

SUPREME COURT OF INDIA

Jasmeet Kaur

Vs.

State (NCT of Delhi)

SLP(Crl.)No.4858-4859/2018

(Uday U.Lalit and Indu Malhotra,JJ.,)

12.12.2019

JUDGMENT

Indu Malhotra,J.,

1. The present Special Leave Petitions arise out of matrimonial disputes between the parties. SLP (Crl.) No. 4858-4859/2018 has been filed by the Petitioner - wife to challenge the Orders dated 06.03.2018 and 21.05.2018 passed by the High Court in a Habeas Corpus Petition (Crl) No. 725 of 2017 filed by the Respondent - husband, seeking issuance of a writ of habeas corpus for production of the children, who have been illegally abducted by the Petitioner - wife from his custody in the USA. SLP (C.) No. 20022/2019 arises out of a Guardianship Petition filed u/S. 9 of the Guardians and Wards Act, 1890 (“GWA”) by the Petitioner - wife praying for permanent and sole custody of the minor daughter - Ishnoor now aged about 7 years, and minor son - Paramvir aged about 2 years. Since both SLPs arise out of common facts, they are being disposed of by this common judgment.

2. The background facts in which the present SLPs have been filed are briefly set out herein below:

2.1. The Respondent - husband migrated to the U.S. with his parents in 1994, when he was 14 years old, and has been permanently residing there since the past over 25 years, and has acquired U.S. citizenship. The Respondent - husband has been practicing as a Dentist in the U.S.

2.2. The Petitioner - wife moved to the U.S. in 1998, when she was 17 years old to pursue a degree in Computer Science from Hunter College in New York. The Petitioner met the Respondent sometime in 2000, while she was a student. After meeting the Respondent, she decided to do a course in Dentistry, and subsequently qualified as a Dentist.

2.3. On 22.08.2006, the parties got married in New York and obtained a certificate of registration of marriage from the Marriage License Bureau, New York. On

23.12.2007, the parties came to India, and solemnized their marriage under Sikh rites in the presence of their families.

2.4 The parties have lived in the U.S. throughout the subsistence of their marriage, and jointly started running a dental clinic viz. 'South End Dental Clinic' at Norwalk, Connecticut. The daughter - Ishnoor was born out of the wedlock on 27.08.2012 and acquired U.S. citizenship by birth.

2.5 After the birth of their daughter, the Petitioner - wife applied for citizenship, and obtained U.S. citizenship in April, 2013.

2.6 On 26.01.2016, the couple along with their daughter - Ishnoor and the parents of the Respondent came to New Delhi, to attend the wedding of her brother, on a return ticket. The Petitioner - wife was pregnant at that time. The parties were scheduled to return to the U.S. on 06.03.2016. The Petitioner - wife however refused to return to the U.S. alongwith Ishnoor. While she was in India, she delivered the second child viz. Paramvir on 15.09.2016 at New Delhi. Since both parties were U.S. citizens, the minor son - Paramvir would be an American citizen by birth.

3. Proceedings in the U.S.

3.1 The husband instituted custody proceedings before the US County Court at Stamford, Connecticut seeking custody of the children.

3.2 The Superior Court of the State of Connecticut at Stamford/Norwalk passed an ex - parte interim Order dated 17.11.2016 whereby temporary custody of both children was granted to the Respondent - husband, with supervised visitation rights for the Petitioner - wife.

3.3 On 25.01.2017, the Superior Court passed a Final Order directing the Petitioner - wife to return to the U.S with the minor children, and granted sole, legal and physical custody of both children to the husband, with supervised visitation rights to the Petitioner - wife. The Superior Court ordered that when the wife appears before the Court, she would be given an opportunity to be heard, and to lead evidence with respect to the issue of custody of the children, which would be dealt with fairly, after evidence was led by both parties.

4. Guardianship Proceedings in India

4.1 The Petitioner - wife filed a Guardianship Petition bearing G.P. No. 64/2016 u/S. 7,9, 11 and 25 of the Guardians and Wards Act, 1890 read with S. 6 (a) of the Hindu Minority and Guardianship Act, 1956 before the Family Court, Tis Hazari, New Delhi seeking sole and permanent custody of both the children.

4.2 The Respondent - husband filed an Application under Order VII, Rule 11 CPC seeking rejection of the plaint.

4.3 The Family Court vide Order dated 26.12.2016 allowed the Application, and dismissed the Guardianship Petition. The Court held that the parties and their daughter - Ishnoor were “ordinarily residing” in the U.S. at the time of filing the Guardianship Petition, and their son - Paramvir was a U.S. citizen by birth, consequently, they would be governed by the laws of the U.S.

4.4 The Petitioner - wife filed MAT. Appeal (FC) No. 3 of 2017 u/S. 19 of the Family Courts Act, 1984 before the Delhi High Court to challenge the Order dated 26.12.2016 passed by the Family Court. The Delhi High Court vide Order dated 19.09.2017 dismissed the Appeal, and held that the issue of custody of the children should be decided by the court having closest connection with the children, which is the Courts in the U.S.

4.5 Aggrieved, the Petitioner -wife challenged filed Civil Appeal No. 2291 of 2018 before this Court to challenge Judgment dated 19.09.2017.

4.6 This Court vide Order dated 20.02.2018 allowed the Civil Appeal filed by the Petitioner - wife, and set aside the Order passed under Order VII Rule 11. The case was remitted to the Family Court to be decided on merits.

4.7 The Family Court vide Order dated 20.08.2018 decided that the Indian Courts would have no jurisdiction to entertain the Petition u/S. 9 of the Guardians and Wards Act. The Family Court held that the Petitioner - wife was an American citizen. She had an American Passport, with an OCI Card. The minor girl - Ishnoor was also holding an American passport. On account of the Petitioner - wife having prolonged her stay in India, the passport of the daughter expired in October 2017, which has not been renewed ever since. Insofar as the son is concerned, the Petitioner - wife had not obtained the U.S. Passport even though he was an American citizen by birth. Both children had no valid documents for their stay in India. Since the children were residing in India in breach of immigration laws, they would not fall within the ambit of ‘ordinarily residing’ in India as provided by Section 9 of the Guardians and Wards Act. On the issue of custody, the Family Court held that the paramount interest of the children would lie in shared parenting by the parties in the U.S., and that the Petitioner - wife was not entitled to the sole custody of the children. With respect to jurisdiction, the Family Court held that the Indian Courts would lack jurisdiction to entertain the Guardianship Petition. Aggrieved, the Petitioner - wife filed MAT. Appeal (FC) No. 244 of 2018 before the Delhi High Court to assail the Order dated 20.08.2018 passed by the Family Court. The High Court by the impugned Judgment and Order dated 01.07.2019 dismissed the appeal. The High Court held that the Hindu Minority and Guardianship Act, 1956 does not override the Guardians and Wards Act, 1890 which is supplemental to the latter. S. 9 of the Guardians and Wards Act, 1890

provides that the Court where the child 'ordinarily resides' would have jurisdiction to decide the issues of guardianship and custody.

The High Court noted that the Petitioner - wife had purchased properties in the U.S., and had applied for U.S. citizenship in 2012, which was granted to her in 2013, and was not surrendered to date. These facts reflect that the Petitioner - wife did not intend to make India her permanent home. The conduct of the parties revealed that they had abandoned their domicile of origin in India, and therefore, could not be said to be 'ordinarily residing' in India. As a consequence, the courts in Delhi would have no jurisdiction to entertain the Petition u/S. 9 of the Guardians and Wards Act, 1890. The Court held that it would not be difficult for the minor girl - Ishnoor to get accustomed to the life and environment of America, since she was 7 years old, and had spent the initial 4 years of her life in the U.S. Once she starts going to school in the U.S., she would acclimatize herself to that country. The minor son - Paramvir being a little over two years old would be in a position to adapt to the lifestyle and customs of the US. The High Court held that this was not a case where the children had grown up and rooted themselves in India. The welfare of the children would lie in joint parenting by both parents in the U.S., which was not possible if the wife retained the sole custody of the children in India. The wife could therefore not be granted permanent and sole custody of the children. The Judgment and Order dated 01.07.2019 passed by the High Court dismissing the MAT. Appeal (FC) No. 244 of 2018 has been challenged by the Petitioner - wife before this Court by way of SLP (C.) No. 20022/2019.

5. Habeas Corpus Proceedings in India

5.1 After dismissal of the first round of litigation pertaining to the guardianship of the children, the Respondent - husband filed Writ Petition (Crl.) No. 725 of 2017 before the Delhi High Court for issuance of a Writ of Habeas Corpus to direct the Petitioner-wife to produce the minor children i.e. Ishnoor and Paramvir before the Court, along with their U.S. Passports. The Respondent - husband further prayed that the High Court permit him to take the minor children with him to the United States.

The High Court vide Judgment and Order dated 06.03.2018 allowed the Habeas Corpus Petition and directed the Petitioner - wife to return to the U.S. along with the two minor children within three weeks. It was evident from the conduct of the parties that they had abandoned their domicile of origin i.e. India, had set up their matrimonial home in the U.S. and raised their daughter in that environment. When the Petitioner - wife decided not to return to the U.S. in January, 2016 she acted in her self-interest, and not in the best interest of her children. The High Court held that the children have the right to be brought up by both parents as a family in the U.S. It is in the best interest of the children that the Petitioner - wife returns to the U.S. The High Court issued directions to the Respondent - husband to ensure that once the Petitioner - wife returns to the U.S., she is not faced with any adversity or

hostility by the Respondent - husband, or the American legal system. The High Court further directed the Respondent - husband to move the Superior Court, Judicial District Stamford, Norwalk for re-call of Orders dated 17.11.2016 and 25.01.2017 wherein the Petitioner - wife was directed to grant temporary physical and legal custody of the minor children to the Respondent - husband. Furthermore, when the Petitioner - wife lands in the U.S. with the two minor children, they shall not be removed from her custody. The two minor children shall continue to remain in the custody of the Petitioner - wife even after she returns to the U.S., till the competent court in the U.S. passes fresh orders on the aspect of temporary/permanent custody of the children, after granting adequate opportunity of hearing to both parties. The Respondent - husband would not make any attempt to take the minor children out of the custody of the Petitioner - wife by force. The Respondent - husband shall however be entitled to meet the children and spend time with them as may be mutually agreed between the parties.

The Respondent - husband undertook not to initiate any criminal/contempt proceedings against the wife in the U.S. The High Court directed the Respondent - husband to file an Affidavit of Undertaking in terms of the conditions mentioned in the Order dated 06.03.2018.

5.2 In compliance with the Order dated 06.03.2018 passed by the High Court, the Respondent - husband took the following steps: -

a) Submitted an Affidavit of Undertaking dated 20.03.2018 before the Delhi High Court to comply with the directions stated hereinabove.

b) The Respondent obtained an Order dated 14.05.2018 from the Superior Court of Stamford, the operative part of which is extracted hereinbelow:

“1. The prior orders for sole physical and legal custody in favour of the Plaintiff shall be recalled.

2.The prior orders remain in place that Jasmeet Kaur is to return immediately to Connecticut with the minor children.

3.The minor children shall remain in the custody of Jasmeet Kaur, and the Plaintiff shall have reasonable interim visitation with the minor children as agreed or Court ordered upon the minor children’s return with Jasmeet Kaur to Connecticut, until further custody orders are determined by the Connecticut Superior Court after granting adequate opportunity of hearing to both the parties.

4. That the Affidavit of Undertaking of the Plaintiff, confirming how he has confirmed his conduct to the Order of the High Court of Delhi at New Delhi on March, 6, 2018, submitted as Exhibit B to the Motion for Order (Tab 2 of Exhibit 2) is hereby approved and so ordered. That Attorney William Taylor is hereby

appointed as escrow agent pursuant to Exhibit C to the Motion for Order (Tab 3 of Exhibit 2).”

c)The Respondent deposited an amount of USD 25,000 in an Escrow Account to ensure compliance with the payment terms. This account would be operated in accordance with the directions and Orders of the US Supreme Court at Stamford, Connecticut, USA where the matter between the parties was pending.

5.3 The High Court vide Order dated 21.05.2018 directed the Petitioner - wife to return to the U.S. along with both the children within 3 weeks, failing which, the children would be handed over to the Respondent - husband along with their respective Passports.

5.4 The Petitioner - wife challenged the Orders dated 06.03.2018 and 21.05.2018 passed in the Habeas Corpus Petition before this Court by way of SLP (Crl.) No.4858- 59/2018.

6. We have heard Ms. Malvika Rajkotia, Ld. Counsel appearing for the Petitioner - wife, and Mr. Anil Malhotra, Ld. Counsel appearing for the Respondent - husband.

6.1 During the course of arguments before this Court, the Petitioner - wife agreed to return to the U.S with the minor children. In these circumstances, we are not touching upon the issue of jurisdiction.

7. We posted the matter for hearing in Chambers on 10.12.2019, when both parties along with the minor children appeared before us. The Petitioner and Respondent perused the directions which are being issued by this Order, and agreed to the same. We direct that both the present Special Leave Petitions be disposed of with the following directions :-

i. The parties will jointly apply to the U.S. Embassy for renewal of the U.S. Passport of their daughter - Ishnoor, and for issuance of an American passport for their son - Paramvir.

ii. The Petitioner - wife along with the two minor children- Ishnoor and Paramvir will return to Norwalk, Connecticut, USA within a period of two weeks from the issuance of the Passports of the minor children. If the Petitioner fails to comply with the aforesaid direction, the children will be handed over to the Respondent - husband who will take them back to the U.S.

iii. The Respondent - husband offered that upon returning to the U.S., the Petitioner - wife may return to the matrimonial home at Norwalk, Connecticut. If the Petitioner - wife however chooses to live independently, the Respondent - husband will provide suitable accommodation to the Petitioner - wife in Norwalk, Connecticut, with all basic amenities. In the alternative, the Petitioner - wife may identify a suitable accommodation, in the vicinity of Norwalk, Connecticut, so that

the Respondent - husband has access to the children.

iv. The Petitioner - wife undertakes to provide visitation and unsupervised access to the Respondent - husband every weekend, which arrangement may be modified by a Court of competent jurisdiction in the U.S.

v. The Respondent - husband offered that upon returning to the U.S., the Petitioner - wife may continue to practice dentistry at their joint clinic viz. South End Dental Clinic at Stamford. If the Petitioner - wife is not interested to jointly practice with the Respondent - husband at their clinic, the parties may take steps to divide the assets equally. The division of assets shall be completed within a period of 4 months.

vi. The Respondent - husband will take steps to get the children admitted to a reputed school in the vicinity.

vii. The Respondent - husband has agreed to provide the following expenses to the Petitioner - wife:

1.	\$ 2000 approx.	towards rent
2.	\$ 1000	towards food/clothing/other needs
3.	\$1000	towards child care/nanny
4.	\$200	towards car expenses
5.	\$100	towards fuel expenses
6.	\$454.85	towards health insurance of the wife
7.	\$281.07	towards health insurance of the minor daughter – Ishnoor
8.	\$281.07	towards health insurance of the minor son – Paramvir
9.	\$899	towards pre-school fees of Ishnoor
10.	\$1500	towards legal expenses

That even though the aforesaid amounts work out to approximately, US \$ 7,715, we direct that the amount be rounded off to US \$ 8,000 per month to the Petitioner - wife to meet all her expenses.

The payment of these expenses would be made for a maximum period of 12

months, or until the Petitioner - wife gets employed in the U.S. and obtains division of their assets, whichever is earlier. The amount deposited in the Escrow Account by the Respondent - husband as a security to ensure compliance of the payment terms will continue during this period. The Escrow Account shall be operated as per Orders passed by a competent Court in the U.S.

viii. After the assets are divided, both parties will share equally the expenses towards the education and upbringing of the children.

ix. We were informed that the Petitioner - wife has instituted Divorce proceedings against the Respondent - husband before the Family Court, Tis Hazari, New Delhi. The Petitioner - wife has agreed to withdraw the divorce proceedings within a period of two weeks from this Order.

The Special Leave Petitions stand disposed of in the above-mentioned terms.

J.

(UDAY UMESH LALIT)

J.

(INDU MALHOTRA)

New Delhi

December 12, 2019.