

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

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**CWP-17774-2023 (O&M).
Date of Decision: 11.10.2023.**

RAMAN SONI

.. Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. R.S. Randhawa, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer made in the present writ petition is for seeking issuance of a writ in the nature of mandamus directing the respondents to act in accordance with the order dated 04.01.2022 (Annexure P-5) and order dated 16.11.2022 (Annexure P-9) passed by the High Court of England and Wales on the principles of Comity of Courts whereby the said Court has ordered that minor is a ward of that Court during her minority and no important step in child's life be taken without its permission.

Learned counsel for the petitioner has contended that his minor daughter Nysa Soni who was born on 22.04.2019 and is a British Citizen who has been illegally removed from his care and custody by respondent No.4-Neha Arora from United Kingdom (U.K.) and is now being detained at Sector 9, Faridabad, within the territorial jurisdiction of this Court.

Aggrieved of the same, the present writ petition has been filed.

The facts as averred are that the petitioner went to England in 2003 and became a British Citizen in the year 2009. The petitioner got married to respondent No.4-Neha Arora who also moved to U.K. on a spouse VISA on 23.03.2013 where she was granted indefinite leave to remain in U.K. in the year 2018. She started working with PA Consulting, a British Company based in London since March 2021. The daughter Nysa Soni born on 22.04.2019 was granted British citizenship after reaching U.K. on 14.01.2020 and was studying there. On 18.09.2021, the respondent No.4 asked the petitioner to bring along her daughter to India which was refused by the petitioner owing to the prevailing Covid -19 situations then and owing to the fact that Nysa Soni was not vaccinated. Notwithstanding the same, the respondent No.4, along with their daughter Nysa Soni came to India in October 2021. The petitioner is stated to have made efforts to contact them, however, his efforts fell in vain. A petition was accordingly moved by the petitioner before the Family Division of Hon'ble High Court of England and Wales against respondent No.4 for having abducted his daughter by using fraudulent consent at Heathrow Airport, London. The High Court of England and Wales declared Nysa Soni to have been unlawfully removed and having primary jurisdiction in the matter of parental responsibility of Nysa Soni vide order dated 19.11.2021. Thereafter, vide its order dated 09.12.2021, the Family Division of Hon'ble High Court of England and Wales ordered that the child is and shall remain a ward of the Court during her minority and till further orders.

It is argued that despite attending the hearing before the Courts in England, the respondent No.4 has not obeyed the said order. A writ in the nature of mandamus is thus sought for directing the respondents to act in

terms of the judgment order dated 04.01.2022 (Annexure P-5) and order dated 16.11.2022 (Annexure P-9) passed by the High Court of England and Wales.

Counsel for the petitioner has made an attempt to refer to certain judgments, however, he fairly concedes that the said judgments are in relation to handing over custody and largely in exercise of a jurisdiction in the nature of habeas corpus and do not pertain to a writ in the nature of mandamus. Further, the issue in question relates to the custody of the child in the given circumstances where said orders have been passed by the Family Division of the High Court of England and Wales.

I have heard learned counsel appearing for the petitioner and have gone through the documents appended along with the present petition.

The order having been passed, the enforcement thereof is to be done in a manner known to law. Section 44 A of the Code of Civil Procedure, 1908, lays procedure for execution of such decree, if so passed, where the territory is reciprocating territory. The process of seeking enforcement of such order through a writ jurisdiction is thus not evolved. There being no Public Authority involved or the private respondent being under any public duty or discharging public function, a writ jurisdiction does not come into play for enforcement of such decree/order. The same can be done only as per the manner and procedure prescribed for enforcement of such decree, if passed by a Court in India.

Writ petition is thus misconceived and is liable to be dismissed.

Petitioner, may, if so advised, take recourse to filing an appropriate petition as per law for seeking enforcement.

Dismissed with liberty as above.

October 11, 2023

raj arora

(VINOD S. BHARDWAJ)

JUDGE

Whether speaking/reasoned

Whether reportable

: Yes/No

: Yes/No