

COURT OF PRINCIPAL DISTRICT JUDGE ANANTNAG

1. File No.
CNR No.
Date of Institution	10.12.2024
Date of Order	31.07.2025

In the case of:-

.....

(Petitioner)

Through Mr.Shahi-dul-Aslam Advocate

Versus

.....

(Respondent)

Through Mr.Numan Jhangir Advocate

In the matter of:-

Petition under section 43 of Guardians and Wards Act for executing the Order dated 29.10.2024 passed by this court.

2. File No.
CNR No.
Date of Institution	01.12.2025
Date of Order	31.07.2025

In the case of:-

.....

(Petitioner)

Through Mr.Shahi-dul-Aslam Advocate

Versus

.....

(Respondent)

Through Mr.Numan Jhangir Advocate

In the matter of:-

Application for initiating disobedience proceedings against the non-applicants for violating the order dated 29.10.2024 passed by this court.

3. File No.
CNR No.
Date of Institution 10.12.2024
Date of Order 31.07.2025

In the case of:-

1.

(Petitioner)

Through Mr.Numan Jhangir Advocate

Versus

.....

(Respondent)

Through Mr.Shahi-dul-Aslam Advocate

In the matter of:-

Application for setting aside/cancellation of order dated 29.10.2024 passed by this court on the basis of compromise.

Coram : Tahir Khurshid Raina
(UID No. JK00055)

J U D G M E N T

PRELUDE

1. By virtue of this Composite judgment, this court is going to decide three petitions, based on the dispute between the same parties as titled above. The main parties to the lis carry the status of the husband and the wife, but unfortunately, their relation went into rough weather, on account of which they have been living separately for a long time. However, the story does not end here. There is a child born out of their wedlock, who has

unfortunately become a bone of contention between the estranged couple, who simply out of their false egos, intolerance, and illiteracy, have turned the child into a chattel or a ball, to be shuttled or shunted from one parent to the other.

2. This court, however, in exercise of its **“parens patriae”** jurisdiction, is legally enjoined to ensure the welfare of the child under the Guardian and Wards Act, 1890 (for short “the Act”). Further, this court has to ensure that the child born out of the wedlock does not get exposed to the horrible consequences of the marital discord between his parents. Therefore, the various orders to be passed by the court inevitably require to be child friendly, enabling him to grow in a conducive atmosphere where he experiences cordiality, warmth, fun and fanfare around.

FACTUAL MATRIX

3. On account of the rough roads on which the marital relationship of the couple went, the child, who was supposed to grow under the shade of a loving atmosphere of his parents, unfortunately got deprived of the same and remained with his mother only. In the year 2023, the father had approached this court and sought custody of the child, being the natural

guardian of the ward. Shorn of the details, a compromise got finally reached between the parties to the lis on 29.10.2024. By virtue of the compromise, the child had to get admitted in a new educational institution.....at Bijbehara and the father had to bear all the expenses of the child's educational needs etc. It was also decided between the parties that the child would be taken by the father into his custody on every Friday at 1 PM and would be returned to the custody of mother in the evening. The parties also decided that they will not compel the ward to remain at any particular place but would leave it to his sweet will to enjoy the company of either of the parents, as per his choice and comfort. The agreement was to remain in force for one year with a rider to refresh its conditions as per the demand of the time and circumstances.

4. Unfortunately, the compromise did not work, and the petitioner, the father of the child, was back in the court, seeking enforcement of the said compromise.
5. Objections to the same were filed by the mother of the child, denying the very genesis of the compromise, stating that the

terms of the compromise were envisaged therein without her consent and that of the child.

6. A successive petition was also filed by the father of the child, seeking initiation of an action against the non-applicants-the mother and her father-for showing willful disobedience to the order of the court based on the compromise (supra).
7. On the other hand, the non-applicant-the mother- along with her father, have filed an application seeking cancellation of the court's order based on the compromise (supra), inter alia, on the ground that when the said compromise was executed, the ward was not taken on board and the child's consent was ignored while passing any such order based on compromise. She further contended that, being an illiterate woman, she does not know the English language in which the compromise was written, and it was not made understandable to her in a language she comprehends. She has also taken some technical grounds in her petition for cancellation and setting aside of the compromise (supra).
8. It is in this backdrop this court has to decide all three petitions through a composite judgment, for the reason that

the parties to the lis are the same, and the bone of contention in the litigation is the child of the estranged couple-whom they want to move and mould according to their diametrically opposite choices on account of their strained relations. Therefore, requires a composite and a final judgment to be passed by this court to end the multi-litigations in the case at the earliest, in the interest of the child and in the interest of justice.

9. The fact remains that in this whole litigation, going on between the estranged couple, who is at stake and whose welfare is at stake is the child himself. This court is concerned about him and how to ensure his welfare in the broader context while exercising its “**parens patriae**” jurisdiction relating to the child under the Act.

LEGAL POSITION ON THE SUBJECT

10. While commenting on the object and purpose of the Act, the Hon’ble SC has held that the purpose of the Act is not merely physical custody of the minor but due protection of all rights of the ward, which ensure the proper welfare of the child to be

considered by the court while deciding any litigation under the Act.

11. In one of the guiding judgment delivered by the Hon'ble SC on the subject, it is held that child is not **“a property”** or **“a commodity”**. It is also held that issues relating to custody of minor and tender-aged children should be handled with love, affection and sentiments and by applying a human touch to these human problems. (For reference: Nil Ratan Kundu V. Abhijit Kundu (D.O.D 08.08.2008). Relevant para 56 is reproduced hereunder:-

“56. In our judgment, the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual

development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor...”

12. It is also to put on record that the settled legal position, based on case law and the mandate of the Act, is that the **“welfare of the minor”** is the paramount consideration for the court to consider while dealing with any litigation relating to custody or visitation of the minor under the Act. Moreover, while considering the custody, if the minor is old enough to form an intelligent preference, the court has to consider that preference in terms of Sec. 17 of the Act.

APPRECIATION

13. Reverting to the litigation in hand, the first round of litigation between the parties ended with a settlement dated 29.10.2024. However, on account of its non-implementation, the second round of litigation between the parties started in February 2025, based on three petitions filed by both sides,

putting forth claims and counter-claims in context of the child and the earlier settlement (supra).

14. As put earlier, such issues are just human issues, more to be dealt with a human touch than merely by the letter of law. This court in the past has experienced that based purely on the letter of law, some decrees have been passed by this court under the Act. However, not a single one has been executed. Rather, their execution has just aggravated the problem for the families involved in the litigation, viz-a-viz child is concerned.
15. At the risk of repetition, the litigation in the instant case revolves around the child, about whose education the father is apparently concerned, and he wants him to be admitted in another school. At the same time, he seeks his interim custody and meetings with him in terms of the compromise arrived at between the parties. However, the compromise has not worked well and the parties are back in the court with fresh litigation.
16. But, before to address this issue, this court made an effort to know about the child.

He is of 10 years old, studying in class 3rd at , Bijbehara, Anantnag. He was a position holder in the class 2nd examination and First-position holder in two semesters of class 3rd and the session is still in progress. He is right now in the custody of his mother, who lives at The father lives in Tehsil The distance between the two places is around 40 kilometers. The said school in which the ward is presently studying is in Bijbehara, whereas the father wants to admit him in another school named.....), which is also in the same town but at a distance of around 3 kilometers away from his current school.

17. One important fact to put on record is that the child in this case is not just a milk sucking child to be treated according to the whims and wishes of the parties to the lis. Here, the child is quite mature who is very strongly expressing his own choice in the context of the custody/visitation rights of the father and change of his school etc. as desired and prayed by his father before this court.

18. In view of the ward's ability to understand what is going on in context of the said litigation, and as per the mandate of the Act and the settled law on this point, this court had made few interactions with the estranged couple and with the ward as well. On all such occasions, this court has witnessed a complete refusal of the child to agree to any such prayer of his father. This exercise has generally been taken by the court in camera. Finally, when this case was taken up in the open court, some questions were put to the child in open court, to which he responded very confidently. The said questions were just introductory in nature, like to know about his name, address, studies, school and his aim in the life. He responded clearly and confidently.

19. **The interesting part of it was that he has expressed his aim to be a judge.** But finally when two material questions were put to him like:

Q. Do you recognize the man on the opposite side who wants to meet you?

Ans. The answer was "No".

Q. *Would you like to be in his company for few hours?*

Ans. The reply was “No”.

Q. Would you like to meet your father in your school or at any place of your choice in presence of your mother?

Ans. The reply was “No”.

Finally, the question put was--

Q. Would you like to get admitted to the new school as desired by your father for your better academic career?

Ans. The answer was “No”.

20. Why the child is so rude and refuses to meet the father and even to recognize him as his father? The obvious reason is, over the years of separation between the parents of the child, resulting into strained relation between the two, which unfortunately continues to date. During this period of separation and mistrust, the child, born out of the wedlock, has simply grown in the custody of the mother, with apparently no genuine efforts made by the father to bring him back in his company. Obviously, the child has grown with no idea about the father in his life, and the father is now

belatedly attempting through the process of court, to bring him back into his custody and company.

21. This court though acknowledges the right of the father to meet his son and to take him into his custody. Also acknowledges fathers concern for his child's well being and upbringing. But, due to delayed expression of concern, the child is at all not acknowledging the said efforts or even the relationship itself. Even the child's mother, on persuasion of the court, though acknowledged the right of the father to meet his son and his indispensability in the life of the child's life. But the child was seen quite adamant, rigid and stubborn in refusing to meet his father or even to recognize him as such. This court, however, noticed the mother, telling the child to meet father but the child outrightly rejected the words of his mother.

FINDINGS OF THE COURT

22. From my all interactions with the child, what I observed that the child has become highly agitated by the behavior of the father, who seeks to dictate terms to the child regarding his admission in a new school and makes the child to subdue before his choice.

23. There was only one person who could have enabled the father to succeed in his attempt in bringing the child closer to him- his estranged wife, the child's mother. However, any such genuine effort should have been made much earlier, during the child's infancy, not merely through the process of the court but through him bonafidely, even by recourse to the family platform as well. Today, even the mother of the child though acknowledges the role of the father in the child's life, but the child has become so rude, rough and stubborn towards the father that he even condemned the mother for asking him to meet the petitioner, his father. An absolute hatred and condemnation for the father has been noticed by this court in the behavior of child.

24. Keeping in view, such a behavior of the child towards his father, this court made various attempts to make the father understand to leave the litigation and adopt a more compassionate approach in this peculiar matter. That he must be unilaterally kind and loving to his son and must not be aggressive in his approach. His conduct towards the child and his all attempts towards the child reflect him that of an

arrogant father, bent upon to snatch his child from the custody of the mother. **He was further asked to give all he wants to his son, silently, unilaterally and unconditionally.**

25. Unfortunately, the words of the court seem to have fallen on his deaf ears. As a result, the more he pursues litigation, the more the child drifts away from the father. Now, the situation has reached a stage where the trust deficit between the father and child surpasses even that between husband and wife.
26. ***It is purely in this context that the agreement arrived at earlier between the parties has failed to yield to their desire and designs.***
27. The adamant father wants the agreement to be implemented through the court. Despite the glaring fact that the child/ward is in complete denial to meet his father, the father remains insistent on enforcing the agreement. **Can this court afford to go against the will of the ward? The answer is “big No”.** Even the visitation rights of the father are subject to the will of the child. Once the child has shown his complete refusal to meet his father, this court cannot afford to compel

him for the same by passing a judicial order. Under such circumstances, compelling the child to meet the father would simply amount to torturing the child, which is clearly against the concept of the **“welfare of the child”**, and ex-facie militates against the very purpose of the Act.

28. Albeit the child may not be in an ideal atmosphere due to being the child of a broken family. However, once this court has noticed him enjoying the company of his mother, in such a situation this court can't deprive him of the said solace, notwithstanding any sort of contract or settlement to the contrary, which cannot be implemented against the wish and will of the child.

29. As put earlier, from my all interactions with the child, he is not at all convinced to meet his father. He even stated that his mother is also his father, quite happy and comfortable in her company. In the appreciation of the court, the only detracting factor in his life is the regular litigations being filed by his father, who is just aggressive in his behavior which is simply proving counterproductive for him, adding hate in the mind and heart of the child against his father. ***It is in this context***

all the above titled petitions filed by the father, have to fail before the wish of the child. Thus, while upholding the choice of the child, this court declares all the claims of the petitioner-father unsustainable, to be consigned to the records after their due compilation.

EPILOGUE

30. Before parting with the order, this court as a “***parens patriae***” of the child has a message for the petitioner-father.

Don't try winning the child by litigation; win him by your patience and unconditional love for him. Give love a chance over litigation is the brief but a perfect message for the petitioner. Let your child grows in the lap and love of the mother with a sincere blend of unilateral, unconditional, un-annoying and un-disturbing love and care from you as the father. Remember, “father is so much more than just a relation. It means sacrifices, tough decisions, trust and a life time of love given to his kids”.

31. This court also requests his counsel to convince his client to wait and keep patience, which is inevitably required in the facts and circumstances of the case, for his client to observe in the interest of his child. This court hopes that the counsel's words may mold his client and lead him to live a stable and peaceful life by accepting the reality before him. Let his attempts may not make his life uncomfortable and that of the child, who is peacefully growing with the unfathomable and unmatched love and blessings of his mother.

32. ***At the same time, a word to the mother of the child—***
She has shown a positive response regarding the child's meeting with his father and of course much depends on her in this regard if she really believes in it to happen. Her words must match with the action as is required in this very piquant situation. For her to sustain the challenge of single parenting will be a daunting task. Let the father also share his own responsibility and this may bring a sense of relief in her already turbulent life. Let you choose to be a bridge of love between the estranged father-child, rather than a wall of hatred. This is a

simple but befitting message to the mother of the child from this court.

33. **Last but not the least**, this court wishes the broken family to unite soon, and the child to become a bridge between his divided parents to lead them finally to live a loving and a blissful life together, and the family to have a happy life in a happy home.

Let the child grows and bloom to his fullest, and finally, to achieve his aim-to be a “JUDGE”.

**Announced
31.07.2025**

**Principal District Judge,
Anantnag**