children abroad to Dubai on 23.03.2024 without prior permission of the Court, an act which was noted adversely in the order dated 09.04.2024 passed by this Court in connected proceedings.

7. Subsequently, after hearing extensive submissions from both sides, the Family Court, by its detailed order dated 07.08.2024,

directed that the interim custody of both children be handed over to the Respondent, subject to structured visitation rights in favour of the Appellant. The said order further vacated earlier restrictions on the Respondent's access to the children's school or residence. The Family Court reasoned that both children had, since birth, resided with both parents jointly at the matrimonial home; that no credible material was shown to suggest that the Respondent was unfit; and that the daughter, being at an impressionable teenage stage, and the son, being of tender years, both required maternal care.

8. Aggrieved thereby, the Appellant has preferred the present Appeal seeking setting aside of the Impugned Order and restoration of custody to him.

**PROCEEDINGS BEFORE THIS COURT**

9. During the pendency of the Appeal, various interlocutory applications were moved by both parties concerning visitation and interaction arrangements. The Court, at different stages, interacted with the children in chambers and through mediation, endeavouring to ensure that the interim custody regime subserved the best interests of the minors while maintaining meaningful contact with both parents.

10. Notice in the present Appeal was issued on 12.08.2024. Thereafter, by order dated 12.09.2024, this Court modified the arrangement directed by the Family Court. It was ordered that the children shall be with the Respondent from Friday 5:00 P.M. to Sunday 5:00 P.M. every week, while continuing to reside with the Appellant for the remaining period.

11. On 23.10.2024, this Court considered the Appellant's application seeking modification of visitation schedule. The parties mutually agreed upon a temporary variation for the Diwali weekend, while continuing the arrangement otherwise.

12. Subsequently, by order dated 16.05.2025, this Court recorded that the daughter had expressed her preference to stay with the Respondent. The interim order dated 12.09.2024 was accordingly modified to that limited extent, permitting the daughter to reside with the Respondent, while the son continued to stay with the Appellant.

13. On 13.08.2025, this Court noted that the daughter had voluntarily continued to live with the Respondent, while the son remained with the Appellant at Gurugram. Having interacted with both children individually and jointly, the Court observed that the daughter appeared mature and articulate and desired to continue living with the Respondent, whereas the son, being of tender age, displayed reluctance to interact either with his sister or the Respondent.

14. The Appeal has thereafter been heard finally on merits, upon comprehensive consideration of the record of the Family Court and of the subsequent developments recorded in the aforesaid orders, with particular emphasis on the paramount consideration of the welfare of both minor children.

## 15. SUBMISSIONS ON BEHALF OF THE APPELLANT

15.1 Learned counsel for the Appellant assails the Impugned Order primarily on the ground that the Family Court failed to apply the

settled principle that, in custody matters, the paramount consideration is the welfare of the children, and not the legal rights of the parents. It is urged that such welfare ought to be assessed holistically in light of the parents' conduct, stability, and the overall environment available to the minors.

15.2 It is submitted that the Appellant has been the primary caregiver for both children since the second half of 2023, when he shifted to Gurugram along with them owing to constant discord at the matrimonial home. Both minors have since been admitted to reputed schools in Gurugram, are well settled academically and socially, and have been under the care and supervision of the Appellant and their paternal grandparents.

15.3 Learned counsel submits that the Family Court erred in directing a sudden transfer of custody of both minors to the Respondent, without ensuring a gradual or psychologically safe transition. It is urged that such abrupt interference disrupted the children's settled routine and was contrary to judicial precedents that discourage disturbance of an existing stable custody arrangement unless compelling reasons of welfare are demonstrated.

15.4 The Appellant has placed on record material to show the Respondent's alleged extra-marital relationships with certain individuals. It is contended that these communications, supported by screenshots and chat transcripts forming part of the record, demonstrate conduct unbecoming of a parent and overall suitability to be entrusted with day-to-day custody of two impressionable minors.

15.5 It is further submitted that the Family Court failed to properly appreciate contemporaneous electronic communications, including WhatsApp and text messages exchanged between the Respondent and the Appellant, as well as between the Respondent and the elder child, which, according to the Appellant, reveal instances of erratic and insensitive behaviour towards both children. It is urged that these materials were ignored while assessing the Respondent's ability to provide emotional stability and consistent care.

15.6 Learned counsel also contends that during the pendency of the present Appeal, the Respondent has systematically attempted to influence and alienate the daughter from the Appellant and his family. Despite earlier orders recognising that both children were comfortable in the father's care, the Respondent, through persistent emotional pressure and inducement, has succeeded in persuading the daughter to shift residence to her. It is urged that such development, though recorded in interim proceedings, cannot be construed as a voluntary or mature choice by the child, particularly when the same appears to be the result of sustained manipulation by the Respondent.

15.7 It is further argued that the Respondent's conduct during the proceedings has been inconsistent and detrimental to the children's emotional wellbeing. She is alleged to have involved the children in parties' matrimonial disputes by making disparaging remarks against the Appellant and his parents, thereby aggravating alienation. The Respondent has also initiated multiple criminal and domestic violence proceedings against the Appellant and his family members, aggravating hostility and rendering cooperative co-parenting

unfeasible.

## 16. SUBMISSIONS ON BEHALF OF THE RESPONDENT

16.1 *Per contra*, learned counsel for the Respondent submits that the Impugned Order is well-reasoned and balanced determination rendered after careful consideration of the welfare of both minor children. It is urged that the Family Court correctly applied the settled principle that the welfare and best interest of the child is the paramount consideration, and that the Respondent, being the natural mother, is best suited to provide emotional security, stability, and day-to-day care to the minors.

16.2 It is submitted that since birth, both children had resided at the matrimonial home under the joint care of both parents, and that the Respondent had been the primary caregiver, attending to their daily routines, schooling, and emotional needs. The sudden removal of both children by the Appellant to Gurugram, without her consent and in defiance of pending proceedings, was an act calculated to deprive the Respondent of access and to create a fait accompli before the Family Court.

16.3 Learned counsel further submits that the Family Court's reasoning, particularly its finding that there existed no credible material to suggest that the Respondent was unfit to have custody, remains unassailable. The allegations of extra-marital relationships, it is urged, are wholly unsubstantiated, speculative, and intended only to malign the Respondent's character. It is contended that even assuming such allegations arguendo, they bear no direct nexus with the welfare

of the children, who have consistently enjoyed the Respondent's love, care, and affection.

16.4 It is emphasised that the Family Court had the opportunity to interact with both minors in chambers, and found that both children were comfortable in the presence of the Respondent. The elder child, in particular, expressed a clear preference to reside with the Respondent, which has since been consistently reiterated before this Court during multiple interactions. It is submitted that such expression of preference is genuine, voluntary, and founded upon the child's sense of emotional security and comfort in her mother's company.

16.5 Learned counsel also points out that the Respondent has never obstructed the Appellant's visitation rights, and that, on the contrary, it was the Appellant who violated the Court's directions by taking the children abroad to Dubai in March 2024 without prior permission. The Respondent has, at all stages, cooperated with the Court's efforts and abided by interim arrangements framed from time to time.

16.6 It is contended that the Appellant's allegations of "manipulation" and "alienation" are misconceived and intended to deflect from his own unilateral conduct. The Respondent submits that the elder child's present residence with her mother is a product of her own free volition, as recorded by this Court in orders dated 16.05.2025 and 13.08.2025, and not of any inducement. The Respondent further asserts that the younger child continues to reside with the Appellant only because of his tender age, and not on account of any judicial finding adverse to her suitability.

16.7 It is submitted that the Respondent has demonstrated stability, sensitivity, and maturity throughout the proceedings, continuing to prioritise the children's welfare despite the pendency of contentious matrimonial litigation. The environment at her residence is described as calm, affectionate, and conducive to the children's education and psychological development, as contrasted with the strained atmosphere at the appellant's home, where the children are allegedly exposed to hostility towards their mother.

## ANALYSIS & FINDINGS

17. This Court has considered the submissions advanced by learned counsel for the parties and perused the record of the Family Court proceedings as well as subsequent developments recorded in orders passed during the pendency of the present Appeal. The matter concerns the custody of two minor children, and therefore, the Court proceeds in the exercise of its *parens patriae* jurisdiction, keeping foremost in view the paramount consideration of their welfare.

18. It is well settled that in custody disputes, the welfare of the minor child is the controlling and overriding consideration, transcending the legal rights of either parent. The statutory framework embodied in Section 17 of the Guardians & Wards Act, 1890, and Section 13 of the Hindu Minority and Guardianship Act, 1956 makes it explicit that all questions relating to custody must be decided on the touchstone of what best serves the child's welfare - physical, emotional, moral, and intellectual. While the financial stability or affluence of a parent may constitute one relevant factor, it can never,

by itself, outweigh the emotional security, sense of belonging, and continuity of care that underpins a child's holistic well-being.

19. In the case of ***Rosy Jacob vs Jacob A. Chakramakkal***[1], the Supreme Court underscored that the object of the Guardianship law is not confined to determining mere physical custody but extends to securing the overall welfare of the minor, including the child's health, maintenance, education, and moral development. The Court cautioned that children are not mere chattels or playthings in the hands of parents, and that the absolute rights of parents must yield to the paramount consideration of the child's well-being. The principle of *parens patriae* is central to this approach - the Court acts not as an umpire between warring parents, but as a guardian concerned solely with the child's holistic welfare. The Family Court's approach in the present case aligns with this settled principle, insofar as it gives precedence to the emotional and psychological stability of the child over competing parental claims.

20. This Court now proceeds to examine, seriatim, the principal grounds urged by the learned counsel for the Appellant as recorded in paragraph 15 of this judgment.

20.1 Failure to apply the welfare principle – The contention that the Family Court failed to apply the settled welfare test is devoid of merit. A perusal of the Impugned Order reveals detailed reference to Section 17 of the Guardians and Wards Act, 1890 and to binding precedents emphasising that the welfare of the children is the paramount

[1] (1973) 1 SCC 840

consideration. The Family Court's approach was neither mechanical nor perfunctory; it carefully assessed both parents' conduct, stability, and caregiving capacity before concluding that the children's welfare would be better served under the Respondent's custody.

20.2 Appellant as primary caregiver since 2023 – It is not disputed that the Appellant had temporary physical custody of the children after shifting with them to Gurugram in the latter half of 2023. However, that custody was unilaterally assumed following domestic discord, when the parties and the minors had till then been residing together in the matrimonial home. Such self-created, exclusive custody cannot eclipse the Respondent's long-standing role as the children's primary caregiver. The Family Court rightly held that a brief, unilateral arrangement could not vest the Appellant with any presumptive right to continue custody.

20.3 Alleged abrupt transfer of custody – The submission that the Family Court ordered a sudden transfer of custody is misconceived. On the contrary, the record demonstrates that it was the Appellant who abruptly moved out of the matrimonial home and relocated with the minor children to Gurugram, thereby disturbing the *status quo*. The Family Court merely restored custody to the Respondent, who had been the natural and primary caregiver until that unilateral relocation. Its directions were preceded by multiple chamber interactions with the children and calibrated visitation arrangements to ensure a gradual and psychologically safe transition. The daughter's subsequent decision to continue residing with the Respondent reinforces that the transition was neither abrupt nor distressing, but aligned with the children's

comfort and welfare.

20.4 Allegations of extra-marital relationships – The Appellant has levelled allegations of extra-marital relationships of the Respondent with certain individuals. These allegations remain unsubstantiated. The Family Court found no admissible or credible evidence to support them, and the Appellant has, even at this stage, failed to establish any such conduct. In any event, absent proof that the alleged behaviour has adversely impacted the minor children, this Court cannot proceed on conjecture. Custody adjudication cannot turn on unproven imputations of moral conduct.

20.5 Electronic chats and alleged erratic behaviour – The Appellant's reliance upon screenshots of WhatsApp chats and text messages exchanged between the parties, and between the Respondent and the elder child, has also been considered. These materials, at best, constitute disputed evidence whose veracity and context can only be tested at trial. At the interim stage, this Court is neither required nor equipped to enter upon a detailed evidentiary analysis. Suffice it to observe that the Family Court examined the record and found no material establishing any pattern of behaviour detrimental to the children's welfare.

20.6 Alleged influence and alienation of the daughter – The allegation that the Respondent has influenced or alienated the daughter also lacks merit. It is a matter of record that the Appellant had taken both the minor children with him to Gurugram; yet, during the pendency of these proceedings, the daughter voluntarily returned

to the Respondent and has since continued to reside with her. Both the Family Court and this Court have interacted with the children in chambers. Without disclosing the confidential details of those interactions, it suffices to note that the daughter appeared mature, articulate, and clear in her preference to live with the Respondent. Her demeanour reflected emotional unease while remaining in the father's exclusive custody, and her preference appeared genuine and uninfluenced. These circumstances, viewed cumulatively, negate the plea of "parental alienation" and reinforce that her residence with the Respondent is a voluntary and well-considered choice.

20.7 Respondent's conduct and multiplicity of proceedings – The Appellant's grievance that the Respondent has initiated multiple legal proceedings or made disparaging remarks in the presence of the children does not, by itself, render her unfit for custody. Matrimonial disputes often give rise to parallel litigations. Unless it is demonstrated that such conduct has directly impaired the minor children's welfare, which has not been shown here, the same cannot outweigh the Respondent's consistent caregiving role and the children's comfort in her custody.

21. It emerges from the overall record that both the Family Court and this Court have independently interacted with the minor children on multiple occasions to ascertain their comfort, maturity, and preferences. The daughter, in particular, appeared poised and emotionally aware, expressing in unambiguous terms her desire to reside with the Respondent. Without disclosing details of the confidential interactions, this Court records that certain aspects came

to light which further persuade it that it would not be in the minors' best interest to remain in the Appellant's exclusive custody.

22. The record further indicates that on 23.03.2024, the Appellant travelled with both children to Dubai despite clear directions from the Family Court granting the Respondent overnight visitation on 24.03.2024 and 31.03.2024. This Court, in its order dated 09.04.2024, had already noted that such conduct was *prima facie* contumacious and frustrated implementation of the Family Court's directions. Such disregard of judicial orders, particularly in sensitive custody proceedings, does not inspire confidence in the Appellant's sense of responsibility as a custodial parent.

23. While it is true that the Appellant has provided the children with material comforts and a secure financial environment, such factors alone cannot be determinative. The welfare of a child cannot be measured merely in terms of luxury or affluence. At a formative age, the affection, emotional nurturing, and sense of belonging associated with maternal care are often indispensable for a child's balanced growth. The Family Court, therefore, rightly accorded weight to the maternal bond rather than to material considerations.

24. The statutory framework itself contemplates that, where the child has attained an age and level of maturity sufficient to form an intelligent preference, such views are entitled to due consideration. Section 17(3) of the Guardians and Wards Act, 1890, provides that the Court may consider the child's wishes if capable of forming an intelligent opinion. The weight to be given to that preference depends

on the child's age, maturity, and the circumstances in which the opinion is expressed. At this stage, it would be apposite to refer to Section 17 of the Guardians and Wards Act, 1890, which reads as under-

> *"17. Matters to be considered by the Court in appointing guardian*
>
> *(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.*
>
> *(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.*
>
> *(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.[* * * *] [Sub-Section (4) omitted by Act 3 of 1951, Section 3 and Sch.]*
>
> *(5) The Court shall not appoint or declare any person to be a guardian against his will."*

25. This Court is also conscious that it is ordinarily in the interest of justice and the emotional welfare of siblings that they remain together, to preserve their natural bond and sense of continuity. While the daughter is presently residing with the Respondent and the son with the Appellant, this arrangement is not ideal in the long term. The Court expects that appropriate measures will be explored by the Family Court to gradually harmonise the children's living arrangements, ensuring that sibling ties are maintained and strengthened.

26. Having considered the entire record, the interactions of Family Court as well as this Court with the minor children, and the subsequent conduct of the parties, this Court finds no infirmity in the

Family Court's conclusion that the Respondent, being the natural guardian and the parent better positioned to ensure emotional stability and consistent caregiving, has rightly been entrusted with custody of the children. The Impugned Order reflects a balanced, welfare-centric, and legally sound determination, warranting no interference in appellate jurisdiction.

**CONCLUSION & DIRECTIONS**

27. Accordingly, the Appeal stands dismissed.

28. The interim arrangements presently in force shall continue for a period of 08 weeks from today, during which the parties may, if so advised, move the Family Court for any further directions regarding transition or modification of the existing custody and visitation schedule.

29. The Family Court is requested to monitor the children's adjustment and to take such steps, including periodic review, as may be necessary to ensure continuity of their education and preservation of sibling bonds.

30. All pending application stand closed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**

**NOVEMBER 18, 2025**
*jai/pal*