



FCA-16488-2026 (2).odt

Rohit Ghuge

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL (ST) NO. 16488 OF 2026

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Mrs. Kshitija Anup Gogate
Age: Adult, Occ. Household,
R/o Mandar Bungalow, Lane No.1,
Vinit Co-operative Housing Society,
Near Merchant Co-operative Bank,
Rahul Nagar, Kothrud, Pune – 411038.

...Appellant

Versus

Anup Anil Gogate
Age: 39 years, Occ. Service,
R/o 04-36, Blk 103, Bukit Purmei Road,
Singapore – 090103

...Respondent

WITH
CONTEMPT PETITION (ST) NO. 21565 OF 2026
IN
FAMILY COURT APPEAL (ST) NO. 16488 OF 2026

Mr. Anup Anil Gogate,
Age: 40 years, Occ. Service,
R/AT 04-36, BLK 103, Bukit Purmei Road,
Singapore – 090103
Presently At :3, Sai Park, Society, Lane 5,
Dahanukar Colony, Kothrud, Pune – 411 038.

...Petitioner

Versus

Mrs. Kshitija Anup Gogate
Age: 39 years, Occ. unemployed,
R/o Mandar Bungalow,
Lane No.1, Vinit Co-operative Housing Society,
Near Merchant Co-operative Bank,
Rahul Nagar, Kothrud, Pune – 411038.

...Contemnor No. 1

Mr. Onkar Sangam,

Age: About 37 years, Occ. Service,
R/At Mandar Bungalow,
Lane No.1, Vinit Co-operative Housing Society,
Near Merchant Co-operative Bank, Rahul Nagar, Kothrud,
Pune – 411 038.

...Contemnor No. 2

Mrs. Vijaya Sangam,
Age: About 65 years, Occ. Nil,
R/At Mandar Bungalow,
Lane No.1, Vinit Co-operative Housing Society,
Near Merchant Co-operative Bank, Rahul Nagar, Kothrud,
Pune – 411 038.

...Contemnor No. 3

Mr. Kishor Bodhani,
Age: Adult, Occ. Self Employed,
R/ At : Unknown

...Contemnor No. 4

Mr. Mangesh Paranjpe,
Age: Adult, Occ. Self Employed,
R/ At : Unknown

...Contemnor No. 5

Mr. Dilip Sangam,
Age: About 70 years, Occ. Retired,
R/At Mandar Bungalow,
Lane No.1, Vinit Co-operative Housing Society,
Near Merchant Co-operative Bank, Rahul Nagar, Kothrud,
Pune – 411 038.

...Contemnor No.6

WITH
CONTEMPT PETITION NO. 396 OF 2026
IN
FAMILY COURT APPEAL (ST) NO. 16488 OF 2026

Mr. Anup Anil Gogate,
Age: 40 years, Occ. Service,
R/At 04-36, BLK 103, Bukit Purmei Road,
Singapore – 090103

...Petitioner

Versus

Mrs. Kshitija Anup Gogate
Age: 39 years, Occ. Unemployed,
R/at Mandar Bungalow, Lane No.1,
Vinit Co-operating Housing Society,
Near Merchant Co-operative Bank,
Rahul Nagar, Kothrud, Pune – 411038.

...Respondent

Mr. Akshay Petkar a/w Mr. Abhishek Salian i/b Nyaaya Legal, for the Appellant.

Mr. Abhijeet Sarwate, for the Respondent.

***CORAM: BHARATI DANGRE &
ASHISH S CHAVAN, JJ.***

DATE : 01st SEPTEMBER 2026.

JUDGMENT (Per Ashish S. Chavan, J.):

1. By way of this Appeal, the Appellant mother has assailed the order of the Family Court dated 16.05.2026 whereby, the Court, was pleased to allow an Application filed by the Respondent-father *vide* Exhibit-7 filed in Petition D No. 23/2025, under Section 12 of the Guardians and Wards Act, 1890 (hereinafter referred to as the 'said Act'), *inter alia* directing to restore the custody of minor son to the Respondent-father along with certain other ancillary reliefs which are discussed hereinafter.

2. Although, the Appeal assails the aforesaid order, it would be necessary to set out a brief background and a chronology of events in order to appreciate the controversy that arises for consideration of this Court.

3. **BACKGROUND:**

- 3.1. The marriage between the Appellant and Respondent was solemnized on 18.03.2012 at Pune, in accordance with Hindu rites and customs.
- 3.2. On 16.03.2016 a son namely Anuraag was born from the said wedlock.
- 3.3. The minor son spent his formative years in Pune until about June-July 2022. He was admitted to a school in Pune at the relevant time.
- 3.4. Around July 2022, both parties shifted to Singapore and the minor son was thereafter admitted to Wise Oaks International School, Singapore.
- 3.5. Disputes arose between the parties on account of matrimonial discord, allegations of domestic violence, emotional abuse which strained the matrimonial ties between the parties.
- 3.6. The Appellant returned to India along with the minor son on 11.03.2025 and since then he has continuously remained in custody of the Appellant at Pune. The return of the Appellant along with the minor son, form the bone of contention between the parties and also the fulcrum of the dispute between them

which then started its contentious journey.

- 3.7. On 05.04.2025 the Respondent filed a petition before the Family Court, Pune under Section 7 of the said Act. Pending the Petition, the Respondent-father filed an application *vide* Exhibit-7 seeking interim custody of the minor son and his relocation to Singapore. The said application was partly allowed by the Family Court, which *vide* its order dated 19.05.2025 set out a schedule of visitation / access concerning the minor son *qua* both the parties.
- 3.8. Aggrieved by this order, Respondent-father instituted an Appeal bearing FCA No. 56 of 2025 before this Court.
- 3.9. On 13.02.2026, this Court remanded the matter back to the Family Court to decide the application for interim custody afresh within a period of eight weeks, in the light of the fact that this Court did not find any deliberation by the Family Court weighing the contesting claims by the competing parents on the touchstone of consideration of welfare of the minor son.
- 3.10. It is pertinent to note that, in the interregnum on 25.07.2025, The Family Justice Courts of the Republic of Singapore passed an order granting the custody of the minor son to the Respondent-Father on an application preferred by him.

3.11. The Respondent-father had filed a Habeas Corpus petition before this court making several allegations against the Appellant-mother and seeking production of the minor son, which travelled to the Hon'ble Supreme Court and was ultimately withdrawn on 24.06.2026. Since the same has no direct bearing on the issue that arises for our consideration, we do not deem it necessary to refer at length to the developments in the Habeas Corpus petition.

4. Heard, learned counsel for the Petitioner Mr. Akshay Petkar and learned counsel for the Respondent Mr. Abhijit Sarwate. Perused the Appeal, impugned order and the record therewith.

5. **CONTENTIONS OF RIVAL PARTIES.**

5.1. Contentions of the Appellant:

5.2. On behalf of the Appellant it was submitted that, the impugned order is contrary to settled principles governing custody jurisprudence wherein, welfare, emotional well-being, stability, and wishes of the minor child are the paramount considerations.

5.3. It was urged on behalf of the Appellant that, the Trial Court directed transfer of the custody and relocation of the child at

the interim stage without a full-fledged trial, evidence, psychological assessment, or independent welfare evaluation.

5.4. The Appellant has assailed the findings of the Trial Court regarding parental alienation, manipulation, emotional poisoning, trauma, and unsafe atmosphere as speculative, unsupported by evidence while failing to appreciate that the minor son is presently well settled in Pune, pursuing education with excellent academic performance under the care and nurture of the Appellant-mother.

5.5. Learned counsel for the Appellant submitted that the Trial court has erred in recording adverse findings against the Appellant-mother without there being any cogent or reliable material to base such finding on. He has also argued that although the Family Court has interacted with the minor son, it has not recorded its impressions of the said interaction and in that context it was also argued that when this Court while hearing the Habeas Corpus Petition referred hereinabove interacted with the minor son, he appeared to be happy and comfortable in the care of Appellant-mother and did not wish to return to Singapore.

5.6. On behalf of the Appellant it was urged that, the Trial Court

has exceeded its limited scope of interim jurisdiction under Section 12 of the said Act virtually granting irreversible custody amounting to final relief even before conclusion of the Trial placing undue emphasis on the Respondent-father's financial status and ignoring the settled principles that economic superiority alone cannot determine welfare and custody of minor child.

5.7. That, the Trial Court placed excessive reliance upon the proceedings and order of the Singapore Court while losing sight of the fact that, it was dealing with guardianship jurisdiction and hence, it was incumbent upon the Family Court to consider the welfare of the minor son as the over-arching consideration to decide the interim application for custody.

5.8. **Contentions of the Respondent.**

5.9. On behalf of the Respondent-father, learned counsel Mr. Sarwate supported the impugned order on several grounds. He urged that, the Family Court in the impugned order has complied with the observation made by this Court while remanding the matter back to it for fresh consideration and hence, its exercise of determining the custody of the minor son cannot be faulted with at this stage.

5.10. It was contended that, the Family Court has recorded findings on the welfare of the minor son. The observation against the Appellant-mother that she is utilizing the minor son as a pawn, that she has instigated him against the Respondent-father has been supported by cogent material. It was urged that the observation of the Family Court that the Respondent-father was in a better position to take care of the minor son is not only based on economic superiority but also considers other factors.

5.11. It was contended that the Trial court has rightly placed reliance on the Singapore Court order since Singapore and India are reciprocating countries and the principle of comity of courts and the welfare of child are not mutually exclusive but mutually complementary. Learned counsel for the Respondent has also harped on the conduct of the mother who according to him has created impediments in the continuous access to the Respondent-father.

5.12. It was further contended that the interactions that the Family Court had with the minor son were instrumental in forming its opinion that he did not wish to stay with his mother. It was also emphasized that since the time that the minor son was staying in India with his mother, his education at Singapore in Cambridge Curriculum, his school friends and neighborhood

associations were disrupted and this has affected the continuity in his life.

6. Before proceeding to examine the impugned order, it would not be out of place to refer to the order of the Division Bench of this Court dated 13.02.2026, in the first round of litigation between the parties, remanding the matter back for fresh consideration to the Family Court. In the said order while dealing with the impugned order of the Family Court, this Court had observed that in the entire order there was no deliberation on the contention raised by the father as regards his claim for temporary custody and protection of the child, pending his proceedings for being declared as guardian under Section 7 of the said Act. This Court had observed that the Family Court was expected to consider the pros and cons of the rival claims put up by the parents, but instead it is seen that the court is carried away by the allegations about the distorted relationship between the husband and wife. This Court had also observed that the impugned order failed to consider the potential of each of the parents to act in the interest of the child and that the point for determination in such proceedings would be as to who would be in a better position to take care of the child and under what circumstances. It was in this context that this Court had relegated the parties to the Family Court for a fresh determination of the application with due focus upon the welfare of the child in considering the interim application for grant of

temporary custody.

7. It would therefore be necessary to examine the present impugned order not only on its merits but also in the light of directions of this Court as to whether the impugned order reflects a compliance of the same and consequent finding on the aforesaid aspects.

8. THE IMPUGNED ORDER AND ITS REASONING :

8.1. At the outset, before analyzing the impugned order on merits it would be necessary to set out the broad contours of the jurisdictional scope of Section 12 of the said Act, which is reproduced hereinbelow:

“12. Power to make interlocutory order for production of minor and interim protection of person and property.

(1) The Court may direct that the person, if any, having the custody of the minor, shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country

(3) Nothing in this section shall authorise -

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any

person in possession of any of the property.”

8.2. From a plain reading of the aforesaid provision it is evidently clear that Section 12 deals with the power of the court to make an interlocutory order for the production of minor and interim protection of his person and property. This provision of law is in the nature of interim arrangement to direct the person having the custody of the minor to produce him and thereafter, make such order as the court thinks fit and proper for the temporary custody and the protection of the person or property of the minor. The scope and extent of the power to be utilized by the court under Section 12 has been set out by the Hon’ble Supreme Court in a series of judgments. In the case of ***Athar Hussain vs. Syed Siraj Ahmed and Ors¹***, it was observed as under:

“30. Reasons are as follows: Section 12 of the Act empowers courts to "make such order for the temporary custody and protection of the person or property of the minor as it thinks proper". (emphasis supplied) In matters of custody, as well settled by judicial precedents, the welfare of the children is the sole and single yardstick by which the court shall assess the comparative merit of the parties contesting for the custody. Therefore, while deciding the question of interim custody, we must be guided by the welfare of the children since Section 12 empowers the court to make any order as it deems proper.

1(2010) 2 SCC 654

31. We are mindful of the fact that, as far as the matter of guardianship is concerned, the prima facie case lies in favour of the father as under Section 19 of the Guardians and Wards Act, unless the father is not fit to be a guardian, the court has no jurisdiction to appoint another guardian. It is also true that the respondents, despite the voluminous allegations levelled against the appellant have not been able to prove that he is not fit to take care of the minor children, nor has the Family Court or the High Court found him so. However, the question of custody is different from the question of guardianship. Father can continue to be the natural guardian of the children; however, the considerations pertaining to the welfare of the child may indicate lawful custody with another friend or relative as serving his/her interest better.

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36. ...What is important for us to note from these observations is that the court shall determine whether, in proceedings relating to interim custody, there are sufficient and compelling reasons to persuade the court to change the custody of the minor children with immediate effect.

37. Stability and consistency in the affairs and routines of children is also an important consideration as was held by this Court in another decision cited by the learned counsel for the appellant in Mausami Moitra Ganguli v. Jayant Ganguli.”

8.3. IMPUGNED ORDER

8.3.1. The impugned order prefaces itself by setting out the observations of the Division Bench of this Court while directing the Family Court to decide the Application under Section 12 of the said Act. It goes on to record the rival submissions on behalf

of the parties. The Judge has endeavored to divide the reasoning into three broad sections. First, dealing with the discussion on merits. Second, the conclusions/findings and third, the operative part of the order.

8.3.2. The discussion on merits highlights the number and nature of proceedings instituted by the parties against each other. Alleged failure of the mother to facilitate access, her refusal to reconcile with the Respondent-father, her persistent conduct of allegedly disobeying the orders of various courts, her alleged non-performance of matrimonial duties, electronic evidence in the nature of WhatsApp messages which have allegedly poisoned the mind of the minor child, the Respondent-father's financial position and facilities available in Singapore along with the custody order of the Singapore Court and the principle of comity of courts are aspects which are dealt by the family court.

8.3.3. The Family Court has in the impugned order time and again reproduced the principle that in all matters concerning custody, the welfare and best interests of child constitute the sole and paramount consideration, which was the focal point of the exercise expected to be carried out by the Family Court as directed by this Court while remanding the Application. Unfortunately, we notice that the Family Court has not made

any efforts to substantiate its reasoning in coming to the conclusion that the welfare of the minor child lies in the handing over of his interim custody to the Respondent-father, thus completely bypassing the directions by this Court and reducing the aforesaid principle to a dead letter in the impugned order. For instance, the Family Court observes that the Appellant-mother has instituted several litigations against the Respondent-father at every level which shows that she is fighting tooth and nail for material possessions and hence, he holds that he does not see the good future of the child in the custody of the Appellant-mother. This conclusion is not only speculative but also based upon a preconceived notion that only because a parent litigates against the other, he/she is disqualified to be entitled to the custody of the child.

8.3.4. The Family Court has further observed that the Appellant-mother is utilizing the minor child as a pawn in a legal battle between herself and the Respondent-father. The reasoning that the Family Court gives to justify this observation is that the Appellant-mother is facing an allegation that despite Court orders, she has time and again refused to give access to the minor child and that she has forgotten that the child belongs to both parents. Surprisingly, the Family Court further reasons

that missed calls from the father, whispers during audio calls, asking the child to send a text to his father to the effect that the Respondent is not his father, all point out to the fact the child is being instigated and/or pressurized by the Appellant-mother. It is even more surprising that the Family Court on one hand notes that this alleged disobedience to court orders and refusal to grant access can be considered only after leading evidence but at the same time, records that this finding is based on his “perception” of the entire observation of the case. The Judge of the Family Court has inherently contradicted himself by justifying his observation on the basis of speculative, extraneous and superfluous considerations.

8.3.5. While remanding the matter back, this Court had observed that the Family Court had emphasised on the troubled relationship between the husband and wife. However, it seems that this observation did not have its desired effect as can be seen in the present impugned order. The Family Court has once again emphasized on the allegations and counter allegations between the mother and the father, rather selectively focusing upon the perceived faults of the Appellant-mother. Illustratively, there is an observation that the Appellant has forgotten that the Respondent is the “Janak Pita” of their child

and that she has not exhibited a single word that she is ready to “patch-up” with him but is only expecting huge monetary assistance. It is rather perturbing that the Judge of the Family Court has proceeded to sermonize and set out the so called duties of a pious wife towards her husband as a basis to observe that it would be in the best interest of the child to be with his father. The Family Court observes:

“9. ...Pious duties of a wife towards her husband, nurturing the home, maintaining the respect, providing emotional support in traditional and religious perspectives, managing the household diligently, communicating with kindness, creating welcoming environment - these appears to be foreign terms to her. Keeping the marriage vows, caring for her husband physically and emotionally, praying for him, and seeking his good in all things is expectation however she treated him as if he and his family is her seven generation enemy thus, in the company of such a women, the future of the Child is not safe. If he heard the poisonous words day-to-day for his pappa, his bonding with his dad would definitely ruined in a very short time. Thus, to save the such a lovely relationship of Bap (father) and Mulga (son), according to me, it would be better for child's future to rest in the nest of his father.”

8.3.6. As if the aforesaid moralistic sermon was not enough, the Family Court uses proverbs to make casual stereotypical and generalized observations about relation between the minor child and his grandfather and makes scathing remarks against the Appellant on the basis of the fact that she is the “Bahu” of

the family. The observations of the Judge of the Family Court setting out the so called pious duties of a wife or expecting her to act as the “Bahu” of the family are, to our mind not only unwarranted and unsubstantiated but also regressive which tend to perpetuate and reinforce stereotypical and erroneous notions about matrimonial relations. We cant help but observe that Judges, more than others should be mindful of being circumspect about making such observations, unconnected with the facts involved.

8.3.7. Moreover, the aforesaid observations in any event are concerned with the *inter se* conduct between the husband and wife and have nothing to do with the welfare of the child and to that extent are extraneous to the issue being adjudicated upon by the Family Court. Thus, despite the directions of this Court, the Family Court has once again, been carried away by the allegations and counter allegations between the husband and wife and misdirected itself away from the focus which ought to have been an independent assessment of the welfare of the child and the various underlying factors which contribute to the same.

8.3.8. Another pattern that we notice in the impugned order is that the Judge of the Family Court has referred to certain facts or

issues in controversy, followed by an observation that these facts can be adjudicated only after a full fledged trial but contradicts himself by giving a finding based on the very same facts without any substantiation. To give an example, the impugned order observes that electronic evidence cannot be considered without a full fledged trial. However, at the same time it places reliance on some WhatsApp communication allegedly between the Appellant and the Respondent, untested and unproved by the rigors of a trial, to jump to the conclusion that if the child of such tender age comes across such messages, he would form an adverse opinion about the Respondent-father and goes on to observe that 'hence' the situation is alarming enough to warrant the urgent removal of the child from the mother. This observation is not only inherently self-contradictory but also completely devoid of any basis. Moreover, it focuses selectively on the conduct of the Appellant-mother and apportions the blame entirely to her without there being any basis for making such an observation.

8.3.9. One more example of such self-contradictory observation is the finding of the Court that the wish of the child is immaterial and that the Court needs to take a decision on what is good for the welfare of the child. This aspect is contradicted immediately

by another observation that during interaction with the child, the Judge found him to be influenced by his mother and hence, he observes that the mother has no right to deprive the father from meeting his own child. Such self-contradicting observations which are unsubstantiated and without any basis show that the Judge of the Family Court has based his findings on the foundation of his perceptions, notions, stereotypical beliefs about matrimonial relations and assumptions about human behaviour and not on the exercise that he was required to carry out viz. to independently assess as to who between the two parents was more suited to have the interim custody of the child, what was the imminent urgency if any in handing over the custody of the child from one parent to another and most importantly, to carry out an independent assessment based on the record of the case to arrive at a subjective satisfaction as to whether the interim order of custody was in the interest and for the welfare of the child.

8.3.10. The impugned order on one hand observes that the financial capacity of either of the parents cannot be a criteria for the grant of custody but on the other hand, it observes that the father is financially capable of admitting the son to a Cambridge Curriculum school, he has a 3-BHK apartment at

Singapore with gated community, parks and schools nearby, a full-time domestic helper and a separate room for the child. This again, is inherently self-contradictory and reinforces the fact that the Judge of the Family Court has considered the financial superiority of the father as a deciding factor which is contrary to the various pronouncements of the Hon'ble Apex Court.

8.3.11. As seen from the aforesaid discussion of the impugned order, the Family Court has not identified any imminent danger, neglect or circumstance demonstrating that the continuation of the child in the Appellant's custody is detrimental to him in the light of the narrow parameters of the jurisdictional authority of the Family Court u/s 12 of the said Act. The Family Court has not considered the aspect that from June 2025, the child was admitted to a school in Pune. There is a continuity to his life in the custody of his mother and he is well settled in Pune, sharing strong emotional bonds with his maternal grandparents, extended family members and social circle at Pune. While it is evident that disputed questions of fact may not be adjudicated in an interlocutory application of this nature but it is incumbent upon the jurisdictional Court to conduct a summary exercise to determine if and in what manner the continuation of the

custody of the child with either parent would be detrimental to his overall welfare. Again, we find that this exercise has not been carried out by the Family Court in the impugned order.

8.3.12. The Judge of the Family Court has in the impugned order heavily relied on the custody order passed by the Singapore Family Justice Court, granting the custody of the child to the father and the principle of comity of courts while exercising *parens patriae* jurisdiction as a deciding factor in granting the custody of the child to the father. It need not be emphasized that time and again the Hon'ble Supreme Court has after considering the principle of comity of courts and Section 44A of CPC, held that the overarching consideration of the Indian Courts in dealing with the custody of minor children in their *parens patriae* jurisdiction is and continues to be the welfare of the child. We are fortified in this view by the observation of the Hon'ble Supreme Court in the matter of ***Ruchi Majoo vs. Sanjeev Majoo***² where the Apex Court while dealing with the principle of comity of courts, recognition of decrees and orders passed by Foreign Courts, and in the perspective of the paramount consideration of welfare of the child observed thus:

² (2011) 6 SCC 479

“60. In cases arising out of proceedings under the Guardians and Wards Act, the jurisdiction of the court is determined by whether the minor ordinarily resides within the area on which the court exercises such jurisdiction. There is thus a significant difference between the jurisdictional facts relevant to the exercise of powers by a writ court on the one hand and a court under the Guardians and Wards Act on the other.

61. Having said that we must make it clear that no matter a court is exercising powers under the Guardians and Wards Act it can choose to hold a summary enquiry into the matter and pass appropriate orders provided it is otherwise competent to entertain a petition for custody of the minor under Section 9(1) of the Act. This is clear from the decision of this Court in Dhanwanti Joshi v. Madhav Unde, which arose out of proceedings under the Guardians and Wards Act. The following passage is in this regard apposite: (SCC pp. 125-26, para 30)

"30. We may here state that this Court in Elizabeth Dinshaw v. Arvand M. Dinshaw while dealing with a child removed by the father from USA contrary to the custody orders of the US Court directed that the child be sent back to USA to the mother not only because of the principle of comity but also because, on facts-which were independently considered-it was in the interests of the child to be sent back to the native State. There the removal of the child by the father and the mother's application in India were within six months. In that context, this Court referred to H. (Infants), In re which case, as pointed out by us above has been explained in L (Minors), In re as a case where the court thought it fit to exercise its summary jurisdiction in the interests of the child. Be that as it may, the general principles laid down in McKee v. McKee and v. C and the distinction between summary and elaborate inquiries as stated in L (Minors), In re are today well settled in UK, Canada, Australia and the USA. The same principles apply in our country. Therefore nothing precludes

the Indian courts from considering the question on merits, having regard to the delay from 1984-even assuming that the earlier orders passed in India do not operate as constructive res judicata."

We find that the Family Court has laid emphasis on the enforceability of the order of the Singapore Court on the principle of comity of courts without examining the overarching and predominant aspect of the welfare of the minor child which to our mind is an erroneous approach.

9. CONCLUSION:

In the light of the aforesaid discussion, it is evident that the Family Court has not appreciated the jurisdictional parameters of Section 12 of the said Act, circumscribed by the interlocutory nature of the provision and failed to return a finding as to on what basis and upon consideration of which material, it has come to the conclusion that the custody of the minor child had to be changed forthwith in the favour of the father. We see no independent assessment carried out by the Family Court to determine the physical, emotional, educational or psychological welfare of the child which is contrary to the guiding principles set out by the Hon'ble Supreme Court while considering the interim custody of minor child in the context of Guardians and Wards Act, 1890. Moreover, without delving deep into the merits of the case, we find that the observations of the Family Court as discussed hereinabove are based

upon consideration of irrelevant and extraneous factors, some of these observations suffer from inherent contradictions and some of them are based on preconceived and stereotypical notions of matrimonial relations and assumptions of human behaviour.

10. It is an undisputed position that since, March 2025 the minor child has continuously remained in the custody of the Appellant-mother. As discussed herein above, the Family Court in its impugned order has not indicated any reasoning or basis to change the custody of the minor child to the Respondent-father. We also note that the impugned order is bereft of any basis for coming to the conclusion that the welfare of the child lies in the custody of the Respondent-father. Cumulatively seen, the impugned order is vitiated by the aforesaid aspects which makes the order untenable in law. Hence, it deserves to be set aside.

11. Consequently, the Appeal is allowed in terms of the following order:

- i.** The order dated 16.05.2026, passed by the Family Court, Pune below Exhibit-7 arising out of Petition D No. 23/2025 is set aside.
- ii.** Since, the custody of minor son Anuraag Gogate is already with the appellant mother, she is permitted to retain the custody of the minor child.

- iii. The Appellant-mother is directed to grant access of minor son to the Respondent-father once in every 3 months and also as per mutual understanding during the period of vacation/holidays of the minor son keeping in mind the convenience of the minor son.
- iv. The Appellant-mother is directed to grant video conferencing access to the Respondent-father as per mutual understanding and in any case once in every week.
- v. The main proceedings pending before the family Court, Pune, arising out of Petition D No. 23/2025 be decided in an expeditious manner.
- vi. It is clarified that our observations may not be construed as a discussion on the merit or de-merits of the case and the Family Court, Pune shall proceed with the Petition/Application before it uninfluenced by these observations.

The accompanying Contempt Petition (St) No. 21565 of 2026 and Contempt Petition No. 396 of 2026 do not survive and in view thereof are disposed off accordingly.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.