

Field Note

Courts as the agents of social change.

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Courts are considered as one of the fundamental State institutions all over the world, fully backed by the Government of the countries. Meaning thereby that Courts are one of the pillars of the State Authority. In India the performance of the function of providing justice to common people has been since time immemorial vested with the Kings/rulers and at the local levels was taken care of by the village headmen and tribal leaders. The present day Courts and their hierarchy has been established during the British Rule in India and the overall structure of the Courts is more or less the same as has been established by British. The jurisdiction which the Courts exercise encompass mainly the social behavior of the human population. The functioning of the Courts besides being deterrent and punitive have been also reformative and in recent past in addition to the previous legislations many more laws have been enacted for regulating the behavior within a family. The most important one being Domestic Violence Act 2005.

Being a Judicial Officer, for past more than 10 years and working in some of the busiest Courts of the valley. The undersigned got a chance to hold trial of many cases regarding Domestic Violence and I prefer to write the first hand experience of how the Courts are shaping the behavior of society. The names of the parties would not be reflected for the purpose of saving their identity.

1. ABC Vs XYX

A civil suit was brought before the court by an elderly person with respect to a double storied residential house surrounded by brick walling and having about 02 Kanals of land underneath and appurtenant thereto The plaintiff submits that defendant No. 1 is his son and defendant No. 2 is his daughter-in-law and the said defendants are showing no concern with the plaintiff or his spouse and are not interested in living with

¹ (KCS Judicial 2010 Batch), Sub-Judge/JMIC Chadoora

the plaintiff and his wife therefore, he seeks restraint order against his son and daughter-in-law from the suit scheduled property. The plaintiff further states that regarding the suit property one petition is already pending before the Hon'ble Court of First Additional District Judge at Srinagar and the said litigation is in between the plaintiff and his brothers. The plaintiff further states that the cause of action has accrued to him when the defendants came in a vehicle and tried to enter into the suit property at the behest of muscle power. Further, the plaintiff being a retired Govt. Employee wants to live peacefully in the house held and owned by him. Hence, the suit.

The notices were issued to the otherside and to the utter surprise of this Court, the defendants 1 and 2 who are shown as son and daughter-in-law of the plaintiff meaning thereby that they are husband and wife chose to file their separate Power of Attorney's and have been all along represented in this Court by two separate counsels and from the first hearing of the case till the last date of hearing in the case i.e. for almost five hearings, on none of the hearings the defendant No. 1 and 2 appeared together before the Court or their counsels appeared as a team which in the first instance brings a cloud upon the present status of relationship of husband and wife. Secondly the husband in his written statement submitted that because of the employment purposes, he is presently putting up at Himachal Pradesh and his contract with his employer company is till December end and he cannot come back here before December to reside either with defendant No. 2 or with the plaintiff and regarding the cause of action whatever the plaintiff has submitted does not pertain to defendant No. 1 as on the day of occurrence he was in Himachal Pradesh and not in his home. Although, the defendant No. 1 has used clever drafting by stating that he is caught between the devil and the deep sea as on one side, the plaintiff who happens to be father of answering defendant No. 1 is alleging that he is supporting defendant No. 2 i.e. his wife and on the other side the defendant No. 2 i.e. wife of the answering defendant is alleging vice versa. He further submits that he comes to his place of residence after every two months or so, for about 7 to 8 days only and it is only his wife and two minor children who are residing in the suit scheduled property. He states that he will undertake that he will not throw away the plaintiff from the house/suit property as he has no right or interest in the said suit property. And further he is not causing any sort of interference into the suit property in any manner. He further states that he often remains outside the valley because of his job in a private company and presently it is only his family i.e. defendant No. 2 along-with

kids who are suffering as they are not allowed to stay in the suit property. He further states that he has taken due care of the plaintiff as he was operated upon quite recently and he has provided best possible means to take care of the plaintiff. He further states that he is requesting both the plaintiff as well as defendant No. 2 to settle the issues between them and live a peaceful and happy life.

As far as defendant No. 2 is concerned, who happens to be the wife of defendant No. 1 and daughter-in-law of plaintiff, her learned counsel has submitted in his written statement that the plaintiff has suppressed the material facts regarding the subject matter and has come before this Court with unclean hands. He further states that it is the answering defendant No. 2 i.e. daughter-in-law who has been neglected socially, economically and psychologically and her husband i.e. defendant No. 1 has chosen to live a life of seclusion and has preferred a married life sans the marital/parental obligations and is totally ignorant as to how his two minor children are being nourished, nurtured and brought up by his wife i.e. answering defendant. Taking the plea of being employed in a firm outside valley although he is earning there but is living a luxurious life for himself to the exclusion of his family consisting of his wife and two minor children. Back in matrimonial home, the answering defendant No. 2 is raising her children single handedly in a non-congenial atmosphere and she being a Doctor by profession is also discharging her duties in a Government Hospital and the plaintiff or his spouse never help their daughter-in-law in day to day chores or in taking care of her children. It is she all alone who attends to her duties and also takes care of her children and the home. In fact it was on 20/06/2022, that the plaintiff along-with his family members assaulted the answering defendant and threw her out of the matrimonial home along-with two minor children. The answering defendant did not leave the home but called her parents for the conciliation but as per her written statement her parents had also been misbehaved with, by the plaintiff and his spouse. Although, the answering defendant had approached the concerned Police Station and Women's Police Wing but she did not pursue the same keeping in mind the honour of the family and a legitimate expectation for the reconciliation. Although, the defendant No. 1 suggested her to accompany him to Shimla for one month so that the things get settled down but, on the day, when she had to travel to Chandigarh, the phone of the defendant No. 1 was continuously on **switch-off** mode which created suspicion in the mind of answering defendant and she was afraid to travel alone with her minor children. She believes that

the plaintiff and defendant No. 1 are hand in glove with each other as defendant No. 1 has preferred to live all alone in Shimla and it is the defendant No. 2 who along-with two minor children are being deprived to reside in a matrimonial home. She ultimately prays that she along-with her minor children may not be deprived from residing in their home.

The matter was argued by all the three learned counsels i.e. learned counsel for the plaintiff (father in law), learned counsel for the defendant No. 1 (son) and learned counsel for the defendant No. 2 (daughter-in-law).

The Court **Heard the matter and Perused the file, and gave following finding:** The present suit has been presented for the grant of a Decree of Permanent Injunction i.e; permanent restraint against son and daughter-in-law in using or entering in the house of father-in-law only and since presently the instant suit is not for the relief of declaration but merely for injunction therefore this Court need not to go into details of the title of the suit property i.e. who is having the title with respect to the suit property.

The law applicable to the instant case at this stage is provided under Order 39 Rule 1 Civil Procedure Code which provides the instances where temporary injunction may be granted,as under: _ Where in any suit it is proved by an affidavit or otherwise –

- (a) That any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) That the defendant threatens, or intends, to remove or dispose off his property with a view to defrauding his creditors,
- (c) That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property (or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit) as the Court thinks fit, until the disposal of the suit or until further orders.

As far as clause (a) of Order 39 Rule 1 CPC is concerned, which states that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, same does not apply to the facts of the present case as from pleadings of the parties, it is nowhere shown that if the defendants 1 and 2 along-with their two minor kids are allowed to live in the house of plaintiff, the said suit property will in any way be wasted, damaged or alienated by them.

Order 39 Rule 1 (b) which states that the defendant threatens, or intends, to remove or dispose off his property with a view to (defrauding) his creditors is also presently not applicable to the facts and circumstances of the instant case.

Order 39 Rule 1 (c) states that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. It is the Order 39 clause (c) CPC which the plaintiff/applicant has pleaded before the Court that on the basis of muscle power the defendants had come in vehicles and had threatened the plaintiff and his spouse that they shall be dispossessed/or injury shall be caused to him and on this basis the ad-interim order has been granted in favour of the plaintiff and against the defendants.

This Court has gone through the pleadings of the parties, legal position referred supra and the material placed before this Court for the purpose of deciding the application for ad-interim relief, this Court is guided by an authority titled as **Morgan Stanley Mutual Fund VsKartick Das 1994 SCC (4) 225** in which Hon'ble Supreme Court has held as under:-

In deciding an application under Order 39 Rule 1 CPC, Court has to see following factors:-

- (i) Whether irreparable or serious mischief will ensue to the plaintiff;
- (ii) **Whether the refusal of injunction would involve greater injustice than the grant of it would involve;**
- (iii) The Court will also consider the time at which the plaintiff first had noticed of the act complained of, so that the making of improper order against a party in his absence is prevented;

- (iv) The Court will consider whether the plaintiff had acquiesced for some time and in such circumstance, it will not grant ex-parte injunction;
- (v) **The Court would expect a party applying for exparte injunction to show utmost good faith in making the application;**
- (vi) Even if granted, the exparte injunction would be for a limited period of time and
- (vii) General Principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court

While granting or refusing the injunction, the Court has to take into consideration the conduct of the party, probable injury to either party or whether the plaintiff could be adequately compensated if injunction is refused.

First and foremost, the Court has to go through the three cardinal principals of prima facie case, balance of convenience and irreparable loss.

After marriage a man and woman are entitled to live in the social sphere as husband and wife. The husband is bound to provide everything that a woman requires, he must take full responsibility for the maintenance of his wife and he is also bound to do this without reproach or condescendence. In this matter the components can be simplified to; **adequate responsibility, overall welfare, stability of marriage, clothing, food as well as general care.**

It is in common parlance that once the marriage/Nikah is performed between the Muslim husband and wife, the Muslim woman gets entitled to:-

1. Dower/Meher and she can refuse co-habitation, if it is not paid;
2. Maintenance with due consideration to husband's earning capacity;
3. Use separate room in husband's house/matrimonial home from where she can exclude all others except her husband;
4. Visit to her parents and other blood relations with reasonable frequencies and
5. Equal treatment and separate sleeping apartment, if there are more than one wives.

The learned counsel for the plaintiff misrepresented the facts in his plaint by stating that the defendant No. 1 and 2 along-with some of their relatives are trying to dispossess him and his old aged wife but same is not the reality as brought before this Court. And in fact it is other way round i.e. in the present case the plaintiff is trying to dispossess a legally wedded daughter-in-law from using a room in her matrimonial household.

Now coming to the facts of the present case, in none of the marriages the parents of the would-be daughter-in-law ask for a separate title of immovable property/residential house in name of the bridegroom before marrying off their daughter in the said house and the daughters are married into the households and there is a legitimate expectation of the bride as well as her parents that she will continue to live in the said house in which she is taken as a bride.

In the present case, while granting injunction the Court has to see the prima facie case and not the prima facie title. The law is quite clear that in cases for injunction, it is the possession which needs to be protected and from the facts appearing before this Court after taking the pleadings of both the parties into consideration and the arguments advanced before this Court by learned counsel for the parties it becomes clear that the defendant No. 2 i.e. daughter-in-law had been in lawful possession and had been living peacefully in the matrimonial house but for the intelligent drafting by learned counsel for the plaintiff it was shown that she had been trying to dispossess the plaintiff and his spouse from their own house when in fact she by the fact of being lawfully wedded wife of defendant No. 1 and mother of two minor children of defendant No. 1 who happen to be grandchildren of plaintiff is under a lawful authority to live in the said matrimonial house and the Hon'ble Supreme Court is clear on the point that even a trespasser can claim protection against unlawful dispossession.

Balance of convenience means that which party will suffer more loss or will have to face greater hardship by getting or being denied the relief of injunction. In the present case, prima facie it has been shown that the defendant No. 1 being the son of plaintiff and defendant No. 2 being daughter-in-law of plaintiff and the said daughter-in-law has been taken as a bride in the suit scheduled property and she had a belief that the said suit property is her lawful matrimonial home and now she along-with her minor kids had been putting up in the said house and denying her and her children entry in the

said house is definitely going to tilt balance of convenience in her favour as she had been stopped from exercising her legitimate right of entering and living in her matrimonial house.

As far as irreparable loss is concerned, from the pleadings of the parties, it becomes clear that presently defendant No. 1 is residing at Himachal Pradesh and it is the defendant No. 2 who has been at this stage after almost more than five years of marriage rendered homeless and shelter less and it is definitely going to have an adverse impact on the psyche of her two minor children who at present have a very impressionable age and the scars of the unfolding of events because of the present suit will be very difficult to be healed up.

The relief of injunction is an **equitable relief** and equity, justice and good conscience have to be guiding factors in deciding an application filed under Order 39 Rule 1 of CPC.

Now keeping in mind the facts of the present case, plaintiff has not come before this Court with clean hands as in the plaint he has submitted that the defendants are trying forcibly to dispossess him from his house when in fact the defendant No. 1 has been already out of the valley in pursuit of his livelihood and it is only the defendant No. 2 who had been living in the said house along-with her two minor children.

In **Maria Margadia Sequeria vs Erasmo Jack De Sequeria (D) ... decided on 21 March, 2012** wherein the Hon'ble Apex Court has held that "truth should be the guiding star in the entire legal process, the Court's serious endeavour has to be to find out where in fact the truth lies. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice System will acquire credibility only when people will be convinced that justice is based on the foundation of the truth".

The principle of adjudication is not only to determine the rights of the parties but to see that the litigations come to an end.

The Hon'ble Supreme Court in **Mohanlal Shamji Soni Vs Union of India &Anr. 1991 Suppl. 1 SCC 271** has held that a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere

umpire at a contest between two parties and declare at the end of the combat who has one and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice. It is the duty of a Court not only to do justice but also to ensure that justice is being done.

In **Ashammugam Vs Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam**, the Supreme Court has stated that “it is bounden duty of the Court to uphold the truth and do justice.

Every litigant is expected to state truth before the law Courts whether it is pleading, affidavit or evidence. Dishonest and unscrupulous litigants have no place in law Courts.

Our Hon’ble High Court in a recent judgment titled **Mohammad Yaqoob Lone And Others vs Hamidullah Lone And Others CMM No. 127/2021, CM No. 5797/2021 on 5 October, 2022** states that it can be professed from Rule 1 of Order XXXIX, that grant of temporary injunction is to **prevent damage** or wastage to any property which is in dispute in the suit and is aiming at preserving the property which is in dispute in a suit.

In my opinion and as per the **Sociological Theory of Jurisprudence propounded by Dean Roscoe Pound**, the function of Courts is that of **social engineering** and if under the garb of Court order a daughter-in-law along-with minor children is dispossessed from her matrimonial home and is not allowed to enter there either to take her belongings or to allow her minor kids to stay and grow up and develop there, then the Courts cannot as act mere spectators and if the wrong is allowed to continue, it will have a negative impact on the upbringing of the two minor effected children and further a wrong message will go out in the society and instead of administering the cause of justice, the Courts will be responsible for advancing injustice.

Although civil Courts have powers to stop the commission of infringement of rights of the people in general and persons coming before the Court in particular, but Civil Courts have to remain vigilant and sensitive about the fact that its Acts do not violate rights of another person and its orders are not in contravention to the provisions of any

law e.g. in the present case, the Court shall not be considered as a party in meteing out Domestic Violence to the defendant No. 2. Domestic Violence Act being a special legislation and has been enacted in order to provide more effective protection of the rights of women guaranteed to them under the D.V Act who are victims of violence of any kind in the family and for matters connected therewith or incidental thereto.

Domestic relationship is defined under Clause F of Section 2 of the D.V Act as a relationship between the two persons who live or have at any point of time lived together in a shared household when they are related by consanguinity, marriage, adoption or family members living together in a joint family.

In the present case, as far as defendant No. 1 is concerned, presently he is putting up at Himachal Pradesh and during the course of proeedings before this Court and as per the written statement submitted by him, it has been shown that even after presentation of instant suit and after passing of the ad-interim relief wherein both the defendants were temporarily restrained from causing or making any kind of interference into peaceful possession and occupation of plaintiff/applicant over the suit property he has been living in the said suit property along-with his parents i.e. the plaintiff and his spouse. Therefore, he has not been adversely effected by the passing of the said order, hence, defendant No. 2 along-with her children has been forced to live separately outside the shared household because of the circumstances beyond their control.

It is the duty of the Court that defendant No. 2 along-with her children enjoys a proper status which she has got by virtue of being wife of defendant No. 1 and daughter-in-law of plaintiff and she cannot be allowed to live a life of remorselessness because of no fault of her.

In view of the considerations and deliberations referred supra, the ad-interim order dated **22/08/2022**, is modified to the extent that the defendant No. 2 along-with her two minor kids is allowed to visit the matrimonial home and can use her room as well as common area of the house/suit property and shall not be stopped or restrained in any way for ingress and egress. Further, parties are directed not to cause any disturbance in the privacy of each other in the shared household.

2. PQR (father of the minor ward A) VS UVW (Mother of the minor ward A)

1. The instant petition under Section 25 of Guardian and Wards Act has been preferred by the learned counsel for the petitioner seeking custody of minor ward named above on the grounds mentioned in the said petition. Along-with the main petition he has also filed an application under Section 12 of Guardian and Wards Act for the grant of interim custody. In the main petition, the petitioner submits that he is father of the minor and is entitled to custody of the minor as per the tenants of Islam and the Shariat governing the personal relations between the petitioner and the minor and under the provisions of Guardian and Wards Act. That the non-applicant is divorcee and she has no source of maintenance or any other avenue to make her the bright future and better upliftment and upbringing of the minor daughter. To safeguard the life of the minor and to provide her best environment and atmosphere for nourishment, upbringing, education, mental development and maintenance to the minor, the applicant has preferred the present Guardian petition. That the applicant/petitioner being father and natural Guardian of the said minor has every right and obligation to save the future of his daughter. That the nuptial knot between the applicant and non-applicant stands dissolved and since then the non-applicant is residing at her parental home with her parents along-with the minor child. While as applicant being the Natural Guardian of the said minor has every right and obligation to save the future of his minor child from getting spoiled at the hands of non-applicant. The applicant is very much worried for the welfare and well-being and best development, upbringing and education of his aforesaid minor daughter to the satisfaction of the need of time. Hence, the petition.
2. The other side was put to notice, despite proper service, she did not cause her appearance before this Court and ultimately on 21/09/2021, exparte proceedings were initiated against the non-applicant and applicant was directed to adduce exparte evidence.
3. On 27/10/2021, the applicant including himself as witness has filed four exparte witnesses in the shape of affidavits in presence of the said witnesses, who have deposed their statement in those affidavits.

All these witnesses as ex-parte witnesses, in one go have stated that the witnesses are competent to solicit the witness affidavit as they are fully conversant with the facts of the case and hence competent to swear the affidavit. That the applicant married with non-applicant in the year 2018 and out of said wedlock one daughter namely Myda Jan

was born. However, after some period, the relationship in between the applicant and non-applicant got strained and ultimately marriage stands dissolved by virtue of compromise-cum divorce. That by virtue of said compromise the custody of the minor female child shall remain with the father i.e. the applicant. However, despite of the said compromise, the non-applicant did not bother to handover the custody of the said minor to the applicant although she received Rs.3,00,000/- (Rupees Three Lakhs) from the applicant. That applicant being the father of the said minor seeks to have the custody of the minor ward, so that he could make her future bright by providing her the best possible education, provide best environment, mental and physical development and for her best future. That the applicant has good means of income and has good and peaceful atmosphere in his home which is fit and feasible for the best sustenance to the minor ward instead of living in parental home of non-applicant. That the applicant is interested in overall development of his child and he is willing to provide his daughter, quality education and all necessities of life for her prosperous future. All the witness affidavits are duly verified, stamped and are attested by public notary.

4. From the evidence of applicant adduced in shape of affidavits it is proved to the satisfaction of the Court that the applicant has already divorced the non-applicant by way of a compromise-cum divorce arrived at between the parties wherein it is stated that the applicant has to pay Rs. 3,00,000/- (Rupees Three Lakhs) in favour of the non-applicant and the minor child shall remain in the custody of father i.e. applicant permanently.
5. Taking cumulative note of whatever has been stated above, betterment and welfare of the minor in the hands of the applicant is more secure and safe than the non-applicant.

Section 17 of Guardians and Wards Act gives guideline to the Court which needs to be considered by the Court in appointing Guardian. Briefly the said section provides as under:-

1. In appointing or declaring the Guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.
2. In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any,

of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

3. If the minor is old enough to form an intelligent preference, the Court may consider that preference.
4. The Court shall not appoint or declare any person to be a guardian against his will.

While deciding the Guardianship of the minor, **the paramount concern of the Courts is the welfare of the minor** and not the affluence of the parties seeking guardianship. Although, better financial resources, are the statutory presumptions that father is better suited, may be one of the relevant considerations but cannot be the **sole determining factor for deciding the custody of the child**. Since, custody of a child is a **sensitive issue** and is a matter involving the emotions of the parties hence the Court has to strike a balance between such emotions and the welfare of the minor.

In **Lekha Vs P. Anil Kumar 2006-13SCC – 555** it has been held that *“remarriage of mother cannot taken as a ground for not granting custody of child to her”*.

The appointment of guardian and custody of minor are two different aspects. The custody is related to physical control over a person or a property whereas the concept of guardianship is similar to trusteeship. A guardian is a trustee in relation to the person of whom he is so appointed and his possession is more onerous than of mere custodian.

Although, father being natural Guardian but as per Guardian and Wards Act 1890, Doctrine of “Best interest of child” and Welfare of the child has to be kept in mind.

In **Chandrakala Menon Vs Vipin Menon (Capt.) 2 SCC 6 (1993)** it has been held that *“the father is the natural guardian of his minor daughter, yet the question regarding the custody of minor child cannot be decided on the basis of legal rights of the parties but on the sole criterion of interest and welfare of the minor”*.

In **Nil Ratan Kandu Vs. AbhijitKandu 9 SCC 413 (2008)** It has been held that *“in selecting a guardian, the Court exercises “parens patriae” jurisdiction and is expected, nay bound, to give due weight to a child’s ordinary comfort, contentment, health, education, intellectual development and favorable*

surroundings. But over and above physical comforts, moral and ethical values cannot be ignored and they are equally, or 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”.

In Wazid Ali Vs Rehana Anjum AIR 2005 MP 141 it has been held that *“the word welfare of the child admits of no strait-jacket yardstick. It has many facets, such as financial, educational, physical, moral and religious welfare. The question, where the welfare of the minor lies should be answered after weighing and balancing all factors germane to the decision-making, such as relationships, claims and wishes of parents, risks, choices and all other relevant circumstances. The answer lies in the balancing of these factors and circumstances and determining what is best for the minor’s total well-being. The cardinal principle is that minors cannot take care of themselves so that the State as “parens patriae” has powers to do all acts and things necessary for their protection. It is, therefore, the primary duty of the Court to be satisfied with what would be for the welfare for the minor and to make an order appointing for declaring a guardian accordingly”.*

6. In the present case, although as per the averments made by the father of the child that the applicant has divorced the non-applicant by way of mutual compromise but child continues to be in the parental home of her mother i.e. her matrimonial home since her birth and has been living there with her mother. Further, the mother **has not remarried and is still there** and at the time of presentation of the Guardian petition in the **year 2021**, the child was shown as **2 ½ years old** meaning thereby in the year 2022 **she might be about 3 ½ years old**.

Section 352 of Mulla’s Principles of Mohammedan Law (Nineteenth Edition) page 287, provides: -

352: Right of mother to the custody of infant child.

The mother is entitled to the custody (Hizanat) of her male child until he has completed the age of 07 Years **and of her female child until she has attained puberty**. The right continues though she is divorced by the father of the child, unless she marries a second husband in which case the custody belongs to the father.

The said view has been held by the Hon'ble High Court of J&K in "**Bashir Ahmad Mir Vs Rubeena Akhter, 2011 (II) page 687.**

7. In the petition and in his witness affidavit, the father has submitted that he has good means of income and can provide the basic necessities of life to his said daughter and further he can provide her better-quality education for her prosperous future. Since, father being the **natural Guardian** and can still provide those **material things** to his daughter even if she is in the custody of her mother. As the guardianship and custody are two separate things and it has been held in **Vishnu Vs Jaya2010-6SCC- 733 that if the children are forcibly taken away from the custody of parent with whom they were living for a long time, and handed over to another, it will only traumatize them and do good to nobody.**
8. Keeping in mind whatever has been stated above, this Court is of the view that presently changing the custody of the minor female child will only result in traumatizing her and hence the application stands disposed off with the direction that the father shall continue providing for the maintenance including educational and other expenses to his daughter. Further, it is also admitted position that the ward is presently in the custody of respondent. Although, the age of child is presently only about 3 ½ years old, therefore, she cannot be taken away from the custody of mother, but at the same time, the petitioner, father of the ward cannot be denied under law his right of spending quality time with his child. Therefore, in the interest of justice and in order to allow the relationship of the minor daughter and her father (petitioner) to grow and flourish, the visitation is hereby granted and shall be regulated as under :
 - I. That respondent (mother) shall produce the ward in the Office of Tehsil Legal Services Committee, Chadoora on 1st and 3rd Saturday of every month at 02:00 P.M and leave the custody of the ward with the petitioner till 4:00 PM wherein after petitioner shall re-deliver the custody of the ward to the respondent. However, if for any reasonable cause the respondent would be unable to cause the production of ward on 1st and 3rd Saturday supra, she shall in alternative produce the ward on 2nd and 4th Saturday of every month respectively in afore - noted mode and manner.
 - II. For every visit the father shall **pay ₹1000/-** to the respondent as visitation charges.
 - III. That petitioner (father) shall take necessary measures for upbringing of the ward and oversee her progress.

- IV. That respondent shall facilitate conversation of ward with the petitioner through video call at least twice in a week.
- V. That non-compliance of the order without any reasonable/ lawful excuse would make the defaulting party liable to the costs to the tune of **Rs. 2500/-**
- VI. It is made clear that this order/ in reference to the visitation rights as afore-stated shall remain in force for a period of one year from today i.e. the date of order wherein - after parties may seek alteration/ amendment / modification etc. of this order, if they choose to do so, in accordance with law. Copy of this order shall be sent to Staff of Tehsil Legal Services Committee, for information and compliance.

Case No 3... Mother aged 80 Years Vs Three Sons and Two Daughters.

The instant Pre-litigation has been filed by the applicant on 12.11.2022. The application has been numbered and diarized. In the application the applicant has stated that her husband namely GAG died on 21.08.2022 at his home and left behind the applicant and non-applicants 01 to 05 as his legal heirs and successors in interest. The deceased husband of the applicant was maintaining Saving Account with Post Office Chadoora under Account No. SB-XXX and left behind an amount of Rs. 80,672/- deposited lying therein. The applicant approached the Post office with the request to release the said deposited amount in her favour. The Postmaster refused to release the said amount in favour of applicant unless no-objection from the non-applicant 01 to 05 is on record. The applicant thereafter submits that the non-applicants 01 to 05 i.e. her own two sons and three daughters refused to give their no-objection in the matter. The applicant is widow and has no source of income and prayed that the amount deposited by her husband in the Post office may be released in her favour.

That non-applicants have been put to notice for causing their appearance before the Court and on the day fixed they appeared and were directed to give NOC to their mother then and there failing which they shall be saddled to pay regular maintenance to their mother to the tune of Rs. 10,000/- per month as provided under Maintenance and Welfare of Parents and Senior Citizens Act 2007 (MWPSA ACT). Subsequently, they gave the undertaking and NOC as required in the open Court and same was handed over to the Postmaster for release of amount in favour of the old lady.

These are some of the instances wherein it is practically shown that how the Courts regulate the behavior of family members interse and how they act the agents of social change as whatever is being done by the Courts on day-to-day basis has a clear-cut effect on the daily lives of people.