

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

148

CRWP-6063-2022

Date of Decision: 22.06.2022

AMANDEEP KAUR

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mrs. Savita Bhandari, Advocate
for the petitioner.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been instituted under Article 226 of the Constitution of India for issuance of writ in the nature of Habeas Corpus so as to direct the official as well as private respondents to divulge the whereabouts of the minor child Abhimanyu Singh Khera aged 7 years, who is a citizen of Italy with a further direction to the respondent No.3 to produce the minor child and hand over his custody as well as passport to the petitioner- mother of the minor child. Further prayer was made for appointment of Warrant Officer to search the residence of the respondent No.3-father of the minor child, who is stated to have illegally taken over the custody of the minor child.

FACTS

2. As per the averments contained in the petition, the petitioner is mother of minor child namely Abhimanyu Singh Khera, who was born on 06.01.2015 and is a citizen of Italy, but brought up in India through Indian parents- married in India. It is submitted that the respondent No.3 had brought

his son Abhimanyu Singh Khera to India in the month of March 2018, when he was three years old, on the pretext of a temporary visit to India and that thereafter, gradually blocked the access of the child with his mother (petitioner herein) and the minor sister and also obstructed the visit of the petitioner to India by not giving requisite consent for the minor daughter, then aged 10 years to travel with him. She further submitted that the citizenship of the minor is of Italy and that the respondent No.3 has allowed the passport of the minor child expire on 14.12.2020 in the perceived notion of patriarchal supremacy, even though it was in the best interest of the child.

3. After making a safe stay arrangement for her minor daughter aged 14 years in Italy, the petitioner came to India on 09.05.2022 to get the custody of her minor son and also to get renewed his passport and take him to Italy alongwith her for proper schooling and upkeep as she is a qualified nurse on the registered rolls of Italy, having sufficient capability to maintain her two children.

4. It is alleged in the petition that after her return to India, she has been pursuing her remedies from pillar to post but is not getting access to her minor son and that despite extending her return from 15.06.2022 to 27.06.2022, there is no respite. Resultantly, the instant habeas corpus petition has been instituted invoking the role of the Constitutional Court of the parens patriae for the minor child and to bestow his custody to the petitioner.

ARGUMENTS ON BEHALF OF THE PETITIONER

5. Learned counsel appearing on behalf of the petitioner has contended that the petitioner is being deprived of her right to seek access to

her minor child, who has been removed from Italy in a clandestine manner and was brought to India on a false pretext. She has contended that a writ in the nature of habeas corpus would be maintainable and that it is imperative upon constitutional Court to entertain the same and to direct restoration of the status quo ante. Reference has also been made to various judgments of this Court as well as of the Hon'ble Supreme Court to substantiate about the maintainability of a writ petition in the nature of habeas corpus for securing the custody of the minor children. Reference was made to the judgment of this Court in the matter of **'Rashneet Kaur Vs. State of Haryana and others; decided on 13.06.2022 vide CRWP-3251 of 2022** as also the judgments passed by various High Courts as well as the Hon'ble Supreme Court. The reliance is placed on various judgments and the extracts thereof are being referred to herein below:

In **Mandeep Kaur Vs. State of Punjab & Ors. 2021(1) RCR (Civil) 152** where the mother had filed a Habeas Corpus petition against the father for the custody of the minor child this Court held as under:-

12. *Now, it is well settled that writ of habeas corpus can be issued for restoration of custody of a minor to the guardian wrongfully deprived of it.*

13. *In Criminal Appeal No. 127 of 2020 SLP (crl.) No. 7390 of 2019 titled Yashita Sahu Vs. State of Rajasthan and others decided on 20.01.2020 Hon'ble Supreme Court observed as under:-*

“9. *It is too late in the day to urge that a writ of habeas corpus is not maintainable if the child is in the custody of another parent. The law in this regard has developed a lot over a period of time but now it is a settled position that the court can invoke*

its extraordinary writ jurisdiction for the best interest of the child. This has been done in Elizabeth Dinshaw vs. Arvand M. Dinshaw & Ors. (1987) 1 SCC 42, Nithya Anand Raghavan vs. State (NCT of Delhi) & Anr. (2017) 8 SCC 454 and Lahari Sakhamuri vs. Sobhan Kodali (2019) 7 SCC 311 among others. In all these cases the writ petitions were entertained. Therefore, we reject the contention of the appellant wife that the writ petition before the High Court of Rajasthan was not maintainable.”

That in **Marggarate Maria Pulparampil vs Dr. Chacko Pulparampil & Ors.** Decided on 24 Jan. 1969, Kerala High Court in paragraph No.11 & 12 referred observations of Lord Willmer L. J. in Re H (infants) reported in 1966(1) All ER 886, wherein his Lordship approved the passage from the judgment of Cross. J. that stated:

“The sudden and unauthorized removal of children from one country to another is far too frequent nowadays, and as it seems to me, it is the duty of all courts in all countries to do all they can to ensure that the wrongdoer does not gain an advantage by his wrongdoing.”

And opined that the

“The Courts in all countries ought, as I see it to be careful not to do anything to encourage this tendency. This substitution of self-help for due process of law in this field can only harm the interests of wards generally.”

That the Hon'ble Supreme Court in **'Ruchi Majoo V. Sanjeev Majoo (2011) 6 SCC 749** has held as under:

“58. Proceedings in the nature of habeas corpus are summary

in nature, where the legality of the detention of the alleged detenu is examined on the basis of affidavits placed by the parties. Even so, nothing prevents the High Court from embarking upon a detailed enquiry in cases where the welfare of a minor is in question, which is the paramount consideration for the Court while exercising its parens patriae jurisdiction.

That the Hon'ble Supreme court in *Nil Ratan Kundu Vs. Abhijit Kunu, (2008) 3 RCR (Civil) 936: (2008) 9 SCC 413*, held in paragraph No.54 that:

*“..... 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.**”*

That the Hon'ble Supreme Court of India in *Shafin Jahan Vs. Asokan K.M.* in *Criminal Appeal No.366 of 2018* cited the Supreme Court of Canada in *E. (Mrs.) Vs. Eve* 16 wherein it has been observed that-

“the jurisdiction under the doctrine of Parens Patriae is broad and its scopes cannot be defined. It applies to varied situations, and a Court can not only if injury has occurred but also if it is apprehended.”

In *Roxann Sharma Vs. Arun Sharma, (2015) 2 RCR (Civil) 93*, the Hon'ble Supreme Court has observed:

“We must immediately clarify that this Section or for that

matter any other provision including those contained in the G&W Act, does not disqualify the mother to custody of the child even after the latter's crossing the age of five years.”

In **Rosy Jacob Vs. Jacob A. Chakramakkal, (1973) 1 SCC 840**

has stated in paragraph No.15:-

*“15. **The children are not mere chattels:** nor are they mere play-things for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society.”*

And observed in paragraph No.17 that :

*“**The father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. If the custody of the father cannot promote their welfare equally or better than the custody of the mother, then he cannot claim indefeasible right to their custody.**”*

6. During the course of arguments, a specific question was asked to the learned counsel for the petitioner that as to why the petitioner should not be relegated to take recourse to the alternative remedy prescribed under the Hindu Guardian and Wards Act, considering that the child is stated to have been brought to India in the month of March 2018 and already a period of more than four years and three months has elapsed since the child has

been staying in India with his father. The only response to the said query given by the learned counsel for the petitioner was that the remedy before the Family Court/Judge, Court of Guardian and Wards is not efficacious and the said remedy is time consuming. The learned counsel for the petitioner was further confronted with the fact that the petitioner has chosen not to approach the Court under Guardian and Wards Act and as such, what is the tangible material placed on record to substantiate the submission so advanced by the learned counsel for the petitioner, to which she could not make a reference to any specific evidence/document on record and made a general submission that the said aspect is a matter of common knowledge. In response to the submission that the petitioner has been making efforts to secure the custody of her minor child and for the said purpose, she has been running from pillar to post, a specific question was raised to the learned counsel for the petitioner as regards the efforts made and the authorities to which the petitioner has approached and also whether such authorities are competent authorities in law to restore the custody of the minor child, the petitioner could not indicate to any material on record to buttress the submission and the efforts made by approaching any competent authority other than mere filing the instant petition for securing the custody of her minor child. The learned counsel for the petitioner was further asked to point out or advance the reasons as to why in the wake of an existing efficacious remedy under the statute and in the absence of any compelling urgent circumstances reflecting an imminent danger to the life and liberty of the minor child and especially when the removal of the child from one country to the other is neither sudden nor unauthorized and is also not in

close proximity to the institution of the present petition for habeas corpus, why the jurisdiction under Article 226 of the Constitution of India be exercised against the ordinary, efficacious and expeditious remedy provided under statutory scheme. The response of the learned counsel was again general and not based upon any specific or special circumstances surrounding the case in hand.

7. A prayer was made by the counsel for the petitioner that the petitioner is scheduled to take the flight on 27.06.2022 and that she needs the custody of the child so as to get the passport renewed and to take the child back to Italy. It was duly pointed out that the passport in question had expired in December 2020 and as such, there is no such emergent need for renewal of the said passport immediately. Furthermore, a specific query was also put to the learned counsel for the petitioner that as to whether the interim relief as prayed for by the petitioner before this Court can also be granted by the Court constituted under Guardian and Wards Act, to which learned counsel for the petitioner answered in affirmative.

8. I have heard the learned counsel for the parties and have gone through the facts of the instant case as well as the documents appended alongwith it. Besides, the precedents judgments of the Hon'ble Supreme Court that have been referred to by the parties have also been considered.

ANALYSIS

9. Having kept in mind the pleadings of the petitioner, the arguments raised by the learned counsel for the petitioner and the judgment/ case laws relied upon by her as also the responses to the specific queries put by this Court, the matter in hand has been considered and it failed to impress

this Court with any substantial merit necessitating the exercise of jurisdiction under Article 226 of the Constitution of India invoking the writ jurisdiction of habeas corpus despite existence of an efficacious and alternative statutory remedy prescribed under the Hindu Guardian and Wards Act.

10. Upon careful analysis of the judgments cited by the respective parties in support of their contentions, I am of the view that the issue arising before this Court is not as regards the question of maintainability of a writ in the nature of Habeas Corpus since the issue as to whether availability of an alternative remedy would prohibit exercise of a writ jurisdiction is well settled to the effect that it is not a bar.

11. The question which thus arises first is as to whether the custody of the minor son with the father can be held to be 'unlawful or illegal' and as to whether the Court must exercise its jurisdiction that has been invoked as *parens patriae* whereby Court becomes the principal guardian or protector of the interest of the child.

12. Perusal of the documents as well as the pleadings no where establishes that custody of the child with his father is either illegal or unlawful. Reference in this regard has to be made to the substantive provisions of Section 6 of Hindu Minority and Guardianship Act, 1956. The relevant provision of the same is reproduced hereinafter below:-

“6. Natural guardians of a Hindu minor.—The natural guardian of a Hindu minor, in respect of the minor’s person as well as in respect of the minor’s property (excluding his or her

undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband: Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi). Explanation.—In this section, the expression “father” and “mother” do not include a step-father and a step-mother.”

13. A perusal of the same would show that father is a natural guardian of the minor child and it is only on demise of the father, that the mother becomes the natural guardian. Hence, by operation of law the rights of the father are recognized as a preferential right.

14. The same thus requires to understand as to what would constitute “illegal & unlawful”. The Full Bench of Madras High court in the matter of ***Kuppammal and others Vs. The Dist. Collector and Distt. Magistrate, Thiruvallur District, Thiruvallur and Others*** decided on ***13.02.2001 in HCP Nos.11,41,66, 76 and 103 of 2000*** has observed as under:

13. The writ of habeas corpus is primarily issued calling upon a person who had detained another to produce the detained individual in order to let the Court to know on what ground a

detenue has been confined and set him at liberty if there is no legal justification for such detention. When once the Court comes to the conclusion that the detention is unlawful, the confinement cannot be permitted and consequently direction has to be issued to set the detenue at liberty.

14. The confinement of a person is either unlawful or considered to be unlawful in the following cases:

(i) Where the detention is not authorised or under the shelter of any law or the detention law under which the detention ordered is void.

(ii) Where the authority who had ordered detention is not the one specified or authorised in that behalf.

(iii) Where though the specified authority ordering detention is competent and also acts under a valid law yet if such authority had failed to follow the procedure prescribed in that behalf.

(iv) In some cases even when the authority had followed the procedure prescribed if action of said authority is vitiated by one or more of the defects or infirmity recognised in this respect by principles of administrative law such as;-

(a) abuse of power;

(b) mala fides;

(c) perversity;

(d) non-application of mind;

(e) arbitrariness;

(f) extraneous consideration or a fortiori reason or like.

15. It is equally well settled that strict compliance with the prescribed procedure or all legal requirements are considered as essential by various judicial pronouncements of the Apex Court and this Court. The detaining authority is required to follow strictly and scrupulously the forms and rules of law prescribed in that behalf or by the statutory provision under which the order of detention is being made after arriving at a subjective satisfaction.....

16. At the same time, it is also settled principle that the Courts will

not interfere with the subjective satisfaction arrived at by the detaining authority if such subjective satisfaction is based upon some material from which a person with clear mind will arrive at the same subjective satisfaction or order detention. In other words a detention is unlawful if it is not in accordance with the law or if there is any deviation of the procedure established by law or such procedure has not been complied with. The detention, though under a valued law, if it infringes fundamental rights or if continuance of detention on the facts of the case renders the detention unconstitutional or if such detention is found to be unlawful or the detaining authority exceeds its authority or abuses it or exercises the power vested in it mala fide, then the detention order is liable to be set aside.”

15. As the law confers the custody of a minor child with father, the custody by father cannot be held to be illegal or unlawful as per the circumstances noticed by the Madras High Court.

16. It would also be pertinent to refer to the judgment of Hon'ble Supreme Court in the matter of ***Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tiwari (2019) 7 SCC 42***, wherein the Hon'ble Supreme Court has observed as under:-

*“19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the court. **Habeas corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor is by a person who is not entitled to his legal custody. In view of the pronouncement on the issue in***

*question by the Supreme Court and the High Courts, in our view, in child custody matters, **the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.***

20. *In child custody matters, the ordinary remedy lies only under the Hindu Minority and Guardianship Act or the Guardians and Wards Act as the case may be. In cases arising out of the 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 are significant differences between the enquiry under the Guardians and Wards Act and the exercise of powers by a writ court which is of summary in nature. What is important is the welfare of the child. In the writ court, rights are determined only on the basis of affidavits. 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, the rights of the parties to the custody of the minor will be determined in exercise of extraordinary jurisdiction on a petition for habeas corpus.*

21. *In the present case, the appellants are the sisters and brother of the mother Zelum who do not have any authority of law to have the custody of the minor child. Whereas as per Section 6 of the Hindu Minority and Guardianship Act, the first respondent-father is a natural guardian of the minor child and is having the legal right to claim the custody of the child. The entitlement of father to the custody of child is not disputed and the child being a minor aged 1½ years cannot express its intelligent preferences. Hence, in our considered view, in the facts and circumstances of this case, the father, being the natural guardian, was justified in invoking the extraordinary remedy seeking custody of the child under Article 226 of the Constitution of India.”*

17. It is well settled provision in law and oft reiterated and also relied by the Hon'ble Supreme Court in the matter of '**N.P. State Agro Industries Development Cooperation Vs. Johan Khan**' reported as **(2007) 10 SCC 88** that the power of the High Court under Article 226 of the Constitution of India is plenary in nature, not limited to any other provision of the constitution. Prior exhaustion of alternate remedy is a rule of prudence and not of compulsion. In appropriate cases, the High Court may in its discretion, entertain the writ petition prior to availing alternative remedial measures. Some of the circumstances where the Hon'ble Supreme Court has upheld the maintainability of a writ petition despite existence of an alternative remedy are categorized as under:

- (i) Where the petitioner seeks to highlight the violation of fundamental rights and press for enforcement of the same; or
- (ii) Where there is blatant violation of principles of natural justice; or
- (iii) Where the impugned order or action has been passed without jurisdiction; or
- (iv) Where the vires of the concerned Act itself have been assailed; or
- (v) Where the Court or the Tribunal against which the grievance is espoused lacks inherent jurisdiction; or
- (vi) Where the act in question suffers from blatant arbitrariness, discrimination, abuse of authority of power or disregards settled law; or
- (vii) Where the alternative remedy does not provide for the immediate, emergent or the interim relief that has been prayed for and in the absence of grant of such interim indulgence/emergent or immediate relief, the litigant

suffers irreparable loss and injury or where the composition of the remedy renders it unfit for functioning.

18. In the absence of the circumstances noticed above, a writ jurisdiction would not be panacea for all the maladies which a litigant may suffer. It was held by the Hon'ble Supreme Court in the matter of 'Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal' reported as (2014 (1) SCC 603 that the High Court will not entertain a writ under Article 226 of the Constitution of India if an effective alternate remedy is available to the aggrieved person or the statute under which the action complained of has been taken or the statute itself contains a mechanism for a redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The writ jurisdiction is not a jurisdiction ordinarily available in supersession of the existing statutory remedy, rather, the burden lies on the person approaching the Writ Court to explain as to why despite existence of a specialized statutory remedy, the High Court still ought to exercise its writ jurisdiction.

19. While the Court of law is sensitive to the needs of people and is obligated to ensure expeditious dispensation of justice, however, such perception of expeditious dispensation cannot be cited as laying a foundation for disregarding the statutory remedies available in law or to undermine the authority of statutory Courts and to straightway burden the High Court with a litigation where the question of best interest of a child is to be investigated upon and a finding is to be determined on the strength of

evidence brought before the Court. Such contested issues amongst biological parents cannot be decided on the basis of summary proceedings. The private perception of an individual bereft of any tangible material to support that the alternate statutory remedy is not an efficacious remedy, if brazenly allowed as a reason sufficient to by-pass the statutory remedies, the same poses an imminent risk of forum shopping and also reduces the statute as well as the provisions enshrined therein. Such disregard to a statute or statutory provisions and procedures would not ordinarily be promoted by a Constitutional Court.

20. Further, a Division Bench of this Court in its judgment dated 23.05.2019 passed in LPA No.3716 of 2018 in case titled as ***Reetu Verma vs. State of Haryana and others***, observed as under:

*“ The parties are husband and wife, having a minor son namely Jiyanishu Verma. Admittedly, on account of matrimonial dispute minor son is in the custody of the father-respondent, as every time they have appeared before us, the child has been brought by him. Habeas Corpus petition was filed by the appellant-wife seeking custody of the minor child for herself. **Learned Single Judge dismissed the habeas corpus petition on the ground that the custody of a minor child with a natural guardian cannot be said to 1 of 2 be illegal and relegated the parties to avail the remedy under the Guardian and Wards Act.** Before this Court innumerable efforts have been made by us for an amicable settlement between the two, to secure the interest of the child so that he is not deprived of either love of father or the mother. On more than two occasions we interacted with the parties in the Chamber to bring an amicable settlement but the same failed. Lastly, on the suggestion of learned counsel appearing for the parties, we referred the matter to the*

mediation, where also the parties have failed to arrive at an amicable settlement. Since the question of the custody of the minor child and the welfare of the child being supreme it can only be decided on the basis of evidence as to which of the two parents are in a better position to look after the welfare of the child and a conclusion in respect of same only be arrived at by way of an evidence.

Hence, in our considered opinion the impugned order and judgment does not require any interference and it would be in the interest of justice that the appellant is relegated to avail the remedy under the Guardian and Wards Act to seek the custody of the minor child before the appropriate Court. With this, intra court appeal stands dismissed.”

21. Apart therefrom, in the matter of **Manohar Lal and another Vs. State of Punjab and others** passed in **LPA No.476 of 2020** decided on **05.08.2020**, by Division Bench of this Court observed as under:

“14.....Of course, the position would be viewed from a different perspective, where there are competing claims between the biological parents of the child or where parties to the lis purport to have an authority or lawful right to retain/claim custody of the child. Something that requires evidence and full scale inquiry.....”

CONCLUSION

22. Taking into consideration the submissions advanced by the learned counsel for the petitioner as also the judgments relied upon by her and the other precedent judgments of the Hon'ble Supreme Court, I do not find any sufficient ground as to why the extraordinary writ jurisdiction under Article 226 of the Constitution of India should be invoked in the present case. The essential aspects that have been noticed and have weighed

upon the Court are extracted herein below:

- (i) The custody of the minor child is with his father, who is a natural guardian of the minor under Hindu Guardian and Wards Act 1956, which is the governing statute applicable to the parties in the present case. As such, the custody of the minor child with the father cannot be said to be illegal.
- (ii) The respondent No.3-father has not removed the child in violation of any order passed by any competent authority/Court of law as would render the custody to be unauthorized.
- (iii) That the child is stated to have been removed from the custody of mother in the month of March 2018 and already a period more than 04 years and 03 months has elapsed before the instant petition has been filed by the petitioner seeking to invoke the writ of habeas corpus.
- (iv) Even though the petitioner claims that she was precluded from travelling to India, however, there is no material on record to suggest that any proceedings/efforts have been made by the petitioner to institute any proceeding before any competent authority or forum in Italy to secure the custody of her minor child.
- (v) That no circumstances have been alleged or urged in the petition as would indicate that there is imminent danger to the life and liberty of the child.
- (vi) That there is no prima facie material to establish as to how vesting of the custody of the child with the petitioner is in the best interest

of the child inasmuch as the only ground urged is that the child is a citizen of Italy, however, the same may not by itself be in the best interest of the child as uprooting the child from the country where he belongs and which he has adopted would itself have a serious impact on the psychology and well-being of the child. The European citizenship/passport may be conceived as valuable from the prospect of a grown up major, however, the said yardstick of financial security or future growth prospects cannot by themselves be concluded to be the only parameters that would be in the best interest of the minor child. The emotional, psychological and mental strength and family as well as social support are equally essential for a child and for his healthy development and growth. Besides, nothing has been substantiated or alleged in the petition that respondent No.3- father of the minor is financially not capable to support or take care of the basic amenities/luxuries that may be provided by the petitioner.

(vii) That the petitioner has even though alleged that she made every effort to secure the custody of her minor child, however, her assertion is not substantiated by any overt act. There is no reliance on any steps taken or measures adopted by the petitioner to seek restoration of the custody of the minor child, whether while being in Italy or after her return to India.

(viii) That the petitioner has failed to point out the existence of any circumstance as would necessitate an immediate action only by

a Constitutional Court and that the alternative efficacious statutory remedy would not be sufficient or capable of redressing the grievances espoused by the petitioner.

- (ix) That the petitioner has also failed to refer to any material on the basis whereof it may be assumed that the available statutory remedy is neither effective nor efficacious.
- (x) That the reasons cited by the petitioner for directly approaching the High Court instead of taking recourse to the alternative efficacious remedy as per law do not fall within the recognized exceptions by the Hon'ble Supreme Court through various judicial pronouncements.
- (xi) Constitutional Courts should exercise adequate precaution to ensure the supremacy of the governing statute as well as the procedure and the remedies prescribed under the said statute instead of taking recourse to by-passing the statutory provisions and the remedies without any pressing need or without existence of any circumstance which would satisfy the judicial conscience that the ends of justice can be secured but only by exercise of the extraordinary writ jurisdiction.

23. In view of the above, I do not find any sufficient ground to entertain the instant writ petition invoking the writ of habeas corpus towards securing the custody of the minor child. The petitioner/parties are at liberty to take recourse to the alternative remedies available to them under the statute, and in the event of the petitioner taking recourse to such remedy as per law, by way of moving any petition or application for seeking interim

relief, the said petition/application shall be adjudicated upon as expeditiously as possible by the concerned Court/Forum/Tribunal and preferably within a period of two months from the date of its effecting service upon the parties.

24. The writ petition is accordingly dismissed with the liberty as aforesaid.

(VINOD S. BHARDWAJ)
JUDGE

22.06.2022
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No