

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

129

LPA-2434-2026 (O&M)

RAHUL KAMBOJ AND OTHERS

.....APPELLANTS

Vs.

ISHAA JAIN @ ISHAA KAMBOJ

.....RESPONDENTS

Sr. No.	Particular	Details
1	The date when the judgment is reserved	03.09.2026
2	The date when the judgment is pronounced	21.09.2026
3	The date when the judgment is uploaded on the website	23.09.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON’BLE MR. JUSTICE SUVIR SEHGAL
HON’BLE MR. JUSTICE RAJESH GAUR

Argued by: Mr. Amit Jhanji, Senior Advocate with
Mr. Sayyam Garg, Advocate and
Ms. Kudrit Kaur Sra, Advocate for the appellants.

Mr. Anil Goel, Advocate (Through VC)
for the respondent

SUVIR SEHGAL, J.

1. This intra-court appeal has been filed under Clause X of the Letters Patent by a father and his family members, challenging judgment dated 20.08.2026 passed by the learned Single Judge, whereby a habeas corpus petition filed by respondent-mother has been



accepted and appellants have been directed to hand over custody of minor child to her.

2. Mr. Amit Jhanji, learned Senior counsel appearing for the appellants, has vehemently argued that a writ of habeas corpus is not maintainable in matters involving a custody dispute between parents. He asserts that the minor child has been residing in a comfortable and a well-provided environment under the continuous care of the father-appellant No.1 for the last more than a year. He urges that the appropriate remedy available to the mother is to approach the competent Civil Court under the Hindu Minority and Guardianship Act, 1956. Reliance has been placed by him upon judicial precedents to buttress his arguments.

3. *Per contra*, Mr. Anil Goel, counsel for the respondent-mother submits that appellant No.1 and respondent were married on 20.09.2018, and a male child, namely Vivaan, was born out of the wedlock on 02.04.2022. He states that there was a marital discord between the parties and that on 15.03.2025, when respondent had gone to visit a doctor, the minor child was forcibly taken away by the appellants and thereafter, respondent was neither permitted to enter the matrimonial home nor given custody of the child. It has been argued by him that under Section 6(a) of the Hindu Minority and Guardianship Act, 1956, custody of a child under the age of five years must ordinarily be given to the mother. He supports the order passed by the learned Single Judge and relies upon judicial precedents to contend that instant Letters Patent Appeal questioning the judgment passed in a criminal writ petition, is not maintainable.



4. We have heard learned counsel for the parties at length and have considered their submissions, besides perusing the record with their able assistance.

5. The preliminary objection raised by appellants regarding the maintainability of the habeas corpus petition in a custody dispute between the parents, stands settled by the Hon'ble Supreme Court in ***Yashita Sahu Versus State of Rajasthan and Others***, (2020) 3 SCC 67; ***Manju Tiwari Versus Dr. Rajendra Tiwari and Another***, 1990 AIR SC 1156; ***Nil Ratan Kundu and Another versus Abhijit Kundu***, (2008) 9 SCC 413 and ***Roxann Sharma Versus Arun Sharma***, (2015) 8 SCC 318. In Yashita Sahu's case (supra), Apex Court has clarified the position and held that where the Court is of the view that a detailed enquiry is required, the Court may decline to exercise the extraordinary jurisdiction and direct the parties to approach the Civil Court. It is only in exceptional cases, that the rights of the parties concerning the custody of a minor can be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus. This Court is, therefore, of the firm opinion that a petition for habeas corpus claiming custody of a minor child, is maintainable.

6. In matters concerning custody of a minor, the welfare of the child is the paramount consideration. The rights asserted by either parent must necessarily yield to the welfare and the best interests of the minor. Proviso to Section 6(a) of the Hindu Minority and Guardianship Act, 1956, lays down that custody of a minor who has not completed the age of five years shall ordinarily be with the mother. The expression "ordinarily" undoubtedly leaves the Court with discretion to depart from the rule where



the welfare of the child so warrants. However, such departure must rest upon circumstances demonstrating that custody with the mother would be detrimental to the welfare or interests of the child. Unless it is established that the mother is unfit, immoral or incapable to take care of the minor, the custody of the child should normally be entrusted to her. Her right to custody remains paramount over the guardianship claim of any other relative of the child.

7. In the present case, the child is approximately four years and five months old. Although some allegations have been levelled against the mother that she left the matrimonial home of her own and, despite being given opportunities, she did not meet the child, but no material has been brought to our notice which would persuade us to hold that she is incapable or unsuitable to look after the minor. There is nothing on record to satisfy us that restoration of custody of the minor to her would prejudicially affect the child's welfare. Merely because the child has remained with father or his family for a period of time cannot by itself confer a right upon them particularly when the circumstances in which mother came to be separated from the child are themselves in dispute. Financially stronger position of the father, or the investments made by him, cannot replace biological and emotional necessity of a mother's care for a four year old toddler.

8. Learned Single Judge has struck a balance between both the parties. It has been rightly observed that a child of tender age requires the care, affection and companionship of both parents. While placing the child in the custody of the mother, appellants have been granted appropriate visitation rights and access to the minor. Simultaneously, learned Single

Judge has protected the rights of the father by giving him liberty to approach the appropriate Civil Court for seeking permanent custody of the child. This Court does not find any illegality, perversity or jurisdictional error in the well-reasoned judgment passed by the learned Single Judge which does not warrant any interference.

9. As a result of the above discussion, Letters Patent Appeal is dismissed, though with no order as to costs.
10. All pending miscellaneous application(s), if any, shall stand disposed of.

(SUVIR SEHGAL)
JUDGE

(RAJESH GAUR)
JUDGE

21.09.2026
pry

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No