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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 09th January, 2024*

+ W.P.(CRL) 1267/2020 & CRL.M.A. 11195/2020 & CRL.M.A. 830/2024

SUSHIL KUMAR RAI

..... Petitioner

Through: Ms. Sarika Singh, Advocate (through
video-conferencing).

versus

MONIKA CHAUHAN & ANR.

..... Respondents

Through: Mr. Narinder Singh, Advocate.
Mr. Sanjay Lao, Standing Counsel
(Criminal) for the State with Ms.
Priyam Agarwal, Mr. Abhinav Kumar
Arya & Mr. Shivesh Kaushik,
Advocates.
S.I. Deepak Chandra, P.S.: Tilak
Nagar.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The present petition under Article 226 and 227 of the Constitution of India has been filed seeking following prayers:-

“(a) Setting aside the impugned Order dated 08.07.2020 passed by District Court of Montgomery County, Virginia.

b) Directing Respondent No.1 to repatriate/hand over the custody of 4 years old son Reyansh to the petitioner.”

2. Marriage between the petitioner and the respondent No.1 was solemnized on 07.06.2011 at Maa Bhishmchandi Mandir, Shanti Margh,



Cantonment, Varanasi, U.P. They were blessed with a baby boy named Reyansh on 29.06.2016.

3. As stated in the present petition, on 13.01.2019, respondent/mother fled with the minor son to USA without the consent of the petitioner.

4. She also filed a divorce petition before the Family Court, Tis Hazari, Delhi on 11.02.2019. She had executed a power of attorney in favour of her sister to file and pursue the said divorce petition as she had left India before filing the same.

5. It is also pertinent to note that pursuant to the impugned order dated 08.07.2020, passed by the District Court of Montgomery County, U.S., Virginia in a petition filed by Respondent No. 1, the above Court, keeping in mind the best interest of the child, granted her custody.

6. Petitioner, by virtue of the present petition, seeks setting aside of order dated 08.07.2020, passed by the District Court of Montgomery County, U.S., Virginia.

7. As already noted, respondent-wife has already filed a divorce petition in Tis Hazari Court. Petitioner has sought rejection of the same by moving application under Order 7 Rule 11 CPC. Such application is still pending adjudication in which the husband has, *inter alia*, taken objection regarding territorial jurisdiction.

8. According to petitioner, the above foreign judgment is not conclusive in view of Section 13 of CPC which reads as under: -

A foreign judgment shall be conclusive as to any matter thereby directly



adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of¹ [India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in¹ [India].

9. However, if petitioner feels that such judgment is not conclusive then he should challenge the same before appropriate forum, instead of choosing filing a Criminal Writ Petition. This Court, while exercising criminal jurisdiction, will not be competent to adjudicate whether the case was under any exception enumerated in Section 13 CPC. Reliance on Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari (2019) 7 SCC 42 is misplaced as therein the Court was seized with Habeas Corpus petition and observed as under:-

“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 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”.



10. We may also hasten to add that the order of any foreign court is presumed to be passed by a court of competent jurisdiction unless the contrary is shown.

11. The remedy of writ habeas corpus cannot be used for converting writ jurisdiction into that of Family Court or executing Court and the writ petitioner can always take recourse to such other remedy as may be permissible in law for the custody of child. Reference in this regard be made to *Nithya Anand Raghavan v. State (NCT of Delhi) (2017) 8 SCC 454*.

12. Moreover, as per the counter-affidavit filed by the respondent no. 1 herein, the petitioner, who has assailed the impugned order dated 08.07.2020 in the present proceedings, has also challenged the same before the appellate court i.e. V.A. Circuit Court, U.S. and thus he evidently surrendered to the jurisdiction of such U.S. Court. In such a peculiar situation, since he has challenged the same very order before the competent appellate court of law in U.S., present writ petition does not seem to be sustainable.

13. In view of the above, the present petition is, accordingly, dismissed. Liberty is granted to the parties to approach the competent court as per law.

(SURESH KUMAR KAIT)
JUDGE

(MANOJ JAIN)
JUDGE

JANUARY 09, 2024/st