

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 341 OF 2024**

Mr. Abhijit S. Shingote
Age : 36 years, Occ : Service,
R/at : 10315 Alexander,
Martin Ave, Charlotte NC 28277

.... Petitioner

v/s.

- 1) The State of Maharashtra
Through Public Prosecutor
- 2) Sr. PI Nerul Police Station
Jagatguru Aadi Shankracharya Marg,
Sector 23, Darave Village,
Sector 28, Nerul, Navi Mumbai
- 3) Mrs. Shrikala Tikekar
Age : 33 years, Occupation : Service,
Currently R/at : Mukkam Post
Tikekar wadi, Post Otur, Junnar,
Pune – 412409.

And
2071/3B Shrirang, Anantjyoti Society,
Jayantrao Tilak Nagar, Sahkarnagar,
Pune – 411 009

.... Respondents

Mr. Siddhesh Bhole a/w. Mr. Ashwin Pimple, Mr. Abhishek Bandre,
Ms. Nehal Desale i/b. Mr. Aditya Andhorikar for the Petitioner.
Mr. S.V. Gavand, APP for the State.
Mr. Harshwardhan Salgaokar a/w. Mr. Himanshu Patil i/b.
Mr. Sangharsh Waghmare for Respondent No.3.

**CORAM : A.S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 02nd APRIL, 2024.
PRONOUNCED ON : 07th MAY, 2024.**

JUDGMENT : [PER : SHYAM C. CHANDAK, J.] :-

1) Rule. Rule made returnable forthwith and with the consent of learned Advocates for the respective parties, heard finally.

2) This is a Writ Petition under Article 226 of the Constitution of India. Since the Petition is concerning a girl child aged about 7 years as of date; to respect her anonymity, we deem it appropriate to refer her as Miss 'R' for the purpose of our decision.

2.1) The main relief that Petitioner prayed for is as under :-

“ This Hon’ble Court be pleased to issue an appropriate writ, order or direction in the nature Habeas Corpus to the Respondents and more particularly Respondent No.2 to produce the minor daughter Miss ‘R’ before this Hon’ble Court and deliver her custody to the Petitioner Father so as to repatriated her to the U.S.A in compliance of the order passed by the U.S court dated 14/12/2023 and 12/01/2024.”

2.2) The other prayers relate to an interim relief and other consequential reliefs.

3) In the case of *Smriti Madan Kansagra vs. Perry Kansagra*, 2017 SCC OnLine Del 7007, the High Court of Delhi has observed that, “*The issue of custody, including interim custody and visitation rights of the parents to a child becomes a source of continuous litigation when the litigating couple adopts hard postures. Often the innocent children are used as tools of vengeance by vindictive litigants who inflict severe emotional*

and psychological abuse on the child thereby seriously affecting the child in his/her later part of life. We have been noticing that in family disputes, litigants often made false and vindictive allegations against each other, wasting and consuming enormous Court's time. Depriving a child the love and affection of both parents is not in the interest of the child. The custodial parent who tries to alienate the child from the other parent does not realize the serious consequences caused in the later part of the child's life. It is the fundamental right of children to get love and affection from both parents. If efforts made by a Court to make the parties mutually agree upon a visitation schedule and interim custody period fail, the Court has to step in and pass suitable orders in the best interest of the child. ”

3.1) With this as preface, we proceed to note the averments of Petitioner (*‘the husband’, for short*) and contentions of Respondent No.3 (*‘the wife’, for short*), as the contest between two is not an exception to that.

4) The husband’s case is that, since 2007, he has been working and residing in the United States of America (*‘the USA’, for short*). He is having an Indian passport. The husband and the wife are Indian Citizens by birth. Their marriage was solemnized on 16th January, 2015 at Pune, India. On 09th February 2015, the couple shifted to the USA. On 24th June 2016, the couple was blessed with Miss ‘R’. She is a citizen of the USA and holds a passport thereof.

4.1) It is alleged that, meanwhile the husband was subjected to

physical, mental, social, emotional and financial harassment by the wife. The husband and the wife, therefore, fallen apart on 05th September 2023. Thereafter, the residential address of the wife and Miss 'R' was 5924, Cactus Valley Road, Charlotte, North Carolina 28277.

4.2) On 05th September 2023 itself, the husband filed a Motion before the District Court of Mecklenburg County, in the States of North Carolina, the USA (*'The Mecklenburg Court'*, for short), seeking for Miss 'R's custody, child support and equitable distribution. The wife appeared in the said case and filed her verified Answers-cum-Counter-claims for post separation support, alimony, child custody, equitable distribution, Motion for Temporary Parenting Arrangement, child support and Attorney fees. It was followed by the husband's verified defence, reply and responsive pleadings. During the hearing for 'Temporary Parenting Arrangement', it was confirmed that, till final hearing, the parties would continue to exercise joint physical custody on a week on-week off basis. One Lynna Moen was appointed as a Parenting Co-ordinator. Then, between 05th September 2023 to 06th December 2023, the husband fully participated in the daily activities of Miss 'R' and took her on vacation on certain occasions.

4.3) It is averred that, on 06th December 2023, suddenly the wife withdrew Miss 'R' from her School. On 07th December 2023, she flew to India alongwith Miss 'R' but without intimation to and consent of the husband. Thus, the wife flouted the temporary arrangement of Miss 'R's

custody and the Orders of the competent Court. Thereafter, the wife was non-communicating. In this background, on 14th December 2023, the Mecklenburg Court granted a Motion by the husband for an *Ex-parte* Emergency Custody i.e., sole legal and physical care, custody and control of child 'R'. However, the wife did not appear in the case on 04th January 2024.

4.4) It is stated that, after coming to India, the wife filed a report bearing F.I.R.No.567/2023 with Nerul Police Station, Navi Mumbai against the husband and his relatives alleging offences punishable under Sections 323, 406, 498-A, 504, 506 read with Section 34 of the Indian Penal Code, 1860 ('I.P.C.', for short). The husband also filed a report dated 09th January 2024 with Nerul Police Station, Navi Mumbai against the wife alleging offences punishable under Sections 361 and 363 of I.P.C.

4.5) By its Order dated 19th January 2024, the Mecklenburg Court permanently granted the sole custody of Miss 'R' to the husband. The said Court also issued a *suo moto* Order to the wife to show cause as to why she be not held in willful civil/criminal contempt of the Court for violating the terms of Temporary Parenting Arrangement dated 06th December 2023 as well as fleeing the jurisdiction of said Court etc. In the backdrop, custody of Miss 'R' with the wife is illegal.

4.6) However, the wife filed a Custody Petition D. No.03/2024, under Section 7 of The Guardians and Wards Act, 1890 with the Family Court, at Pune claiming permanent custody of Miss 'R'. Hence, the Petition.

5) The wife filed her Affidavit-in-Reply and resisted the Petition. The wife contended that, the husband and his family members subjected her to cruelty, therefore, on 12th December 2023, she filed the F.I.R. alleging cruelty. On 05th January 2024, she filed the Custody Petition in which the husband recorded his appearance and opted for mediation. On 05th February 2024, she filed a petition for domestic violence against the husband at District Court, Pune.

5.1) The wife contended that, the husband, at the advice of his brother and her sister-in-law, had planned to deprive her of Miss 'R's lawful custody. Accordingly, on 05th September 2023, the husband left their matrimonial home, took Miss 'R' from her school without the wife's consent and filed the Petition before the Mecklenburg Court, seeking separate custody of Miss 'R'. On the same day, the husband sent an e-mail through his attorney stating that, Miss 'R's residence has been changed to a new address and the wife is not supposed to contact the husband or Miss 'R', without his lawyer being involved. The husband withheld the wife's immigration documents and Canadian PR in exchange of her consent to Indian divorce in the USA as her *visa* was dependent on the husband's *visa*-H4 (spouse visa). The husband was trying to make the wife's presence illegal in the USA by withholding her immigration documents and attempting to deport her without Miss 'R'.

5.2) It is contended that, on 06th September 2023, the husband,

through his attorney, blackmailed the wife saying that, the only way for her to see Miss 'R' again is if she agrees to equal visits of Miss 'R' over the week. The husband restricted all her access to Miss 'R' until she agrees to equal custody. Trapped in this critical situation, she agreed for that arrangement with the husband through their lawyers. The USA Court was not involved in determination of the custody schedule till the wife traveled back to India.

5.3) It is contended that, the husband was packing stale-food and uncooked sausages in Miss R's lunch box for school and sending her without proper clothing. Meantime, Miss 'R' suffered anal fissure, however, the husband diagnosed and tried to treat it on his own. He also did not care for Miss R's other medical issues. This has badly impacted on her health.

5.4) It is contended that, the husband was not allowing Miss 'R' to stay with the wife. He used to lock Miss 'R' until she agrees that, she does not want to see her mother. Therefore, on multiple occasion Miss 'R' stated that, '*I hate myself; I wish I was dead*'. Once, when the wife was getting Miss 'R' ready to send to the husband's house, Miss 'R' asked as, '*What will happen, if she is dead?, How will her mom know about it?*' Thus, the separation between the parents and the ongoing problems caused stress and similar issues to Miss 'R'. The husband, however, declined the wife's request to take Miss 'R' to a Child Therapist.

5.5) It is denied that, post separation Miss 'R' was in sole custody of the husband. In fact, the wife was also looking after Miss 'R' as the parties

were residing in the same house. It is contended that, due to separation between the husband and wife, Miss 'R' had tough time. She exhibited indiscipline in the school for which she was punished. Therefore, the wife met Miss 'R's class teacher and explained that Miss 'R's said behavior is the result of separation between the parents and new living arrangements. The class teacher, however, did not convey that fact to the School Counsellor. Yet, the husband obtained a letter from the School to show that, Miss 'R' never needed the counselling.

5.6) It is contended that, the lifestyle of the husband is unsuitable for Miss 'R'. He has been leading an immoral life. He has an anxiety issues. His smoking habit has taken heavy toll on Miss 'R's health. In contrast, the wife was and has been taking every good care of Miss 'R'. There is good physical and emotional bond between the two.

5.7) It is contended that, after separation between the parents, arrangement of Miss 'R's custody was pursuant to their mutual understanding and it was until the Court decides otherwise. On 06th December 2023, the Mecklenburg Court simply adjourned the matter to the next date without passing any order binding on the parties. Meantime, Miss 'R' was in need of counselling, proper care and attention as she was going through tough phase of life. However, the husband did not show any concern for Miss 'R's physical and mental well-being. The said Court's hearing were nothing but an emotional and mental suffering for Miss 'R'. In

this background, both Miss 'R' and the wife needed a proper family support. The wife's stay in the USA was subject to the 'Spouse Visa'. Therefore, the wife came to India along with Miss 'R'.

5.8) It is contended that, when Miss 'R' was brought to India on 07th December 2023, there was no Court order in force. According to the local enactment of the State of North Carolina, both the parents have equal rights over Miss 'R' in absence of a specific Court Order. The Mecklenburg Court's *ex-parte* Order dated 14th December 2023, is not enforceable in India. Moreover, India is not signatory to Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention), 1980. The Mecklenburg Court has no jurisdiction to decide the issues between the parents. It is contended that, the appropriate Court for the parties to approach for the custody and separation is Indian Family Court as both the parties are Indian Citizens and they are exercising their right to Miss 'R's custody as Indian Citizens, even though she is the USA national by birth. Therefore, the instant Petition is not maintainable in law as Miss 'R' is in lawful custody of the wife.

5.9) It is contended that, now, Miss 'R' is going to Universal Wisdom School, Pune, from 08th January, 2024. Miss 'R' is settled in the said school environment and enjoying the care and attention from the wife and her family members. Miss 'R' has been taking child therapy from Ms. Nisrin Poonawala, Pune. It is contended that, the husband failed to properly look

after Miss 'R', take care of her physical and mental well-being and he is not able to pay proper attention to Miss 'R' and her needs due to his job. Thus, Miss 'R' was not safe in the hands of the husband. It is contended that, the wife has been employed since last two years, therefore, she is able to meet the financial needs of Miss 'R'. In the backdrop, the best interest of Miss 'R' can be achieved if she remains in the wife's custody only. And this is possible as Miss 'R' holds an 'Overseas Citizenship of India' Card (OCI) and she can have Indian citizenship after she becomes major. Hence the Petition be dismissed.

Oral Submissions :-

6) Mr. Siddhesh Bhole, learned counsel for the Petitioner submitted that, the cruelty to the husband by the wife caused a separation between them. Since birth, Miss 'R' was ordinarily residing at North Carolina, the USA. She, therefore, was used to the living conditions there. She was studying in a school. She had developed good friendship with children there. During this time, Miss 'R' was comfortable and safe in the company of the husband as he showered upon her the best love and affection. The certificate issued by Miss 'R's School Authority shows that, she has no health issues and on the contrary, she is a normal and a bright student. Even after separation between the husband and the wife, the former took every best possible care of Miss 'R'.

6.1) However, as the differences between the husband and the wife

could not be resolved, the husband was compelled to file a Motion before the Mecklenburg Court, seeking Miss 'R's custody. The claim made in that Motion that, said Court has jurisdiction to adjudicate all the issues between the parties, has been conceded by the wife in her Answer-cum-Counter claims. However, when the said case was scheduled for hearing on 06th December 2023, suddenly, the wife moved to India along with Miss 'R', but without bothering about the ill-effects of such uprooting on Miss 'R'.

6.2) The learned counsel submitted that, the ground of cruelty raised by the wife is an afterthought. The wife's allegation that, the husband was intending to withhold her documents of immigration to make her stay in the USA illegal, is not only baseless but also false. Said ground has been taken just to entangle the husband in the litigation in India and deny him the child's custody. Lastly, learned Advocate submitted that, the husband is fit in all respects i.e., physically, mentally, financially and socially to look after Miss 'R' and raise her as a respectable member of the society. Absolutely, there is no harm to Miss 'R' if she resides with the husband in the USA. If Miss 'R' resides and grows in the USA, she will have good prospects. As such, repatriation of Miss 'R' to the USA would serve her best interest, which should be a primary consideration in such litigation. To buttress the submissions, the learned Advocate placed his reliance on following decisions :-

i) Lahari Sakhamuri vs. Sobhan Kodali, 2019 (7) SCC 311; ii) Nienke

Leida Hulshof vs. State of Maharashtra and Othrs., 2024 SCC Online Bom 447 ; iii) Yashita Sahu vs. State of Rajasthan and others, (2020) 3 SCC 67 and; iv) Mr. Abhay s/o. Sanjeev Mogal vs. Mrs. Nehal Joshi, 2021 SCC Online Bom 11381.

7) Mr. Harshwardhan Salgaokar, learned counsel for Respondent No.3-wife submitted that, there is history of cruelty to the wife at the hands of the husband and his relatives. As described in the reply, the husband's behaviour with Miss 'R' was not proper. He was not taking Miss 'R's proper care and looking after her daily and medical needs. The conduct of the husband in suddenly moving to his brother's place along with Miss 'R' on 05th September 2023, proved injurious to Miss 'R'. All this caused health issues to Miss 'R'. However, the husband did not take the child to a Child Therapist to do the needful. He was not allowing Miss 'R' to stay with the wife. The husband withheld the wife's immigration documents and Canadian PR in exchange of her consent to Indian divorce in the USA as her *visa* was dependent on the husband's *visa*-H4 (spouse visa). The husband was trying to make the wife's presence illegal in the USA by withholding her immigration documents and attempting to deport her without Miss 'R'. This all created a compelling situation which ultimately led the wife to return to India along with Miss 'R'.

7.1) Learned counsel submitted that, financially, the wife is stable. She is capable to provide every financial support to Miss 'R'. Presently Miss

'R' is just aged 07 years, therefore, she must be in the company of the wife. After coming to India, immediately the wife admitted Miss 'R' in a best school in Pune. She got Miss 'R' examined from an Expert Psychologist. This helped resolving Miss 'R's health issues. There is paternal family support to the wife in India. The parties are not permanent residents of the USA. In the backdrop, the Court cases including the Custody Petition filed by the wife against the husband, can be heard and decided in India, without raising a question of jurisdiction, legitimately. Now, there is no point in uprooting Miss 'R' from India and repatriating to the USA. Therefore, the Petition is liable to be dismissed. To support his submissions, learned Advocate for Respondent No.3 relied upon the decision in *Nithya Anand Raghavan vs. State (NCT of Delhi) and another, (2017) 8 SCC 454*.

ANALYSIS :

8) In so far as the objection as to maintainability of this Petition is concerned, we are not affected with that, because following the precedent in the case of *Yashita Sahu* (supra), the Hon'ble Supreme Court clearly laid down that :

“ 10. 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.”

9) However, as held by the Hon'ble Supreme Court in the case of

Rajeswari Chandrasekar Ganesh vs. The State of Tamil Nadu & Ors, 2022 SCC OnLine SC 885, in paragraph 86, [reiterated in Elizabeth Dinshaw v/s. Arvand M. Dinshaw, (1987) 1 SCC 42], “whenever a question arises before a court pertaining to the custody of the minor child, the matter is to be decided not on consideration of the legal rights of the parties but on the sole and predominant criterion of what would best serve the interest and welfare of the child”.

9.1) In this regard, the Apex Court referred to the decision in *McGrath (Infants)*, [1893] 1 Ch. 143 C.A., wherein it was observed that, “.....The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.”

9.2) In view thereof, in paragraph 91, the Hon’ble Supreme Court held as under :-

“ 91. Thus, it is well established that in issuing the writ of Habeas Corpus in the case of minors, the jurisdiction which the Court exercises is an inherent jurisdiction as distinct from a statutory jurisdiction conferred by any particular provision in any special statute. In other words, the employment of the writ of Habeas Corpus in child custody cases is not pursuant to, but independent of any statute. The jurisdiction exercised by the Court rests in such cases on its inherent equitable powers and exerts the force of

the State, as parens patriae, for the protection of its minor ward, and the very nature and scope of the inquiry and the result sought to be accomplished call for the exercise of the jurisdiction of a court of equity. The primary object of a Habeas Corpus petition, as applied to minor children, is to determine in whose custody the best interests of the child will probably be advanced. In a Habeas Corpus proceeding brought by one parent against the other for the custody of their child, the court has before it the question of the rights of the parties as between themselves, and also has before it, if presented by the pleadings and the evidence, the question of the interest which the State, as parens patriae, has in promoting the best interests of the child”.

9.3) In the above context, in paragraph 92, the Hon’ble Supreme Court considered the following general principle governing the award of custody of the minor, as stated in Halsbury's Laws of England, Fourth Edition, Vol. 24, Article 511 at page 217 :

“... Where in any proceedings before any court the custody or upbringing of a minor is in question, then, in deciding that question, the Court must regard the minor's welfare as the first and paramount consideration, and may not take into consideration whether from any other point of view the father's claim in respect of that custody or upbringing is superior to that of the mother, or the mother's claim is superior to that of the father”.

10) As regards how to deal with such question, in the case of *V Ravi Chandran vs. Union of India and others: (2010) 1 SCC 174*, in para

nos. 29 and 30, the Hon'ble Supreme Court has held that :-

“ 29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention of the orders of the Court where the parties had set up their matrimonial home, the Court in the country to which the child has been removed must first consider the question whether the Court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to the child's welfare be investigated in a Court in his own country. Should the Court take a view that an elaborate enquiry is necessary, obviously the Court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of the child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign Court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

*30. However, in a case where the Court decides to exercise its jurisdiction summarily to return the child to his own country, keeping in view the jurisdiction of the Court in the native country which has the closest concern and the most intimate contact with the issues arising in the case, the Court may leave the aspects relating to the welfare of the child to be investigated by the Court in his own native country as that could be in the best interests of the child. The indication given in *McKee v. McKee* [1951 AC 352 : (1951) 1 All ER 942 (PC)], that there may be cases in which it is*

proper for a Court in one jurisdiction to make an order directing that a child be returned to a foreign jurisdiction without investigating the merits of the dispute relating to the care of the child on the ground that such an order is in the best interests of the child has been explained in L (Minors), In re. [(1974) 1 WLR 250 : (1974) 1 All ER 913 (CA)] and the said view has been approved by this Court in Dhanwanti Joshi : (1998) 1 SCC 112. Similar view taken by the Court of Appeal in H. (Infants), [(1966) 1 WLR 381 (Ch & CA) : (1966) 1 All ER 886 (CA)] has been approved by this Court in Elizabeth Dinshaw, [(1987) 1 SCC 42 : 1987 SCC (Cri) 13] ”.

11) As observed in the case of *Rajeswari* (supra), while taking note of the fact that India is not a signatory to the Hague Convention of 1980, on the “Civil Aspects of International Child Abduction”, the Hon’ble Supreme Court in the case of *Nithya* (supra), *inter alia*, held as under :-

“40. As regards the non-Convention countries, the law is that the Court in the country to which the child has been removed must consider the question on merits bearing the welfare of the child as of paramount importance and reckon the order of the foreign court as only a factor to be taken into consideration, unless the court thinks it fit to exercise summary jurisdiction in the interests of the child and its prompt return is for its welfare. In exercise of summary jurisdiction, the court must be satisfied and of the opinion that the proceeding instituted before it was in close proximity and filed promptly after the child was removed from his/her native state and brought within its territorial jurisdiction, the child has not gained roots here and further that it will be in

the child's welfare to return to his native state because of the difference in language spoken or social customs and contacts to which he/she has been accustomed or such other tangible reasons. In such a case the court need not resort to an elaborate inquiry into the merits of the paramount welfare of the child but leave that inquiry to the foreign court by directing return of the child. Be it noted that in exceptional cases the court can still refuse to issue direction to return the child to the native state and more particularly in spite of a pre-existing order of the foreign court in that behalf, if it is satisfied that the child's return may expose him to a grave risk of harm. This means that the courts in India, within whose jurisdiction the minor has been brought must "ordinarily" consider the question on merits, bearing in mind the welfare of the child as of paramount importance whilst reckoning the pre-existing order of the foreign court if any as only one of the factors and not get fixated therewith. In either situation-be it a summary inquiry or an elaborate inquiry — the welfare of the child is of paramount consideration. Thus, while examining the issue the courts in India are free to decline the relief of return of the child brought within its jurisdiction, if it is satisfied that the child is now settled in its new environment or if it would expose the child to physical or psychological harm or otherwise place the child in an intolerable position or if the child is quite mature and objects to its return. We are in respectful agreement with the aforementioned exposition."

12) In addition to the aforesaid principles of law, every Court is well aware of the role of a mother in the life of a child of tender age and in particular, a girl child. In the case of *Philips David Dexter vs. State NCT of*

Delhi and Anr., 2013 (135) DRJ 537 (DB), it is observed that, “The bond between a mother and her child has always been held, especially in India, standing on a higher pedestal vis-a-vis the bond between a father and his child. From times immemorial, the Indian ethos gives the highest place in the life of a child to the mother, followed by the teacher and at third place comes the father.”

12.1) Describing a mother’s role in similar situation, in the case of *Vivek Singh vs. Romani Singh: (2017) 3 SCC 231*, the Hon’ble Supreme Court observed that, *“The role of the mother in the development of a child’s personality can never be doubted. A child gets the best protection through the mother. It is a most natural thing for any child to grow up in the company of one’s mother. The company of the mother is the most natural thing for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are compelling and justifiable reasons, a child should not be deprived of the company of the mother. The company of the mother is always in the welfare of the minor child ”.*

13) However, in the case of *Rajeswari* (supra), in paragraph 84, the Hon’ble Supreme Court referred to the decision in the case of *Rosy Jacob vs. Jacob A. Chakramakkal (1973) 1 SCC 840*, wherein in paragraph 15, it is held that, *“...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”

14) The Government of India has acceded on 11th December 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child. In this regard, it is useful to refer the decision in the case of *Lahari Sakhamuri* (supra), wherein in paragraphs 43 and 49, the Hon’ble Supreme Court has held as under :

“43. The expression “best interest of child” which is always kept to be of paramount consideration is indeed wide in its connotation and it cannot remain the love and care of the primary care giver, i.e. the mother in case of the infant or the child who is only a few years old. The definition of “best interest of the child” envisaged in Section 2(9) of the Juvenile Justice (Care & Protection) Act, 2015, as to mean, “the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identify, social well-being and physical, emotional and intellectual development”.

49. The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent’s can be interalia, delineated, such as (1) maturity and

judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.”

15) In the light of the aforesaid settled principles of law, we have considered the facts and circumstances of the case in hand and the oral submissions advanced at length by learned Advocates for the parties at dispute. It gave rise to a solitary issue viz; ‘Whether Miss ‘R’ should be repatriated to the USA or not?’. And considering the material before us coupled with all the facts and circumstances, a summary inquiry was suffice to resolve the said controversy.

FINAL ANALYSIS :-

16) It is admitted fact that, Miss ‘R’ was born in the North Carolina, USA and she is a citizen thereof. Initially, Miss ‘R’ resided with both parents in New Jersey, 07071 until August 2020, after which she enjoyed the love and care in the company of both the parents under a common roof in North Carolina, 5924, Cactus Valley Road, 28277, until 5th September 2023. Following her parents' separation, she has resided separately with each parent in different locations i.e. 5304, Rock Hill Lane, Charlotte and 5924, Cactus Valley Road, North Carolina, 28277. Thus, Miss ‘R’ has spent her entire life in the USA only.

17) During this stay there, Miss ‘R’ was studying in the local school.

Hence, undoubtedly, she was very much comfortable with the surrounding atmosphere and the local language in the USA. She must have various friends there. Except a bald statement by the wife, absolutely there is nothing on record showing that, during Miss 'R's stay in the company of her parents, right from her birth, she had suffered any inconvenience or some harm or any injury at the hands of the husband. This fact indicates that, until Miss 'R' was brought to India, she was treated with love and affection, care and grown giving full attention by her both the parents. Therefore, the mother's act of suddenly removing Miss 'R' to India certainly detached her from her daily routine, emotional bond with her friends and mainly with the father. Such a disconnect is always traumatic and painful for a child of such a tender age. Therefore, if Miss 'R' goes back to the USA, she would soon get blended in the same atmosphere to which she was used to. She need not learn new things, new language, make new friends and adjust with them, which she is currently forced to do in India due to unilateral decision of the wife.

18) In her answer to the Motion of the husband filed before the Mecklenburg Court, the wife has stated that, the husband is employed by Zelis as a Data Scientist and earns a base salary of US\$ 1,65,000 per year. Additionally, he gets yearly bonuses, investment income and rental income from a property at New Jersey. This manifests that, financially, the husband is secured to provide all the amenities and comfort to Miss 'R', which are

expected in a country like the USA. In short, the husband is capable to provide all the support to Miss 'R', which the money can.

19) Undoubtedly, like money, capacity to provide shelter is an indispensable aspect in such matters. Herein, the house located at 5924, Cactus Valley Road, in Charlotte, North Carolina, is jointly owned by the husband and the wife. The house is described as being sufficiently spacious and designed in a way that allows for separate living arrangements for both the parents. This could be a significant factor in determining the custody or guardianship arrangements for Miss 'R' by the Mecklenburg Court.

20) As Miss 'R' is the USA National, it would be advantageous for her to stay and study in the USA. This is because the USA is considered as a developed country, offering numerous benefits and better future prospects for her. Additionally, without the financial support of the husband, who is described as economically well-placed, it might be challenging for the wife to provide the same level of amenities for Miss 'R' in India, as she was enjoying in the USA. This inference is fortified by the wife's pleading before the USA Court that, she is substantially in need of maintenance and support from the husband. Thus, the argument weighs the benefits of staying in the USA, where Miss 'R' is a citizen, against the potential challenges she might face in India, where she lacks citizenship and may not have access to the same level of resources and opportunities.

21) From the rival pleadings, it is apparent that, immediately after

the marriage, the husband and the wife shifted to USA. They beget the child there. Meanwhile, they bought a house property in North Carolina. This conduct clearly indicates that, since fixing of their marriage, the parties had a mutual perceptive and intent to work and for good settle in the USA.

22) The wife contended that, on 05th September 2023, the husband left the matrimonial house by taking out Miss 'R' from the school without her consent and on the same day, he filed the Petition before the Mecklenburg Court, seeking separate custody of Miss 'R'. Thus, the husband tried to deprive the wife the custody of Miss 'R'. However, this cannot justify the wife's act of bringing Miss 'R' to India suddenly, because she had already filed her Answer-cum-counter claims for substantial reliefs *i.e.* divorce, permanent custody of Miss 'R' and their maintenance etc., in the same Court. Therefore, she could have easily moved to that Court to thwart the ill-attempt of the husband of denying her the custody and company of Miss 'R'. This was very much possible as the husband had no intention to move beyond the limits of the ordinary place of his residence there and the said Court's local jurisdiction, the wife has been earning there and they both have separate support of residential facility to which Miss 'R' was very much familiar. That apart, as stated in the Affidavit-in-Reply, the husband had offered for equal custody of Miss 'R'. That, on separation between the parents, arrangement of Miss 'R's custody was pursuant to their mutual understanding and it was until the Court decides differently. Their lawyers

assisted in this arrangement. These fact indicate that, the husband never wished nor wanted to deprive Miss 'R's custody rights to the wife.

23) Additionally, the wife has taken the ground that, the husband withheld her immigration documents and Canadian PR in exchange of her consent to Indian divorce in the USA as her *visa* was dependent on the husband's *visa* – H4 (spouse visa). Thus, the husband was trying to make the wife's presence unlawful in the USA by withholding her immigration documents and attempting to deport her without Miss 'R'. However, the basis of this claim is not explained with sufficient clarity in the Affidavit-in-Reply nor it is discernible from the record as to exactly when the husband tried to withhold the said documents. If indeed that situation was existing, the wife could have requested the Mecklenburg Court to restrain the husband from doing that to her. Additionally, to grant her Miss 'R's visiting and contact rights plus her custody on sharing basis. Since Miss 'R' was citizen of the USA, studying school there, being of tender age and the wife was economically stable there with a shelter facility, the Court concerned would not have declined those reliefs in the best interest of Miss 'R'. This we safely infer as the same Court granted an urgent Motion by the husband for an *ex-parte* emergency custody on account of Miss 'R's sudden removal to India.

23.1) It is not the case that, there is no law in the USA to meet the situation where a husband acting to make the presence of his wife unlawful

by detaining her immigration documents etc., as claimed herein by the wife. Instead, the converse is more probable, as post marriage also people from all over the world go to the USA for work. In other words, we cannot imagine a country like the USA, without a law, providing an apt remedy against the act of a husband of withholding his wife's immigrant documents with intent to make the wife's stay there unlawful. Be that as it may, considering the fact that still the wife is in the same job from the USA, it is highly probable that, after her return to the USA in any situation, she will get a necessary *visa* to stay there so long as the best interest of Miss 'R' is not served in conformity with the local law, as Miss 'R' is the USA citizen. Therefore, this ground is absolutely baseless.

24) The wife contended that, the separation between her and the husband caused Miss 'R' to face a tough time. It resulted in indiscipline in the school on her part, which saw her punished. Therefore, the wife met Miss 'R's School Counsellor and informed about her concern. However, the Counsellor showed ignorance claiming that, the class teacher never informed her the said concern. Yet, the husband obtained a letter from the school to show that, Miss 'R' never needed such counselling. The behaviour of the husband with Miss 'R' and his habits were so indifferent that, Miss 'R' suffered anxiety, stress etc.

24.1) In this context, learned Advocate for the wife pointed that, being concerned for Miss 'R's health, the wife took her to a Child Therapist

Nisrin Poonawala for psychological assessment and therapy. It immensely helped improving Miss 'R's mental well-being. However, we restrict ourselves from relying on the assessment/therapy report given by said Poonawala, because she has done just Master of Arts (Psychology), as informed by learned Advocate for the wife. Secondly, the health issues with which Miss 'R' encountered with as demonstrated by the wife, were of greater magnitude, as on multiple occasions Miss 'R' stated that, *'I hate myself; I wish I was dead'*. In our considered view, such a state of mind is medically better handled and treated by specially qualified child psychiatrists, who are easily available in Pune. Nevertheless, instead of first taking Miss 'R' directly to such a scientific expert after returning to India on 07th December 2023, the wife caught up with her Advocate and engaged in filing F.I.R. of cruelty and domestic violence case. Then she allegedly took Miss 'R' to the said Psychologist in the 1st week of January 2024. This conduct of the wife distinctly indicates that, she avoided to give priority to Miss 'R's health and instead, thought it appropriate to first file cases against the husband. This amounts to serve one's own interest. As such, the plea as to Miss 'R's mental well-being and the related Psychologist's report was nothing but an attempt to mislead the Court.

25) No doubt, in the F.I.R.No.567/2023 the wife alleged that, immediately after the marriage, the husband and his relatives treated her with cruelty. However, even though the wife was in India during the *Ganesh*

Festival of 2018, she did not try to file the report of cruelty then and there. The F.I.R. does not mention that, after December 2018, the husband caused any specific cruelty. Therefore, veracity of the F.I.R. is subject to trial.

25.1) Evidently, immediately after filing of the said F.I.R., the wife filed the domestic violence case and the petition seeking for Miss 'R's custody, in the Court at Pune. Considering this conduct coupled with other facts and circumstances of the case, it is clear that, deliberately the wife resorted to this method of litigation just to involve the husband in the multifarious and complex legal battle in India. So that, reasonable time is consumed in taking that litigation to its logical end and thus, it results in Miss 'R' develop her roots in India to some extent and consequently make her immediate repatriation to the USA, practically impossible. This all indicate that, the unilateral decision that the wife took to return to India alongwith Miss 'R' was with intent to serve her own interest i.e. to keep Miss 'R's exclusive custody with her, not in the best interest of Miss 'R', which was of utmost importance. And we are sure, the wife has been led into this complicated situation only because of an improper legal advise given to her in/from India, which is really unfortunate, as it acted against Miss 'R', exactly from the time she left the USA.

25.2) As held in the case of *Philip David Dexter* (supra), "*When the abducting parent is the mother, it is common for her to claim that the matrimonial bond has broken down, and more often than not the allegation*

would be ill-treatment and domestic abuse by the male spouse. There are bound to be allegations that the conduct of the male spouse was of a serious kind with grave likelihood of risk to the mental or the physical health of the child born during the wedlock. Invariably, as an excuse to abduct the child from the foreign shores, she is bound to say that she resorted to a secret operation i.e. resorted to a stratagem of contrivance; pulling wool over the eyes of her spouse and even taking the Courts of that country for a ride; too afraid to do otherwise, she was left with no option but to flee to the country where her kith and kin by birth were available to provide her with comfort and support.” These observations completely applies to the case in hand.

26) Admittedly, since 5th September 2023, the husband and the wife have been residing separately and could not come together thereafter. Therefore, the husband filed a Motion before the Mecklenburg Court, seeking for certain reliefs, and in para Nos.10, 11 and 12 thereof, he asserted that, (i) said Court has subject matter jurisdiction over the said claims pursuant to the North Carolina Uniform Child Custody Jurisdiction and Enforcement Act (for short ‘UCCJEA’), (ii) said Court has personal jurisdiction over Mother, Father and the parties’ minor child, pursuant to the North Carolina UCCJEA and (iii) in the best interest of all parties and the minor child said Court make an award of custody of the parties’ minor child. Pursuant to the North Carolina General Statutes, there now exists facts which justify said Court’s assuming jurisdiction relative to the exercise of

custody of the parties' minor child pursuant to the North Carolina General Statutes. The reliefs claimed by the husband were as under :-

- i) That, the father's complaint be received as a Motion for all the relief sought therein.
- ii) to award primary legal custody of the minor child to the father.
- iii) to award primary physical custody of the minor child to the father.
- iv) to calculate the parties' child support obligations to the minor child, pursuant to the North Carolina Child Support Guidelines, including temporary and permanent child support.
- v) to award equitable distribution of the parties' marital and divisible property, awarding mother with an unequal distribution in mother's favour.
- vi) to order the father to defray the expenses of this action, including the payment of a reasonable attorney's fee to mother, related to mother's claims for child custody and child support.
- vii) that father be granted such other and further reliefs as the Court may deem just and proper.

26.1) In her Answer to the husband's Motion, particularly in paragraph Nos.10, 11 and 12 thereof, the wife admitted the claim about the said Court's jurisdiction, and it is rightly so, as after marriage, the wife was settled with the husband in the USA. They got blessed with Miss 'R' there and since then, Miss 'R' was living there uninterruptedly. Secondly, since before, the couple has been employed there and earning sufficiently. As noted in the Order dated 14th December 2023, passed by the Mecklenburg Court, the wife has filed a 'Temporary Parenting Arrangement' Motion

before the said Court. Therefore, it was highly probable that, said Court would have passed an Order giving visiting and custody rights of Miss 'R' to her both parents.

27) The Orders dated 14th December 2023 and 19th January 2024, passed by the Mecklenburg Court indicate that, the husband and the wife appeared before the said Court on or about 6th December 2023 for hearing on the wife's Motion for 'Temporary Parenting Arrangement'. At the 6th December 2023 'Temporary Parenting Arrangement' hearing, during father's cross-examination of mother, the latter denied all allegations that she had made any threats to take Miss 'R' out of the country and deprive the husband of the minor child permanently. However, the mother on or about 7th December 2023 took Miss 'R' with her to India. The said Orders further indicate that, immediately thereafter, the husband moved a Motion seeking for Miss 'R's' *Ex Parte* Emergency Custody'. The Mecklenburg Court granted that Motion by its Order dated 14th December 2023, and directed that, immediately after entry of the said Order, the wife shall return Miss 'R' to the care of the husband in Charlotte, North Carolina. The said Court's Order dated 19th January 2024 noted that, despite service of the Order dated 14th December 2023, the wife did not record her appearance before that Court and nor she complied with that Order. Therefore, the said Court granted to the husband the sole legal and physical care, custody and control of Miss 'R'. This all show that, the wife has scant respect for the said Court and its

Orders even though at the very first opportunity she filed her Answer-cum-counter claim and Motion for ‘Temporary Parenting Arrangement’ before the same Court and thus, submitted herself to its jurisdiction. These circumstances fortify our conclusion above that the wife just wanted to keep Miss ‘R’ in her custody and keep the husband away from her. This is unfair from the view point of the child and the law as well.

27.1) In this context, it has to be kept in mind that, the principles of status quo ante require a Court to restore parties to the same position in which they were before one party, acting illegally and unlawfully, changed the status quo. He who violates the law and does an act to change the status quo should not be permitted to gain an unfair advantage. These principles of civil law, when transposed to the family dispute of parental abduction would mean that the object of the law is (i) To deter either parent from taking the law into his/her own hand; (ii) To restore the child as soon as possible to the home country; (iii) To restore the Status quo ante; (iv) Abducting parent should not gain any unfair advantage.

28) During the hearing of this Petition, on instructions from and in presence of the Petitioner-husband, his learned counsel made a statement that, the husband is ready and willing to give the entire joint house property of the parties in the USA, including his share, for Miss ‘R’ and the wife’s stay there. Besides that, the husband will happily provide all the financial support which Miss ‘R’ and his wife need to reside there. That, whatever

documents the wife would require for her stay in the USA, the husband would unconditionally provide it to her. Additionally, he would also give his 'no objection' and help her whenever and wherever she would be required to get such documents. From this statement of the husband, we are sure that, there is no hurdle before the wife in quickly returning to the USA alongwith Miss 'R' and there would be no harm by the husband to Miss 'R' and obstacle to the wife's stay there. Moreover, such a return to the Country of Origin is very essential for the child. However, according to us, the husband should never obstruct or come in the way of the wife whenever she wants to visit India, in case she along with Miss 'R' resumes at the USA.

29) Even though the wife has been residing in India, she did not quit her present job in the USA, meaning thereby, still she has been in the same job as submitted by her learned Advocate. Currently, she is earning US\$ 84,000 per year; that is surely decent, compared to one's earning in India carrying similar educational qualifications. It is not the case that, the wife has been planning to resign from her current job and would try to get a new job in India. Considering these circumstances coupled with the fact that, the parties own a conveniently separable house in the USA, it is safe to presume that, once the wife got a pin to piano through the litigation she has opened in India against the husband, soon she would resume her life in the USA alongwith Miss 'R'. Thus, ultimately the wife also wants to settle in the USA.

30) Upshot of the aforesaid discussion is that, story weaved and the scheme designed by wife to return to India by abducting Miss 'R', unmindful of the ill-consequences of the said act, is not acceptable it being devoid of merits. The said action of the wife was intended to serve her own interest, not the child's. Hence, Miss 'R's custody with wife, cannot be said to be strictly legal. On careful examination of the facts and circumstances of the case, we are of the opinion that, there was no inconvenience or any harm to Miss 'R' till she was in the care and custody of the husband before she was brought to India. Miss 'R' was born in the USA and her living there was unbroken, excepting the last 4/5 months since she was brought to India. Therefore, and considering the settled principles of law, we deem it appropriate that, Miss 'R' is repatriated to her home State in the USA. This will help her overall development and thus, serve her best interest, which is of a principle consideration. The conduct of the husband in filing this Petition promptly and remaining present on the dates of hearing, travelling from the USA whenever possible, convinced us to hold that, he is a responsible father and having sincere interest in the child. Besides, he is carrying sufficient means and resources to maintain, up-bring and provide quality life to Miss 'R' in the USA. This would bring better prospects to Miss 'R' and aid her to step into the society as a respectable person. As such we see no harm to Miss 'R' from the hands of the husband, if she goes back to the USA. The Order dated 19th January, 2024 passed by the Mecklenburg

Court shows that, the father is a fit and proper person to be awarded sole legal and physical custody, pending further Orders of the said Court. The husband's approach to voluntarily help the wife to resume her life in the USA and stay there comfortably with the help of the documents that she requires shows that, he has no prejudice towards the wife due to the litigation she initiated in India. We hope this conduct is maintained by him all the time, as it will help the couple to resolve their all disputes, amicably.

31) Thus, we are inclined to allow the Petition. However, as held in the case of *Yashita Sahu* (supra), we cannot direct the wife to return to the USA. The wife is an adult and no Court can force her to stay at a place where she does not wish/want to stay. This aspect is independent in so far as Miss 'R's repatriation is concerned. Therefore, no direction is possible in the writ jurisdiction, to cause the wife to go and live with the strained husband. Nevertheless, considering Miss 'R's present condition, the directions which we must pass hereinafter must be so convenient that, in either case i.e. whether the wife goes to the USA or not, said direction should serve the best interest of Miss 'R' and her both parents.

32) At this juncture we feel that, it will be in the interest of Miss 'R' if the Respondent No.3-wife herself accompanies Miss 'R' to the USA. The wife may like to live in the USA or not, as this is her personal choice. However, if she goes back to the USA alongwith Miss 'R', then she must comply with the Orders of Mecklenburg Court. Obviously, she can apply for

modification/vacation of the said Orders, if so advised.

33) In view thereof, the Writ Petition is allowed with following directions :-

33.1) The wife shall handover custody of Miss 'R' to the husband with passport of Miss 'R' in presence of the learned Advocate for the husband on **10th May, 2024** at 11:30 a.m., before the Registrar (Judicial-I) of this Court. In the same manner, the wife shall handover necessary school documents of Miss 'R' to the husband till 04:00 p.m. of **14th May, 2024**. Thereafter, the husband shall make necessary arrangements for taking Miss 'R' to the USA accompanied by atleast his one close relative.

33.2) In case the wife goes back to the USA along with Miss 'R', then, she must comply with the Orders of Mecklenburg Court. Obviously, she can apply for modification/vacation of the Order, if so advised.

33.3) In case the wife goes back to USA, it shall be the responsibility of the husband to pay reasonable expenses for her entire travel and stay. The wife must within one week from the date of uploading of this Judgment and Order on the official website of the High Court, Bombay, intimate the Advocate for the husband whether she is willing to go back to the USA, or not. In case, she expressed her willingness to do so, the husband shall purchase tickets for travel of the wife, and Miss 'R' to the USA, which journey must be performed on or before **28th May, 2024**. We make it clear that, it will be the wife's responsibility to obtain the requisite travel documents required by her to travel to the

USA by the said date.

33.4) In case the wife is willing to go back to the USA along with Miss 'R' but is not willing to live with the husband, we direct that, the husband shall make alternative arrangements for his own stay and handover possession of the joint house property of the parties to the wife namely 5924, Cactus Valley Road, Charlotte, North Carolina 28277 in conformity with his aforementioned statement made through his Advocate.

33.5) The husband is directed to take care of all the expenses of day-to-day running of the house, educational expenses of Miss 'R', medical insurance for both-wife and Miss 'R', electricity, gas and all other incidental expenses till the time the jurisdictional Court in the USA makes a provision in this regard.

33.6) The husband shall not initiate any coercive or penal action against the wife in the USA and if such action has already been initiated by him or any proceedings in that regard are pending, then the same shall be withdrawn and not pursued any further by the husband. This will be precondition to facilitate the wife's appearance before the Court/s concerned in the USA to effectively represent and defend herself in all matters relating to the matrimonial dispute (including custody and guardianship issues of Miss 'R') between the husband and the wife.

33.7) We, however, clarify that this arrangement will only continue up to **30th June, 2024** before which date the parties must get the proper directions from the jurisdictional Court/s in the USA. Once the jurisdictional Court in the USA passes the order,

then this portion of the Order shall cease to operate.

34) In case the wife does not inform the Advocate for the husband within one week from the date of uploading of this Judgment and Order that, she is willing to go back to the USA, then it shall be presumed that, she has no intention to go to the USA along with Miss 'R'. In that event, we issue the following directions :-

34.1) In case, Miss 'R' goes to the USA with the husband, the husband shall ensure that, Miss 'R' talks to her mother through video calling facilities such as *WhatsApp*, *Skype*, etc., everyday at 08:30 p.m. Eastern Standard Time on weekdays (Monday-Thursday) for atleast 10 minutes each day and on weekends (Friday-Sunday), he shall ensure that, Miss 'R' talks to her mother at the same time or any other time mutually settled between the parties through video calling for atleast 15 minutes.

34.2) We further direct that, if the wife visits the USA hereafter and is staying in the same town where the husband resides, she will be permitted custody of Miss 'R' on all weekends i.e., from Friday 06:00 p.m. to Sunday 06:00 p.m.

34.3) Even if the wife does not visit the USA, the husband shall ensure that, Miss 'R' visits India atleast twice a year, once during the summer vacations and once during the winter break, as per Miss R's school schedule. It will be his responsibility to ensure that, Miss 'R' comes to India accompanied either by him or one of his blood relative. During this period, Miss 'R' shall remain exclusively with the wife. However, in case the husband is also visiting with Miss 'R', then during the period when Miss 'R'

is in India, the husband will have the custody of Miss 'R' for two days per week, preferably on weekends or on other suitable days as settled by the parties.

34.4) In any event, if the wife returns to the USA and stays there till the time she desires and dependent on the *spousal visa*, as legally available through the husband, the husband shall provide all the documentary and other requisite legal support to the wife as expected of him, to obtain such valid *visa* by the wife, in accordance with the USA and Indian law, as the case may be. This direction shall *mutatis-mutandis* apply to any other *visa* which the wife would need in the aforesaid situation and available with the documentary or any other lawful support required from the husband. The husband shall give an **undertaking** to that effect including paragraph no.28 above.

35) The Writ Petition is disposed off in aforesaid terms. Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)

36) At this stage, learned Advocate for the Respondent No.3-wife prayed that, he intends to challenge the present Judgment and Order before the Hon'ble Supreme Court and therefore its effect and implementation be stayed for a period of two weeks from today.

37) As noted in the Judgment, we have taken into consideration the best interest of child 'R' predominantly and, we have also given many of

the reliefs to the wife by way of directions in paragraph nos.33 and 34 above. In view thereof, it will not be out of place to mention that, Respondent No.3 in utter disregard for the best interest of child 'R', has brought her to India. Hence, we are not inclined to grant stay to the present Judgment and Order.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)