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

+ **W.P.(CRL) 3054/2024 & CRL.M.A. 29691-92/2024**

SMITA GUHARROY

.....Petitioner

Through: Mr. Saurabh Karan Singh & Ms.
Kanika Jain, Advs.

versus

STATE OF NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) with Ms. Priyam Aggarwal,
Adv. for State.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% **01.10.2024**

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-Smita Guharoy under Article 226 of the Constitution of India read with Section 528 of the Bhartiya Nagarik Suraksha Sanhita seeking issuance of a writ of *habeas corpus* for production of her two minor children.
3. It is stated that the Petitioner was married to Respondent No. 2-Mr. Pratik Bose on 18th November, 2009 and had two children from the said wedlock. However, owing to some matrimonial disputes, the couple started living separately since 26th August, 2020.
4. It is further stated in the petition that the Petitioner and the Respondent No. 2 entered into a settlement agreement dated 15th May, 2021 (*hereinafter*, 'settlement agreement') under the aegis of the Delhi High Court Mediation Centre. *Vide* the said settlement agreement, it was agreed clearly that the



minor children will reside with the mother, i.e., the Petitioner and visitation rights were given to the father, i.e., Respondent no. 2 over the weekend.

5. There are various violations of the settlement agreement committed by the Respondent No. 2, as per his wife, i.e., the Petitioner, for which the present petitioner has already filed a contempt petition bearing ***Contempt Cas (C) No. 37/2024.***

6. It is seen from the order-sheets that the said contempt petition is coming up for hearing on 16th October, 2024. The apprehension expressed by Id. Counsel for the Petitioner is that the Respondent No. 2/husband intends to take the children to Dubai, for which, the wife/Petitioner has not given consent. He relies on an email received by the Petitioner from her husband/Respondent no. 2 on 26th September, 2024 which states that the husband/Respondent no. 2 wishes to take the children to Dubai.

7. Ld. Counsel fairly submits that yesterday i.e. 30th September, 2024 the Petitioner received an email from one of the sons stating that he does not wish to reside with her.

8. After having perused the records, it is clear that the main issue appears to be regarding the husband/Respondent no. 2's non adherence to the settlement terms for which a contempt petition has already been filed. The other apprehension expressed is that the children may be removed from the jurisdiction of this Court as they are citizens of the United States of America.

9. The settlement agreement is on record. The Court has perused the same. Relevant clauses of the settlement agreement reads as under:-

“2. The Parties agree that the Passports, social security card and other identity cards except the Aadhar card, of both the minor children shall be kept in a Joint Locker to be operated jointly by both the Parties. Both the



Parties already have in their possession copies of the Aadhar Card of the minor Children.

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8. The Parties agree that incase the minor Children have spent a holiday with either parent; the other parent will have right to take them out on a holiday within the same year exclusively that too when the minor children are having their School Holidays with prior intimation to the other Party provided the minor Children are returned back to the jurisdiction of New Delhi/NCR. While taking the minor children for spending half of their vacations, the Party accompanying the children for their holiday shall be liable to disclose the complete itinerary(air or other tickets, hotel or other place of stay) to the other Party well in advance from the date of the proposed travel. The custodial parent during such holiday shall be liable to facilitate video call/audio call/Whatsapp call with the non-custodial parent with the minor Children regularly so that the non-custodial parent gets virtual access with the minor Children during such holiday trips. The frequency of the same can be mutually decided by both the Parties.

9. It is agreed between the Parties that the minor Children shall reside with the Second Party in the rented home at New Delhi from Monday evening till Friday evening and the First Party shall pick up the minor Children from the tenanted accommodation at New Delhi on Friday evening and drop the minor Children back on Monday morning to their School when the schools become operational or till the time the school has classes online, then the First Party i.e. the Father shall drop the minor Children back to the tenanted home in New Delhi on Monday evening.

10. Both the Parties agree that Children shall have opportunities to interact with their respective grandparents in Delhi NCR.”



10. The husband/Respondent no. 2 is currently residing in Noida with the children. Considering the apprehension expressed by Id. Counsel for the Petitioner, it is directed that till the next date of hearing in the contempt petition being ***Contempt Cas (C) No. 37/2024***, the husband/Respondent no. 2 shall not violate the settlement terms. Further, the Respondent No. 2 shall not in any manner move the children outside the Delhi NCR region.
11. This order shall be communicated to the Foreign Regional Registration Office ('*FRRO*') through the Central Government Standing Counsel Mr Anurag Ahluwalia.
12. The Petitioner is free to appear before the Court wherein ***Contempt Cas (C) No. 37/2024*** is filed and pray for any further reliefs.
13. The mandate of this order shall continue till the next date of hearing before the contempt court *i.e.* ***Contempt Case (C) No. 37/2024***. The Petitioner is free to pray for continuation of the present order as also avail of available remedies before the Contempt Court, in accordance with law.
14. With the aforesaid terms, the present petition is disposed of.
15. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

OCTOBER 01, 2024/nk/rks/Pc