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

% ***Judgment reserved on: 29.10.2025***
Judgment pronounced on: 04.11.2025

\+ MAT.APP.(F.C.) 55/2025

IT .....Appellant

Through: Mr. M. Dutta, Sr. Adv. along with Mr. Aditya Guha and Mr. Anand Kumar Soni, Advs.

versus

ANT .....Respondent

Through: Ms. Usha Mann, Mr. Deepak Gupta and Ms. Vijayat M. Bhalla, Advs.

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Appeal, under Section 19 of the Family Courts Act, 1984, is preferred by the Appellant against **the Order dated 01.02.2025**[1] passed by the learned **Judge, Family Court, Patiala House Courts, New Delhi**[2], in Guardianship Petition No. 37/2024. The said Order is a common Interim Order passed by the learned Family Court in the Application under **Section 12 of the Guardians**

[1] Impugned Order
[2] Family Court

and Wards Act, 1890[3], whereby the interim custody of the child was sought by the Respondent herein, as well as in Application filed by the Appellant herein seeking recall of Order dated 27.07.2023 read with Order dated 18.12.2023 whereby the Appellant was restrained from removing herself and the child out of India without seeking the Court's prior permission.

2. The said applications were filed in the Guardianship Petition being **GP No. 37/2024** filed under Sections 7, 8 & 9 of GWA for permanent custody.

BRIEF FACTS:

3. Shorn of unnecessary details, the brief facts, for the purpose of adjudication of the present Appeal, are as follows:

A. The parties herein got married to each other on 10.03.2013 in accordance with Hindu rites and ceremonies in an Arya Samaj Mandir.

B. It is contended that the Appellant, who was a Christian by birth, for the purposes of getting married to the Respondent, converted to Hinduism.

C. After getting married, the parties were living together originally in Noida and thereafter, at House No. 9/11, Circular Road, Dalanwala, Dehradun, Uttarakhand.

D. The parties were blessed with a baby girl, namely, Ms. A, on 08.06.2021. Admittedly, the daughter of the parties was born in Russia and holds a Russian Passport, and after her birth, the parties travelled back to India and continued to reside in Dehradun.

[3] GWA

E. The Appellant left the company of the Respondent, stating that she had been subjected to physical and mental abuse. She took refuge at various places, *inter alia,* for a brief period in Delhi, at the Russian Embassy, and is currently residing in Goa with the minor daughter.

F. There is also a petition seeking divorce that has been filed by the Appellant herein and which is pending adjudication.

G. The Respondent had preferred a petition under Sections 7, 8 and 9 of the GWA, before the learned Family Court, Dehradun, which subsequently was transferred to the learned Family Court, Patiala House Courts, Delhi, *vide* order of the Hon'ble Supreme Court dated 13.08.2024 in Transfer Petition (C) No. 87 of 2024.

H. In the interim, the learned Family Court, Dehradun, *vide* Orders dated 27.07.2023 and 18.12.2023, restrained the Appellant from leaving India with the minor daughter without the prior permission of the Court.

I. The Appellant sought a recall of the said Orders by way of an Application, which came to be dismissed by way of the Impugned Order.

J. Further, the learned Family Court also disposed of the Application filed by the Respondent seeking interim custody of the minor daughter by allowing the same.

K. Aggrieved by the same, the Appellant has challenged the Order of the learned Family Court before us in this Appeal.

4. It is pertinent to note that the parties have been at loggerheads, and though attempts have been made to settle the issues between

them, no headway appears to have been made.

5. To our mind, the principal question that arises for our consideration is the extent to which the provisions of Section 6 of the **Hindu Minority and Guardianship Act, 1956**[4] would have to be accorded primacy in a factual scenario where there exists more than reasonable apprehension of a party or parties removing themselves from the jurisdiction of the Indian Courts.

CONTENTIONS OF THE PARTIES:

6. Learned Senior Counsel for the Appellant would strenuously contend that the provisions of the HMG Act and in particular Section 6 thereof, provides that the natural guardian of a Hindu minor, who is under 5 years of age, is ordinarily the mother. Section 6(a) of the HMG Act reads as follows:

> "6. Natural guardians of a Hindu minor—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—
> (*a*) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;"

7. He would further contend that the Impugned Order does not find any fault or deficiency in the Appellant, and without such a finding having been rendered by the learned Family Court, the provisions of the HMG Act would necessarily have to be given full effect, and the child being under 5 years of age, it is the mother who should be entitled to have the custody of the minor child.

8. *Per Contra*, learned counsel for the Respondent would state that the Appellant herein is a foreign national holding a Russian passport,

[4] HMG Act

as is the minor child. Additionally, she would contend that the Appellant herein has been living the life of a nomad and has an irresponsible disposition and has no secure and stable source of income.

9. She would further contend that the Appellant does not have the means to take care of the child and is also the person who cannot be trusted to take care of the minor daughter.

10. Learned counsel for the Respondent would also contend that the Appellant and the child, both being Russian citizens, and considering the past attempts on the part of the Appellant to secure exit permits to flee the country, there arises a more than reasonable apprehension in the minds of the Respondent that the Appellant would seek to flee the country with the minor child.

11. She would thus contend that in the event of such a circumstance, the efforts of the Respondent and all legal proceedings as are currently pending before the Indian Courts would effectively stand nullified.

ANALYSIS:

12. We have heard the learned counsel for the parties and have perused the records. We are of the opinion that the Order impugned herein, being only an Interim Order, pending final adjudication, granting custody to the Respondent, does not require any intervention.

13. At this juncture, we deem it apposite to extract the relevant paragraphs of the Impugned Order, which read as follows:

> "10. Present is a dispute for the custody of the child who is a citizen of Russia, Mother of the child is also Russian citizen and therefore, if respondent is permitted to take the child out of India there is a possibility that respondent and the child may not come back to India and thereby it would render the present case otiose. The apprehension of her not coming back to India gets further

fortified by noting the fact that respondent does not have any other interest in India either in the form of asset or durable lucrative job or any relative. Therefore, in this circumstance the child in question cannot be allowed to be taken out of Indian territory till the issue of permanent custody is adjudicated by the Court. Family court under the Family Court Act has power of both Civil Court or Criminal Court as it has all the power under Code of Civil Procedure and Code of Criminal Procedure and depending upon the fact and circumstance of the case Court does has power to restrain a party from living its jurisdiction. Hence, the contention that family court in custody petition cannot pass such order is not tenable in law.

11. As far as interim custody/visitation is concerned admittedly petitioner is father of the child and the child has right to be loved and cared by her father as well. Presence of father in the life of the child is also necessary for her over all growth. Petitioner undisputedly has fixed place of abode in Dehradun whereas respondent does not have so in India and she is trying to go out of India. Petitioner is currently stated to be looking after huge ancestral property in Dehradun and looking after the work of developing them for commercial purpose. He is living in his own house in Dehradun with his uncle (elder brother of his father) whose children are settled abroad. Petitioner's parent often visit him and lives with him too for months as they sometime live in Noida or out of India to their other children.

There is domestic help at home of the petitioner. He mostly work from home and goes out only for some meeting etc. All these were told by the petitioner when this court sought to know about all these during the course of argument. Respondent alter feeing from her matrimonial home got shelter in Russian Embassy, thereafter she shifted to Gurgaon and currently she is stated have shifted to Goa. There she is working as Yoga and Dance instructor on contractual basis and getting salary of Rs. 25,000/- per month. She is stated be living alone there with daughter and has three hours of work in school from 9AM to 12 noon.

12. Ordinarily, minor below the age of 5 years should remain in the custody of the mother but if circumstance so warrant the custody of the child below the age of 5 years could be given to father as well. In the present case keeping in mind the aforesaid facts in mind, this court is of the opinion that interim custody of the child be given to father as he is in settled position with roots in the society and therefore would be in a position to provide stable life to the child in question even during the pendency of the petition. Petitioner is also man of means and he would get her admitted to a school in Dehradun whereas respondent not having permanent place and stable job would be living life of instability and is also looking for opportunity to go out of India with no clear intention/goal to come in India for any purpose. Therefore, this court is of firm view that in would be in the interest and welfare of the child that during the

pendency of the present petition interim custody of the child in question be given to petitioner father.

13. Hence, respondent is hereby directed to hand over the interim custody of the child within 15 days from today whereafter the child shall remain in the custody of the petitioner at Dehradun till the present petition is decided on merits. Petitioner would make effort to get the child admitted in a good but nearby school in Dehradun in the current or next academic session whichever is possible at the earliest.

14. Petitioner would allow the respondent video calls access to the child everyday in the evening for about 15-30 minutes. Petitioner would also allow the physical meeting of the child with respondent every weekend at Dehradun with overnight custody between Saturday and Sunday, if respondent wishes to avail them al Dehradun. If respondent avails visitation in Dehradun, petitioner will hand over the custody of the child on Saturday around noon time and respondent will hand over the custody of the child back to the petitioner on Sunday by 5 P.M. However, respondent would remain under restrain from taking the child out of Dehradun.

15. In case, after handing over the interim custody of the child pursuant to this order, respondent wishes to settle down in Dehradun, petitioner would make arrangement of a good 1BHK in safe and secure locality in Dehradun for her, at his own cost either on rent or on purchase and shall provide her with Rs. 10,000/- per month for her maintenance besides the rent for 1BHK in Dehradun. However, this order would not affect the prerogative/discretion of the Government of India to grant citizenship to the respondent or to the child, if any such prayer is made to it later.

16. After handing over the interim custody of the child in question to the petitioner, there would be no restriction on the respondent to leave India and come in India so far as the present matter and present court is concerned. However, this order will not affect the jurisdiction of concerned Authority to deny entry/exit of the respondent to/from India for any other lawful reasons."

14. As is apparent, the primary aspect that seems to have weighed in the mind of the learned Family Court is the apprehension that the Appellant and the child may seek to exit Indian shores. The learned Family Court also takes note of the fact that the Appellant herein has no assets or any other liability to, in any manner, continue to remain in India.

15. The learned Family Court in the Impugned Order has also taken note of the relative stability and permanence that the Respondent has

and will be able to provide to the minor daughter. The learned Family Court has analysed the fact that the Respondent is a man of considerable means and has familial support. The learned Family Court has also analysed the fact that the Appellant herein does not appear to have any permanent employment or means to support a lifestyle; as also the fact that, given her current employment status, it may be preferable, keeping in mind the relative positions as between the Appellant and the Respondent, for the minor, to be in the interim custody of the Respondent.

16. It is in view of these factual aspects that the learned Judge concluded that, though ordinarily a child below the age of 5 years should be in the custody of the mother but given the peculiar circumstances of the present case, it may be in the best interest of the child to be with the Respondent. Resultantly, the learned Family Court concluded that the interim custody of the child be handed over to the Respondent, but with various caveats built into it. The Petitioner's interests were safeguarded to a fair extent, and the same is clearly evident from the directions passed in Para Nos. 14 to 17 of the Impugned Order.

17. The learned Family Court, in our view, has rightly kept in mind the welfare and best interest of the minor daughter of the parties, which is of paramount importance. The Hon'ble Supreme Court has time and again, through various judgements, emphasised on the fact that the welfare of the child is paramount and the same would prevail over the parental rights of the parties. The Hon'ble Supreme Court has laid down the principle that paramount consideration is the welfare and best interest of the child, which far outweighs the competing

rights or entitlements of either parent in ***Sheoli Hati v. Somnath Das***[5], which reads as follows:

> "**17.** It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in ***Gaurav Nagpal* v. *Sumedha Nagpal***, had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51 : (SCC pp. 55-57)
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> "*43*. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the "welfare of the child" and not rights of the parents under a statute for the time being in force.
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> *44*. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.
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> *45*. In ***Saraswatibai Shripad Vad v. Shripad Vasanji Vad*** the High Court of Bombay stated : (SCC OnLine Bom) … It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. *It is the welfare of the minor and of the minor alone which is the paramount consideration* …'
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> *46*. In ***Rosy Jacob* v. *Jacob A. Chakramakkal***, this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The *power* and *duty* of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.
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> ***
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> *51*. The word "welfare" used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being.

[5] (2019) 7 SCC 490.

> Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases."
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> (emphasis in original)
>
> **18.** Every child has right to proper health and education and it is the primary duty of the parents to ensure that child gets proper education. The courts in exercise of *parens patriae* jurisdiction have to decide such delicate question. It has to consider the welfare of the child as of paramount importance taking into consideration other aspects of the matter including the rights of parents also. In reference to custody of a minor, this Court had elaborated certain principles in ***Thrity Hoshie Dolikuka* v. *Hoshiam Shavaksha Dolikuka***, wherein this Court again reiterated that the welfare of the child is of paramount importance. In para 17, following was laid down : (SCC p. 565)
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> "*17.* The principles of law in relation to the custody of a minor appear to be well-established. It is well-settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the court has a special responsibility and it is the duty of the court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the court has to be guided by the only consideration of the welfare of the minor."
>
> ….."
>
> ***(emphasis supplied)***

18. We, on a conspectus of the facts and after going through the analysis of the learned Family Court and the law laid down by the Apex Court, are of the opinion that no interference is necessitated and the reasons for which are elaborated hereinafter. We would, in addition to what has already been set out by the learned Judge, hold as follows:

a. Evidently, the Russian Embassy had, in the year 2023, sought to assist the Appellant herein in securing exit permits for herself and the minor child for the purpose of leaving the country.

b. Also of import are the contents of the Legal Notice dated 25.09.2023, wherein admittedly, the Appellant has stated that

she was no longer interested in staying in India and desired to go back to Russia. She has stated so at least two places as follows:

> "…4. **My Client was no longer interested in living in India and desired to go back to Russia to be with her family.** Further, she is without any funds to lead her daily life and provide for her minor child.
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> ******
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> 9. **My client has no desire to live in India**. She has no means financial or otherwise to support her life and stay at India. **She is desirous of returning back to her home Country / Russia, to be with her family and aged Mother, who is also ailing of ill-health.**"

c. As is apparent from the extracted paragraphs of the said legal notice, not only was the Appellant desirous of leaving India, but it would appear that she was choosing to do so conclusively, meaning thereby that perhaps she were never to return to India.

d. We also take judicial notice of various events that have transpired in the recent past and which had led to the Hon'ble Supreme Court expressing their anguish for the manner in which a national of the same Country was *prima facie* seen to have been assisted by the concerned Country's embassy officials to flee Indian shores. The said matter titled as ***Viktoriia Basu Vs. The State of West Bengal***[6] remains pending before the Hon'ble Supreme Court. In the said case, despite the Hon'ble Court having granted shared custody, the proceedings presently stand frustrated as, *inter alia*, and as apparently observed by the Hon'ble Supreme Court, due to negligence of the concerned authorities, the child was "snatched" from the jurisdiction of the Court. The said case has received

[6] W.P (Crl) No. 129/2023

considerable media attention and, despite the Indian Government's repeated and concerted efforts, remains wrapped in diplomatic red tape.

e. While keeping in mind the various principles governing issues of the present nature, and especially the primacy accordable to the "best interest" of the child, we also need to parallelly, remain cognisant, that in order to do so, Courts in India would have to be enabled with the necessary wherewithal to effectively adjudicate such issues, and upon such adjudication, effectuate the same. The entire process of adjudication would be rendered meaningless if Courts were unable to implement or enforce any orders/ Judgment that were the resultant of the adjudicative process.

f. The various concerns and considerations that need to be given primacy would only come into play once the legal system were permitted its free play, an important facet of which, would be the ability to have its decisions enforced/ implemented. If this basic foundational feature were to be absent, the entire exercise would be rendered futile.

g. In order to ensure that these concerns are able to be effectively effectuated, and to ensure that the jurisdiction of Indian Courts is not "snatched away", we are of the view that the impugned order would not commend itself to any interference.

h. Recent events, coupled with the facts and circumstances of the present case, lends to us a fairly high apprehension that in the event we interfere with the impugned Order, and, if the mother and minor daughter were to exit Indian shores, it would be an uphill task to get the orders/ Judgment(s) of Indian Courts

enforced.

i. It is also pertinent to note that India is not a Member of the **Hague Conference on Private International Law**[7]**,** while the Russian Federation is a member of the same. This would necessarily imply that for the purpose of enforcing any direction or Judgement passed by an Indian Court, the only manner to do so would be by international dialogue between the two nations through diplomatic channels.

j. We also take note of the fact that the minor daughter has stayed in India since almost immediately after her birth and is being raised during her formative years here in India. Considering the same, if handing over the custody to the Appellant herein would mean that the minor daughter would be uprooted completely from the place and country she has been residing in and having adjusted to its environment, the same would not be in the best interest of the child. We are also guided by various precedents regarding this issue, including in the judgement of ***Prateek Gupta v. Shilpi Gupta***[8]**,** wherein the Apex Court based the considerations on the fact that child removed by father, from United States (U.S.) to India, had already spent two and a half years in India and relocation back to United States would be unfavourable to his well-being as the child was in formative years and had adjusted to the environment. The United States court in this case had issued an order for return of child and custody being handed over to the mother. But the Hon'ble Supreme Court stated that such foreign orders and principle of

[7] Hague Convention
[8] 2017 SCC OnLine SC 1421.

comity and close contact can be ignored for the larger good i.e. the welfare of the child being of paramount consideration.

19. We also believe that, given the stage at which the proceedings currently rest, and in view of the admitted position that the Appellant is acutely desirous of leaving the country, the Impugned Order is not, in any manner, to be faulted.

20. In view of the afore-stated circumstances and position of law, we are of the considered opinion that no interference is required.

21. Accordingly, the present Appeal, along with pending application(s), if any, is dismissed.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 04, 2025/rk/va