



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 1046 of 2023
With
CIVIL APPLICATION (FOR ORDERS) NO. 2 of 2025
In R/FIRST APPEAL NO. 1046 of 2023
With
CIVIL APPLICATION (FOR ORDERS) NO. 3 of 2025
In R/FIRST APPEAL NO. 1046 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Sd./-

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Approved for Reporting	Yes	No
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SHREEKRUSHNA BALDEVBHAI PATEL

Versus

HIPABEN BHUPENDRAKUMAR PATEL W/O SHREEKRUSHNA
BALDEVBHAI PATEL & ANR.

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Appearance:

MR NAILESH B SHAH(10108) for the Appellant(s) No. 1
 MS. ALKA B VANIYA(6945) for the Defendant(s) No. 1,2

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CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

Date : 11/08/2026

COMMON JUDGMENT

1. Heard, learned advocate, Mr. Shah, appearing for the appellant and learned Advocate, Ms. Vaniya, for the opponents.

2. By way of this appeal, the appellant has challenged the judgment and order, Dated: 26.12.2022, passed in CMA (DC) No. 17 of 2020 by the learned 5th Additional District Judge, Mahesana (in brief, 'Court below').



3. The brief facts of the case are that the present appellant, who was the original plaintiff, filed CMA (DC) No. 17 of 2020, under the provisions of Sections 12 & 15 of the Guardian & Wards Act, 1890, and the Hindu Minority and Guardianship Act, 1956, seeking custody of his minor daughter Jaina, who was barely 12 years of age and was residing with her mother, at that time.

3.1 It was the case of the appellant before the Court below that, while he was serving at Bangalore in the year 2012, the opponent-wife left her matrimonial house with a view to resume her duties as a teacher at Village: Hadad, District: Sabarkantha. It is the case of the appellant-husband that the opponent-wife has restricted him from meeting their minor daughter Jaina since 2012.

3.2 Multiple litigation are going on between the parties, including the complaint under Section 498-A of the Indian Penal Code, the complaint under the provisions of the Domestic Violence Act, proceedings for divorce as well as the proceedings for maintenance. It is the grievance of the appellant that, though, he has been paying the amount of maintenance, he is not allowed to meet minor Jaina. It is, further, the say of the appellant-husband that the opponent-wife has not only grabbed the amount of maintenance, but, she also has grabbed gold worth



Rs.15,00,000/-.

3.3 According to the appellant-husband, minor Jaina has been staying alone at Vijapur, along with her mentally disturbed father of the opponent-wife, which is not good for welfare and upbringing of the minor Jaina.

3.4 On the basis of the aforesaid facts, the appellant-husband prayed that the custody of minor Jaina be handed over to him.

3.5 Having heard both the sides at length, the Court below dismissed the application of the appellant-husband and hence, the present appeal.

4. Heard, learned advocates for the parties. On going through the impugned judgment and order dated 26.12.2022, what transpires is that the appellant-husband, appeared as party-in-person, before the Court below, rather he acted adamantly. Further, the appellant-husband did not enter into the witness box, but, filed a pursis and told the Court below to decide the application, without there being any evidence on record. Thereafter, the Court below recorded the wish of the minor Jaina and came to the conclusion that the custody of the minor child cannot be handed over to the appellant-husband, as the minor Jaina refused to reside with her father, i.e. the appellant-husband.



Hence, the Court below dismissed the application of the appellant-husband vide impugned judgment and order dated 26.12.2022.

4.1 In order to decide the application of the appellant-husband, the Court below framed the following issues;

- “1. Whether applicant is entitled for custody of his minor daughter JAINA under the provisions of Sections 12 & 15 of Guardian & Wards Act?*
- 2. Whether applicant is entitled for visitation right of his minor daughter JAINA? ”*

4.1.1 The Court below answered both the issues in ‘Negative’.

4.2 At this stage, it would be apposite to refer to the observations made by the Court below, in Paragraph-4 of the impugned judgment, which reads thus;

“4. It appears from the record that after filing present application, applicant appeared as party in person and filed voluminous documents on record, and also filed written argument at Ex.14 and prayed to Exhibit the document produced on record but didn’t enter into the witness box to prove the contentions raised in the application and for proving contents of documents produced on record.

Thereafter, applicant filed pursis on record and prayed the Court to decide present application. Thus, this Court decides present application on the basis of documents produced by the applicant on record.”

4.3 Moreover, the Court below has recorded the following findings in Paragraphs- 8 and 9 of the impugned order;

“8. Moreover, It appears from the record of case that, applicant had earlier filed application at Exh.9 for getting visitation right of his daughter Jaina, which came to be dismissed by learned 2nd Additional District Judge, Mahesana by passing reasoned order dtd. 09/03/2021. Thereafter, applicant had also filed another application – at Exh.15 for granting visitation right of his daughter Jaina, which was also dismissed by the same Court vide order dtd. 09/02/22. It is pertinent to note that, applicant has not challenged any of the said orders passed below Exh.9 and 15 for custody of his daughter Jaina. From bare perusal of orders passed below Exh.9 and Exh.15, it clearly transpires that custody of Jaina is with her mother-opponent and — Jaina has voluntarily denied to live or go with her father applicant. Moreover, from a perusal of the said order, it also appears that there is matrimonial disputes between the applicant and opponent and various matrimonial litigation's- have been filed indifferent Courts. As such, minor Jaina has voluntarily denied to reside with applicant and also denied

to meet his father, i.e. Applicant for visiting with applicant, therefore, this Court deem it proper to dismiss present application on this aspect alone.

In the said factual background of the case, following observations made by. Hon'ble Apex Court in the case of Rajeswari Chandrasekar Ganesh vs The State Of Tamil Nadu, in writ petition (Cri.) No.402/2021 judgment dtd.14/07/2022 the Hon'ble Apex Court has considered the judgment rendered in the case of Rosy Jacob v. Jacob A. Chakramakkal, reported in (1973) 1 SCC 840 and observed as under:

“15. ...The children are not mere chattels; nor are they mere play- things 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...”

15. It hardly needs to be emphasized that a proper education encompassing Skill development, recreation and cultural activities has a positive impact on the child. The children are the most important human resources whose development has a direct impact on the development of the nation, for the child of today with suitable health, sound education and constructive



environment is the productive key member of the society. The present of the child links to the future of the nation, and while the children are the treasures of their parents, they are the assets who will be responsible for governing the nation. The tools of education, environment, skill and health shape the child thereby molding the nation with the child equipped to play his part in the different spheres aiding the public and contributing to economic progression. The growth and advancement of the child with the personal interest is accompanied by a significant public interest, which arises because of the crucial role they play in nation building.

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17. While coming to the conclusion that the respondent as mother was more appropriate to have the custody of the child and under the given circumstances the respondent herein was full competent to take care of the child, the High Court proceeded with the following discussion:

“31. The role of the mother in the development of a child's personality can never be doubted. A child gets the best protection through the mother. It is a most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most



natural thing for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are compelling and unjustifiable reasons, a child should not be deprived of the company of the mother. The company of the mother is always in the welfare of the minor child...”

9. *In view of the aforesaid observations of Hon'ble Apex Court in the present case while determining the question as to who should be given custody of a minor child, the paramount consideration is the welfare of the child" and not rights of the parents under a statute for the time being in force. It is not in dispute that mother has a great deal of affection for her daughter in her heart and to serve the best interest of the daughter the mother is prepared to make any necessary sacrifice for the welfare of the daughter. The mother, at considerable expense, had put her in St. Joseph School, Vijapur, which is recognized to be a very good institution. She has been paying for all the expenses of the daughter at the school. Moreover, She is serving as teacher and even Ld. J.M.F.C. Vijapur has also ordered to pay maintenance of Rs.10,000/to daughter Jaina by applicant and thus she is in a position to meet all, the expenses of her daughter at the school and for welfare*



of her daughter. The mother also does not suffer from any obsession regarding possession of the: girl and she wants her daughter to lead a healthy normal life essential for her proper growth and development. The girl now aged about 11 years, is reaching at age when she is in need of the guidance of the mother. Therefore, considering the facts and circumstances of the case and considering the aforesaid dicta of Hon'ble Apex Court this court is of the view that it is in the welfare of child, custody of the minor girl Jaina should remain with her mother i.e. opponent. Thus, this Court is of the view that applicant is not entitled for custody of minor child Jaina. Therefore, issue No.1 is answered in negative accordingly.”

4.3.1 Aforesaid findings recorded by the Court below clinches the issue. Since, the minor Jaina does not wish to go with her father, no order can be passed against her wish and her custody cannot be handed over to her father, i.e. the appellant, herein. Minor children are neither chattels nor are they toys of their parents. It is the welfare of the child, which is paramount, and in the facts of the present case, the minor child does not wish to go with her father, legally no order for custody can be passed. The whims and impulse of the appellant, petitioner can not stand against desire and inclination of minor's apathy. A father has no absolute right to claim custody.



4.4 What further emerges from the record is that the opponents, i.e wife and the minor child, separated from the appellant-husband in the year 2012, and thereafter, the appellant-wife and the minor child, who was barely 2-3 years of age at that time, stayed at the house of her parents, whereas, the appellant-husband approached the Court below, seeking custody of the minor child, only in the year 2020, i.e. after almost 8 years of separation. This conduct of the appellant-husband would go to show that he is merely using the minor child as a tool to harass the opponent-wife. Thus, this is a fit case to dismiss this appeal with some costs.

4.5 So far as the contention of the learned advocate, Mr. Shah, appearing for the appellant-husband that, at least, he may be given visitation right is concerned, the Court below had framed issue No.2 and after giving detailed reasons in Paragraph-10 of the impugned order, the Court below answered issue No.2 in negative and therefore, the said contention deserves to be rejected. The reason that minor Jaina does not want to go with appellant / petitioner is sufficient to hold that she has also no wish to meet her father and to reject claim of visitation right. In fact, present appeal is a frivolous litigation, whereby, court's process is used to harass minor and her mother.

4.6 Recently, Hon'ble Supreme Court in Contempt Petition No.251 of 2026 in Criminal Appeal No.623 of 2025, reported in **2026 INSC 818 between "xxxx v/s. Xxxx"**, in regards to granting visitation rights held that father has to build confidence in child in regards to granting visitation rights. Observation of the Hon'ble Supreme Court squarely applies to the facts of the present case. As observed herein above, minor – Jaina declared that she does not want to go with her father, it shows that she has no confidence in her father.

4.7 Here, it would be relevant to refer to the observations made by the Hon'ble Apex Court in the case of '**Subrata Roy, Sahara Vs. Union of India**', reported in AIR 2014 SC 3241, wherein, the Apex Court has observed as under;

"150. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considerd claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part."

4.8 Further, in the case of '**Dalip Singh Vs. State of**

Uttar Pradesh & Others', reported in AIR 2010 SC (Supp) 116, the Hon'ble Apex Court held thus;

“In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

4.9 In the present case, the appellant-husband was knowing very-well that the minor Jaina is not willing to come with him and yet, he filed the present appeal, which is nothing, but, a complete misuse and abuse of the process of law. Hence, this petition deserves dismissal with costs.

5. Resultantly, this appeal fails and the accordingly is **dismissed**. The appellant-husband is directed to pay Rs.10,000/-, towards costs, to the minor Jaina within **one month**, from today and he shall produce the receipt thereof before the Registry of this Court. In case, if, the appellant-husband fails to pay the amount towards the costs, then, the same shall be recovered as arrears of the land revenue or by way of executing this order.



5.1 In view of the dismissal of the main matter, connected civil applications shall not survive and the same also stands ***disposed of***, accordingly.

5.2 R&P, if any, be sent back to the concerned Court, forthwith.

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(J. C. DOSHI,J)