

Court No. - 29**Case :-** FIRST APPEAL No. - 922 of 2024**Appellant :-** Amit Dhama**Respondent :-** Smt Pooja And 2 Others**Counsel for Appellant :-** Ayush Kaushik,Pranvesh**Counsel for Respondent :-** Ajay Kumar Singh,Ashish Kumar Singh**Hon'ble Ashwani Kumar Mishra,J.****Hon'ble Donadi Ramesh,J.**

Today, when the matter is taken up, a request for adjournment is made on behalf of the appellant - husband, which prayer is opposed. Sri Sandeep Kumar Rai, has filed Vakalatnama on behalf of the appellant and states that he has instructions to argue the matter. Since the appeal is fixed today for consideration, with the consent of parties, we decline to adjourn the matter.

Heard learned counsel for the parties.

The instant appeal arises out of an order passed by the Family Court, on 31.08.2024 under Sections 7 and 12 of the Guardians and Wards Act, 1890. The order is ex parte whereby custody of the minor daughter, aged 4 years and 3 months has been handed over to the respondent.

Records reveal that the marriage was solemnized between the appellant and respondent on 23.05.2010. Two children are born out of their wedlock. Firstly, a son was born on 02.04.2013 whereafter the daughter came to be born on 29.09.2020. Thereafter, differences have arisen between the parties and they are living separately. Proceeding under Section 13 of the Hindu Marriage Act, 1955 has been instituted by the appellant - husband, which is pending. It is at this juncture that the respondent - wife has filed

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petition for custody of the minor daughter, which is allowed by the Family Court.

This Court on previous occasions tried to explore possibility of amicable resolution of dispute. This Court also interacted with the children but ultimately, no amicable resolution could be worked out. We do not intend to make any comments on the approach of the respective parents during course of the reconciliation as once it has failed, the Court has to decide the matter on merits.

Perusal of the record would indicate that the son born out of the wedlock is presently studying in a boarding school at Faridabad. The payment of fee and expenses etc. are being borne by the appellant - husband. The minor daughter is however living with the father. According to the appellant-husband, he is taking due care of his minor daughter and there is no reason as to why custody of such minor daughter be handed over to the respondent - wife. The matter was heard yesterday and the following order was passed:

"We have heard learned counsel for the parties at some length.

Let this matter be listed as fresh, once again, tomorrow, in order to enable counsel for the parties to obtain further instructions on arrangements, which are proposed during the course of hearing."

Learned counsel for the appellant submits that the appellant - husband is taking due care of the minor daughter and he has sufficient resources available with him to take care of his daughter.

Learned counsel for the respondent - wife however submits that by virtue of Section 6 (a) of the Hindu Minority and Guardianship Act, 1956, the mother would be the natural guardian of minor below age of 5 years. Learned counsel further argues that the mother is a graduate and is living with her parents. It is argued that there is absolutely no good reason for the minor daughter not to be

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in the company of her mother, and that no circumstances have been pointed out which may justify denial of the custody of the minor daughter to the mother.

On the previous occasions, this Court explored possibility of amicable resolution of the dispute which has since failed.

Admittedly, the mother is the natural guardian of minor child below 5 years of age and ordinarily, she would be allowed to have the custody of her minor child, unless for specific reasons, a different course is warranted. It is otherwise settled that in the matter of child custody, primary concern is the welfare and well being of the child.

In facts of the present case, the Family Court has taken note of the facts and circumstances of the case in order to direct custody of the minor daughter to be given to the mother. Although it is pressed on behalf of the father that the daughter is happily living with him and she would be traumatized if her custody is given to the mother, but we are not impressed by this argument. No doubt transfer of custody of a minor may cause psychological stress for the child but the larger issue of custody would require a delicate balancing of interests of the parties. The mother in this case is a graduate and is presently living with her parents. She is all alone in the sense that none of her two children are with her. There are no allegations made against her which may indicate that welfare of the minor daughter would be prejudiced in the custody of mother. Thus, no good ground is made out for the custody of the minor daughter to be given to the father in the facts of the present case. Merely because the mother has been deprived of the company of her daughter at the time when the couple separated and fact that the daughter had continued to be in company of the father for

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sometime itself would not be sufficient circumstance to deny custody of the minor daughter to the mother who is her natural guardian. Various physical, emotional and psychological needs of the four year old daughter would be better protected in the care and custody of her mother.

The Family Court has otherwise given visitation rights to both parents on fortnightly basis. In case there is any difficulty or parties desire any change in the terms of visitation it shall be open for them to make appropriate application before the court concerned which would pass necessary orders in respect of alteration in terms of visitation.

Subject to observations made above, the present appeal fails and is dismissed.

Order Date :- 10.1.2025

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