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

% ***Judgment reserved on: 13.03.2026***
Judgment pronounced on: 02.07.2026

\+ W.P.(CRL) 1190/2020, CRL.M.A. 16260/2021 (Seeking unsupervised visitation right), CRL.M.A. 24858/2025 (Delay of 15 days in filing the affidavit in terms of order dt. 11.07.2025), CRL.M.A. 24859/2025 (Ex. from filing certified copies of annexures–R2/1) & CRL.M.A 5816/2026 (For permission to place on Addl. Documents)

KARAN CHOPRA .....Petitioner

Through: Mr. Prabhjit Jauhar and Ms. Rosemary Raju, Advocates.

versus

STATE & ANR. .....Respondents

Through: Mr. Sanjeev Kumar Dubey, Sr Adv with Mr. Rahul Sanga, Ms. Tanya Verma and Mr. Shahrukh Khan, Advs for R-2.
SI Pradeep Kumar.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

In the solemn chambers of justice, few responsibilities weigh more heavily upon the conscience of the Court than those concerning the welfare and well-being of a child. A

child stands before the law not as a claimant, nor as a prize to be won, but as a life in its most tender and impressionable form, innocent, dependent, and deserving above all else of protection, stability, and love.

When the future of a minor is placed in the scales of justice, the Court must look beyond the assertions and rival claims of those who stand before it. Its gaze must remain fixed upon the silent center of the dispute-the child, whose voice is often the softest, yet whose interests are the most profound. As Kofi Annan, former Secretary-General of the United Nations, poignantly observed, 'There is no trust more sacred than the one the world holds with children."

The law, in its wisdom, recognizes that the welfare of the child is not merely a relevant consideration; it is the paramount consideration. It is the North Star by which the Court must navigate, eclipsing all competing interests. Every order, every direction, and every conclusion must ultimately seek to secure for the child what every child is entitled to: a life of dignity, security, affection, and the freedom to grow unburdened by the conflicts of others.

1. The present Petition has been instituted under Article 226 of the **Constitution of India**[1] read with Section 482 of the Code of Criminal Procedure, 1973, seeking issuance of an appropriate writ, order, or direction in the nature of *habeas corpus* against Respondent No. 2 for production of the minor son of the Petitioner and Respondent No. 2, *namely*, Master "S", who is stated to have been in illegal custody of Respondent No. 2 since 25.10.2019. The Petitioner further seeks

[1] Constitution

compliance with the Order dated 19.03.2020 passed by the Superior Court of Justice, Ontario, Canada.

2. In the alternative, a direction is sought against Respondent No. 2 to hand over the custody of the minor child to the Petitioner in order to facilitate the child's repatriation to Canada in terms of the aforesaid Order dated 19.03.2020.

BRIEF FACTS:

3. Shorn of unnecessary details, the facts germane to the institution of the present Petition are as follows:

a. The Petitioner, Mr. Karan Chopra, had shifted to California, United States of America, in January, 2013, on a work permit.

b. The Petitioner got married to Respondent No. 2, Mrs. Ashu Chopra, on 24.12.2014, through a registered marriage, followed by a ceremonial wedding on 18.01.2015.

c. After the marriage, around February 2015, the parties had shifted to California, United States of America and began residing together.

d. Out of the said wedlock, the Minor Child, Master "S", was born on 24.05.2016 in San Jose City, United States of America, and is stated to be a citizen of the USA.

e. Thereafter, in or around August 2018, the parties relocated to Mississauga, in the Region of Peel, Province of Ontario, Canada, upon obtaining Permanent Residency, and established their matrimonial home there along with the Minor Child.

f. After the parties relocated to Canada, certain disputes and differences arose between them, which eventually led to

deterioration in their matrimonial relationship and gave rise to serious discord between the parties.

g. It is stated in the Petition that on 25.10.2019, upon returning to the residence, the Petitioner discovered that Respondent No. 2 had left the said residence along with the Minor Child. It was subsequently learnt that Respondent No. 2, accompanied by the Minor Child, had travelled to India.

h. It is further stated that the Petitioner made several efforts to establish communication and maintain contact with Respondent No. 2 as well as the Minor Child.

i. In December 2019, the Petitioner instituted proceedings before the **Superior Court of Justice, Ontario, Canada**[2], seeking custody of the Minor Child and consequential directions for the return of the Minor Child to Canada.

j. The Canadian Court, by way of an interim order dated 20.02.2020, granted the Petitioner access to interact with the Minor Child through video conferencing for a duration of 20 minutes daily.

k. Thereafter, Respondent No. 2 filed her reply on 06.03.2020 before the Canadian Court, while also raising her own claims and contentions in the said proceedings.

l. Subsequently, upon hearing both parties, the Canadian Court, *vide* order dated 19.03.2020, *inter alia*, directed that the Minor Child be returned to the Region of Peel, Ontario, Canada, and further granted temporary sole custody of the Minor Child to the Petitioner. The said order also restrained Respondent No. 2

[2] Canadian Court

from removing the Minor Child from the jurisdiction of Ontario, Canada, without either the consent of the Petitioner or further orders of the Court.

m. It is the case of the Petitioner that Respondent No. 2 failed to comply with the aforesaid order dated 19.03.2020, and consequently, the Minor Child continued to remain in India in the custody of Respondent No. 2.

n. In these circumstances, and on account of the alleged non-compliance with the order dated 19.03.2020 passed by the Canadian Court directing the return of the Minor Child to Ontario, Canada, the present Writ Petition has been instituted by the Petitioner seeking issuance of appropriate directions, including the production of the Minor Child.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. Learned Counsel appearing on behalf of the Petitioner would submit that the parties had, for a substantial part of their matrimonial life, resided outside India, initially in the United States of America and thereafter in Canada, and thus their matrimonial home and the centre of their marital life stood established abroad. The Minor Child was born in San Jose, United States of America, and acquired citizenship by birth, after which the parties shifted to Canada upon obtaining Permanent Residency and continued to reside and work there with the intention of permanently settling and raising the Minor Child in that jurisdiction.

5. Learned Counsel for the Petitioner would further submit that Respondent No. 2 unilaterally removed the Minor Child from Canada to India on 25.10.2019 without the knowledge or consent of the

Petitioner, thereby disturbing the settled arrangement between the parties. It would be contended that such removal disrupted the ordinary and habitual residence of the Minor Child.

6. It would further be contended by the learned Counsel for the Petitioner that the Petitioner acted with utmost promptitude and diligence immediately upon learning that Respondent No. 2 had taken the Minor Child to India, and he forthwith approached the competent courts in Canada seeking appropriate relief. Thereafter, the Petitioner, without undue delay, instituted the present Writ Petition before this Court seeking issuance of a writ of *habeas corpus* and consequential directions for repatriation of the Minor Child to Canada.

7. Learned Counsel would submit that Respondent No. 2 had voluntarily invoked and submitted to the jurisdiction of the competent Canadian Court by participating in the proceedings initiated therein and by seeking substantive relief before the said Court. It would further be submitted that, after affording due opportunity of hearing to both parties, the Canadian Court passed an order dated 19.03.2020 directing the return of the Minor Child to Canada, which Respondent No. 2 cannot now disregard.

8. Learned Counsel for the Petitioner would further submit that, despite remaining in India since October, 2019, Respondent No. 2 consciously chose not to initiate any proceedings before the Indian Courts for nearly one year thereafter. Respondent No. 2 instituted proceedings in New Delhi only in September, 2020 and that too subsequent to the filing of the present petition by the Petitioner before this Court.

9. It would be submitted that, in light of the principles laid down by the Hon'ble Supreme Court in ***Nithya Anand Raghavan v. State***

(NCT of Delhi)[3], Respondent No. 2 cannot be said to have demonstrated the requisite promptness or urgency in pursuing remedies before the Indian Courts. Consequently, the mere pendency of proceedings before the Indian Courts cannot operate as an impediment to the exercise of jurisdiction by this Court in the present proceedings.

10. Learned Counsel for the Petitioner would further argue that the principle of comity of courts requires due regard and weight to be accorded to the orders passed by a competent foreign court, particularly where such orders have been rendered after affording an adequate opportunity of hearing to both parties. It would be submitted that the order dated 19.03.2020 passed by the Canadian Court has not been challenged by Respondent No. 2 before any appellate forum in Canada and therefore continues to bind the parties.

11. In support of the aforesaid submissions, reliance would be placed by the learned Counsel for the Petitioner upon the judgments of the Hon'ble Supreme Court in, *inter alia*, ***Nithya Anand*** *(supra)*, ***Lahari Sakhamuri v. Sobhan Kodali***[4], ***Yashita Sahu v. State of Rajasthan***[5], ***Nilanjan Bhattacharya v. State of Karnataka***[6]**,** and ***Sunaina Rao Kommineni v. Abhiram Balusu***[7] to contend that, where a minor child has been removed from a foreign jurisdiction and the aggrieved parent approaches the court with promptness and expedition, the Court ought ordinarily to undertake a summary inquiry. It would further be contended that the child should ordinarily be returned unless it is demonstrated that such repatriation would

[3] (2017) 8 SCC 454
[4] (2019) 7 SCC 311
[5] (2020) 3 SCC 67
[6] (2021) 12 SCC 376
[7] 2025:DHC:4483-DB

expose the child to grave physical, emotional, or psychological harm, which, according to the Petitioner, is not borne out from the facts and circumstances of the present case.

12. Learned Counsel would further submit that Respondent No. 2 remains at liberty to pursue all remedies available to her before the competent Canadian Court, including seeking modification, variation, or recall of any order passed therein. However, it would be contended by the learned Counsel for the Petitioner that Respondent No. 2 cannot be permitted to defeat the due process of law or frustrate the orders of a competent court by continuing to retain the Minor Child in India, in contravention of the directions issued by the Canadian Court.

13. Learned Counsel for the Petitioner would further contend that the paramount consideration of the welfare of the Minor Child would be best served by his repatriation to Canada, as the Minor Child had been ordinarily residing there, was enrolled in school there, and was receiving specialized medical care and therapeutic support in relation to developmental concerns within a structured healthcare system. It would further be contended that no cogent material has been placed on record by Respondent No. 2 to establish that the return of the Minor Child to Canada would expose him to any physical danger, psychological trauma, or emotional harm.

14. Learned Counsel for the Petitioner would submit that, owing to the unilateral acts of Respondent No. 2, the Minor Child has been deprived of the love, care, guidance, and companionship of the Petitioner-father for a prolonged period. It would further be submitted that the right of a child to receive the affection, presence, and involvement of both parents constitutes an integral component of his

welfare and balanced upbringing, which is presently being denied to the Minor Child.

15. Learned Counsel for the Petitioner would additionally submit that both parties were gainfully employed, financially secure, and well-settled in Canada, and had intended to permanently reside there as a family unit. In such circumstances, it would be contended that Respondent No. 2 cannot unilaterally alter the settled position regarding the residence and upbringing of the Minor Child and thereby deprive the Petitioner of his parental and custodial rights.

16. Learned Counsel appearing on behalf of the Petitioner, during the course of oral submissions and on instructions, specifically stated that the Petitioner is ready and willing to make appropriate residential and logistical arrangements for Respondent No. 2 and the Minor Child at the matrimonial home in Canada, being the residence where the parties had ordinarily resided prior to their departure for India. It was further submitted that, in order to ensure the comfort, privacy, and convenience of Respondent No. 2 and the Minor Child, the Petitioner is willing to reside separately in another residential property owned by him during the pendency of any proceedings or arrangements between the parties.

17. Learned Counsel for the Petitioner further, during the course of oral submissions and on instructions, stated that the Petitioner is ready and willing to file an Affidavit of Undertaking stating the following:

a. that appropriate residential and logistical arrangements shall be made for Respondent No. 2 and the Minor Child at the matrimonial home in Canada, being the residence where the parties had ordinarily resided prior to their departure for India;

b. the Petitioner shall reside separately in another residential property owned by him during the pendency of any proceedings or arrangements between the parties;

c. the Petitioner has the wherewithal to bear all the expenses of the Minor Child, as well as reasonable expenses of Respondent No.2, if she chooses to accompany the Minor Child to Canada, *inter alia*, for sustenance of their life in Canada.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2:

18. Learned Senior Counsel appearing for Respondent No. 2 would oppose the relief sought in the present Writ Petition on the following three grounds:

(i) The Petitioner herein, by way of the present Writ Petition, is seeking to enforce the Order of the Canadian Court here in India, which is not legal and maintainable.

(ii) The Petitioner has not come before this Court as well as the Canadian Court, with clean hands and the Petitioner does not have the necessary economic wherewithal to support the child.

(iii) This Court, while exercising its *parens patriae* jurisdiction, has to keep the welfare of the Minor Child as paramount consideration and since the Minor Child has remained in Indian jurisdiction since before the filing of the present Petition, allowing the same will be tantamount to uprooting the child from his roots.

19. Learned Senior Counsel would submit that the present Writ Petition seeking issuance of a writ of *habeas corpus* is wholly misconceived and not maintainable in the facts and circumstances of the present case. The Petitioner is seeking enforcement of an order

passed by a foreign court under the garb of seeking *habeas corpus*, which is impermissible in law. He would rely upon the judgment of the Hon'ble Supreme Court in ***Ghan Shyam Das Gupta & Anr. vs. Anant Kumar Sinha & Ors.***[8] to buttress his argument on the maintainability of the present Petition.

20. Learned Senior Counsel for Respondent No. 2 would submit that the Order dated 19.03.2020 passed by the Canadian Court is not binding upon this Court and, at best, can only be treated as a factor to be considered while determining the welfare of the Minor Child, as an "*input*". It would further be submitted that the said Order is *ex parte* in nature and expressly provides that it is to be executed in accordance with applicable law, including the provisions of the Code of Civil Procedure, 1908. Therefore, the same cannot be mechanically enforced by this Court.

21. Learned Senior Counsel, in furtherance of his contention that the Petitioner has not approached either this Court or the Canadian Court with clean hands, would place reliance upon the unamended petition initially filed before this Court. He would submit that the Petitioner failed to disclose before the Canadian Court that the Minor Child was suffering from autism spectrum disorder, which, according to him, reflects a callous and negligent attitude on the part of the Petitioner.

22. He would further contend that the Petitioner also failed to disclose before this Court the pendency of divorce proceedings instituted before the Canadian Court, which omission, according to

[8] (1991) 4 SCC 379

him, is a relevant circumstance that ought to be taken into consideration.

23. The further point that the learned Senior Counsel for the Respondent no. 2 would seek to canvass is that the Petitioner does not have the necessary economic wherewithal to support the child.

24. He would seek to rely upon the income affidavit filed by the Petitioner along with the supporting documents and would refer to the income statements placed on record to contend that the Petitioner's expenses exceed his disclosed income. On that basis, it would be argued by the learned Senior Counsel for Respondent No. 2 that the Petitioner lacks the financial capacity to adequately support and maintain the Minor Child.

25. He would further contend that the contention of the learned Counsel for the Petitioner that there are multiple houses and it would be ensured hat a separate house is provided for the mother and the child is clearly not made out, as the houses are stated to be under mortgage.

26. On a *demurrer*, learned Senior Counsel would also submit that even if it were to be believed that the Petitioner was economically capable of taking care of the Minor Child, this Court has to see the competing interest of the parents and has to arrive at a decision keeping in mind the welfare of the Minor Child, which, he would submit, is remaining in India with Respondent No. 2.

27. It would further be contended by the learned Senior Counsel for Respondent No. 2 that this Court, while exercising jurisdiction in matters concerning custody of a minor child, acts as *parens patriae*, and the paramount consideration is the welfare and best interest of the

child, which overrides all other considerations, including the principle of comity of courts.

28. Learned Senior Counsel would submit that the Minor Child has been continuously residing in India since October, 2019 and has, over the past more than six years, become fully settled in his social, educational, and familial environment. It would further be submitted that the child is presently studying in a reputed school, is well-adjusted to his surroundings, and remains under the constant care, supervision, and support of Respondent No. 2 and her family members.

29. It would be submitted that uprooting the Minor Child at this stage and directing his repatriation to Canada would cause serious psychological and emotional harm and would be contrary to his welfare. The child has developed deep roots in India and has adapted to the cultural, social, and educational environment herein.

30. Learned Senior Counsel would submit that Respondent No. 2 had duly participated in the proceedings before the Canadian Court; however, mere participation therein does not preclude her from contesting the maintainability of the present Petition or asserting the welfare of the child before this Court.

31. It would also be submitted by the learned Senior Counsel appearing on behalf of Respondent No. 2 that proceedings pertaining to the custody and guardianship of the Minor Child are already pending before the competent courts in India. In view thereof, it is contended that this Court ought not to exercise its extraordinary jurisdiction under Article 226 of the Constitution in the present proceedings.

32. Learned Senior Counsel for Respondent No. 2 would place reliance upon the judgments of the Hon'ble Supreme Court in, *inter alia*, ***Dhanwanti Joshi v. Madhav Unde***[9], ***V. Ravi Chandran v. Union of India***[10], ***Ruchi Majoo v. Sanjeev Majoo***[11], ***Nithya Anand*** *(supra)* and ***Yasir Ayaz Vs State of NCT Delhi & Anr.***[12] to contend that the welfare and best interests of the child are of paramount consideration in custody matters and that orders passed by foreign courts are not conclusive or binding upon Indian courts.

33. He would further rely upon the aforesaid judgments of the Hon'ble Supreme Court to contend that, in cases where a child has developed roots in India and where repatriation may expose the child to harm, instability, or emotional distress, the courts in India are justified in declining the relief of return notwithstanding the existence of a foreign court order.

34. It would thus be submitted by the learned Senior Counsel for Respondent No. 2 that, in the facts of the present case, having regard to the prolonged stay of the Minor Child in India, his educational continuity, medical improvement, emotional stability, and existing familial support system, it would be in the paramount interest and welfare of the child to remain in India under the care and custody of Respondent No. 2.

ANALYSIS:

35. We have heard the learned counsel appearing for the parties at considerable length and, with their able assistance, carefully perused

[9] (1998) 1 SCC 112
[10] (2010) 1 SCC 17
[11] , (2011) 6 SCC 479
[12] 2026:DHC:2008-DB

the voluminous record placed before this Court, including the pleadings, documents, orders passed by the foreign court, and the judicial precedents relied upon by both sides.

36. At the outset, this Court considers it necessary to reproduce the operative directions issued by the competent Canadian Court *vide* Order dated 19.03.2020 concerning the return of the Minor Child and the grant of temporary custody in favour of the Petitioner-father. The said directions read as follows:

> "THIS COURT ORDERS THAT:
> 1) The Respondent mother, Ashu Chopra shall forthwith return the minor child of the marriage, namely Shivaansh Chopra, son of Karan Chopra and Ashu Chopra born May 24, 2016, to the Region of Peel in the province of Ontario, Canada at her own expense.
> 2) The Applicant father, Karan Chopra shall have temporary sole custody of the minor child, namely Shivaansh Chopra, son of Karan Chopra and Ashu Chopra, born May 24, 2016 and the Applicant father, or any person he authorizes,, shall be at liberty to travel with the said minor child for the purpose of returning the child to Applicant father.
> 3) Once the minor child, namely Shivaansh Chopra, son of Karan Chopra and Ashu Chopra, born May 24, 2016 has returned to the Region of Peel in the province of Ontario, Canada, the Respondent mother, Ashu Chopra shall not remove the said child from Region of Peel in the province of Ontario, Canada, without the prior written consent of the Applicant father and/or further order of this Court.
> 4) All law enforcement authorities the Province of Ontario and Canada, including but not limited to the Peel Regional Police, Ontario Provincial Police and Royal Canadian Mounted Police, or anywhere in India and any other law enforcement agencies having jurisdiction in this matter/order, are hereby instructed and authorized to locate, apprehend and deliver the minor child namely Shivaansh Chopra, son of Karan Chopra and Ashu Chopra born May 24, 2016 and his passport and other international travel documents to the Applicant father, Karan Chopra or any person he authorizes.
> 5) This order is liable to execute in India as per the provision of civil procedure of the court 1908 (as amended up to date) or any other law for the time being enforced.
> 6) The Applicant, Karan Chopra shall serve and file written costs submissions on or before April 19 ,2020, and the Respondent,

Ashu Chopra shall have 10 days thereafter to serve and file her response to the said submissions."

37. The principal submission advanced on behalf of Respondent No. 2 is that the Minor Child has remained in India for almost six years and has, during this period, become socially, emotionally, culturally, educationally, and psychologically integrated within the Indian environment. It is contended that the child is now studying in India, has developed emotional bonds with the maternal side of the family, has adapted to the prevailing social conditions, and that uprooting the child at this stage would be contrary to his welfare and emotional stability. At first glance, the aforesaid contention appears to invoke the settled principle that in all matters concerning custody of a minor child, the welfare and best interest of the child constitute the paramount and overriding consideration.

38. However, upon a deeper scrutiny of the facts and circumstances of the present case, this Court is unable to accept the said submission in the manner sought to be projected by Respondent No. 2. The continued stay of the child in India cannot be viewed in isolation or treated as a neutral circumstance detached from the surrounding factual and legal matrix. The said continuance is not the result of any adjudicatory determination by an Indian court granting lawful custody to Respondent No. 2 in derogation of the Canadian Court's order. Rather, the prolonged stay of the child in India is directly linked to, and indeed flows from, the conscious and continued non-compliance by Respondent No. 2 with a subsisting judicial order passed by a court of competent jurisdiction.

39. It is significant to note that Respondent No. 2 had invoked and unequivocally submitted herself to the jurisdiction of the competent

Canadian Court. She actively participated in the proceedings before the said Court, filed her pleadings, opposed the reliefs sought by the Petitioner-father, and sought adjudication of her own claims and objections. The Order dated 19.03.2020 was thus not an *ex parte* determination rendered behind her back, nor can it be characterized as an order passed in violation of the Principles of Natural Justice. The Canadian Court passed the said order only after granting due opportunity of hearing to both parties and after considering the material placed before it.

40. Once Respondent No. 2 consciously elected to participate in and submit to the jurisdiction of the Canadian Court, it does not now lie in her mouth to selectively disregard the binding character of the said proceedings merely because the outcome proved unfavourable to her. A litigant cannot invoke the jurisdiction of a competent court for seeking relief and thereafter refuse to acknowledge the authority of that very court once an adverse determination is rendered. Such conduct strikes at the very root of judicial discipline and orderly administration of justice.

41. It is not disputed before this Court that the Canadian Court, *vide* Order dated 19.03.2020, directed the return of the Minor Child to Canada and granted temporary sole custody to the Petitioner-father. Equally, there is no dispute that the said Order continues to remain operative and has neither been stayed, modified, nor set aside by any competent appellate or supervisory forum in Canada. The legitimacy and binding character of the said judicial determination, therefore, cannot be lightly brushed aside or treated as inconsequential.

42. This Court must also observe that the present proceedings cannot be converted into an appellate exercise for examining the

correctness or merits of the findings recorded by the Canadian Court. The scope of the present proceedings is fundamentally distinct. This Court is not required to re-appreciate the merits of the foreign judgment as though sitting in appeal therefrom. What assumes significance in the present matter is the subsequent conduct of Respondent No. 2, who, despite the existence of a clear judicial mandate directing the return of the child, consciously chose not to comply with the same and instead continued to retain the child in India.

43. Consequently, the continued residence of the child in India, including during the pendency of the present proceedings, cannot be regarded as a circumstance arising from lawful adjudication or legitimate custody recognized by a competent court in India. Rather, it is a situation that has continued despite the subsistence of a judicial order directing otherwise. The factual position, therefore, cannot be equated with an ordinary custody dispute.

44. This Court is conscious that the present Petition under Article 226 of the Constitution cannot be treated as a mere execution proceeding for the enforcement of a foreign order or decree. The legal framework governing the execution of foreign decrees is separately provided under law. However, merely because the factual backdrop of the present proceedings overlaps with the consequences flowing from the Canadian Court's order does not imply that this Court is denuded of its constitutional jurisdiction to entertain a petition seeking issuance of a writ of *habeas corpus* in relation to a minor child.

45. The extraordinary jurisdiction of this Court under Article 226 of the Constitution remains sufficiently wide to examine whether the continued retention of the child is lawful and whether the welfare of

the child would justify issuance or refusal of the relief sought. At the same time, this Court cannot lose sight of the fact that the child is an US Citizen and was ordinarily residing in Canada and was brought to India without the consent of the father, whereafter the father immediately initiated legal proceedings before the competent Canadian Court. Respondent No. 2 participated in those proceedings and, despite suffering an adverse order, continued to retain the child in India in defiance of the said judicial determination.

46. In such circumstances, the objection regarding the maintainability of the present Petition does not merit acceptance. Nonetheless, this Court reiterates that the paramount consideration remains the welfare and best interest of the Minor Child. If the Court were to find that return of the child would expose him to harm, instability, insecurity, or circumstances detrimental to his physical, emotional, educational, or psychological welfare, this Court would not abstain from declining the relief sought.

47. In the considered opinion of this Court, the Order dated 19.03.2020 passed by the competent Canadian Court constitutes a valid and reasoned judicial determination rendered after due observance of the Principles of Natural Justice. Nothing has been brought to the notice of this Court to demonstrate that the said Order suffers from a lack of jurisdiction, procedural irregularity, denial of hearing, or any manifest judicial impropriety. So long as the said Order continues to remain operative and unsuspended by a competent court, it cannot be treated as a nullity or ignored at the unilateral convenience of one of the parties.

48. What particularly concerns this Court is that Respondent No. 2, despite having fully participated in the proceedings before the

Canadian Court, chose not to challenge the said Order before the appropriate appellate or supervisory forum available under Canadian law. Instead, she adopted a course of unilateral non-compliance by continuing to retain the child in India. This conduct cannot be viewed as a mere procedural lapse or an act arising from legal ambiguity. It reflects a conscious decision to disregard a binding judicial determination.

49. The distinction is of considerable importance. Every litigant possesses the legal right to challenge an adverse order before a higher forum in accordance with the law. However, what the legal system cannot countenance is a litigant taking recourse to self-help by simply refusing to obey a judicial order and thereafter attempting to create a new factual situation through prolonged non-compliance. Courts cannot permit a litigant to derive legal advantage from deliberate disobedience of judicial orders.

50. To permit such conduct to attain legal legitimacy would amount to placing a premium upon judicial disobedience. Courts cannot endorse a situation where a party, after having invoked the jurisdiction of a competent court and suffered an adverse determination therein, simply relocates or retains the child in another jurisdiction and thereafter invites the courts of that jurisdiction to proceed as though the prior adjudication were wholly irrelevant. Such an approach would seriously undermine judicial discipline, encourage forum shopping, and incentivize litigants to evade unfavourable judicial orders by creating fait accompli situations across territorial borders.

51. It is also a matter of record that the Petitioner-father approached the competent Canadian Court promptly after removal of the child from Canada. Respondent No. 2 participated in those proceedings

with full knowledge of the issues involved and the consequences that may flow therefrom. Having contested the matter on merits and suffered an adverse order, Respondent No. 2 cannot now invite this Court to examine the correctness of the Canadian Court's determination as though exercising appellate jurisdiction over the same. The present proceedings are not intended to adjudicate upon the legal soundness of the Canadian Court's Order, but rather to determine the appropriate relief in light of the prevailing factual and legal circumstances while keeping the welfare of the child as the paramount consideration.

52. It is now well settled and the Hon'ble Supreme Court has reiterated time and again that the doctrine of comity of courts is founded upon mutual respect and deference between courts of competent jurisdiction, particularly in matters involving transnational family disputes and international child custody issues. While this Court undoubtedly retains *parens patriae* jurisdiction and remains duty-bound to independently examine the welfare of the child, such jurisdiction does not extend to treating valid judicial orders passed by foreign courts as inconsequential, especially where the very party resisting such orders had voluntarily invoked and participated in the foreign proceedings.

53. Comity of courts is not a matter of mere courtesy or diplomatic etiquette; it constitutes an essential principle underlying the orderly administration of justice in an increasingly interconnected legal world. Failure to accord due weight to foreign judicial determinations in appropriate cases would lead to uncertainty, multiplicity of proceedings, and erosion of confidence in transnational adjudicatory mechanisms.

54. If litigants are permitted to first submit to the jurisdiction of a foreign court, contest proceedings on merits therein, and thereafter, upon receiving an unfavorable order, simply ignore the same and seek refuge in another jurisdiction, the very efficacy and authority of judicial institutions across jurisdictions would stand seriously compromised. Such conduct would render international custody adjudications susceptible to strategic evasion and would encourage unilateral removal and retention of children in foreign jurisdictions with the expectation that the passage of time alone would defeat lawful judicial orders.

55. Courts must remain vigilant to ensure that their constitutional and equitable jurisdictions are not utilized as instruments for legitimizing deliberate non-compliance with judicial determinations rendered by courts of competent jurisdiction.

56. This Court would therefore fail in its own institutional duty if it were to completely disregard the deliberate non-compliance demonstrated by Respondent No. 2. Judicial orders, whether domestic or foreign, cannot be reduced to mere advisory observations or treated, as sought to be argued by the learned Senior Counsel for Respondent No. 2, as mere "*inputs*" capable of acceptance or rejection at the convenience of the litigant concerned. Such a proposition is wholly incompatible with the rule of law.

57. This is especially so where the order emanates from a court whose jurisdiction had been expressly accepted and invoked by the very party now seeking to evade its operation. The majesty and sanctity of law lie not merely in the authority of courts to pronounce judgments, but equally in the expectation that such judgments shall be

respected and obeyed unless modified or set aside in accordance with law.

58. At the cost of repetition, this Court reiterates that the present proceedings are not intended to execute the Canadian Court's order as though it were a domestic decree directly enforceable by this Court. However, that does not imply that the said Order can be treated as *non est* or wholly irrelevant while adjudicating the present matter. The distinction between "recognition" of a foreign judicial determination and "execution" thereof is well settled in law.

59. While this Court must independently assess the welfare and best interests of the child, it is equally bound to accord substantial and persuasive weight to the determination rendered by the court of the child's habitual residence, particularly where such determination was made after full participation of both parents and after due adjudicatory process.

60. In the present case, Respondent No. 2 cannot be permitted to approbate and reprobate simultaneously, to invoke the jurisdiction of the Canadian Court when it suited her interests and thereafter repudiate the authority of that very court once the outcome proved adverse. A litigant cannot be allowed to selectively accept or reject a jurisdiction depending upon the fortunes of litigation.

61. Further, in the peculiar factual matrix of the present case, the argument advanced on behalf of Respondent No. 2, premised upon the "*passage of time*" and the consequential establishment of roots by the minor child in India, must be approached with considerable caution and circumspection. It is undoubtedly true that the law recognizes that, in certain circumstances, prolonged residence of a child in a particular environment may result in the child becoming settled socially,

emotionally, educationally, and psychologically, thereby necessitating a more elaborate inquiry into the welfare of the child rather than directing a summary return to the country of habitual residence. However, the said principle is neither absolute nor mechanically applicable, irrespective of the surrounding circumstances.

62. The doctrine relating to a child becoming "*settled*" cannot be invoked in a manner that would effectively reward a litigant for deliberate defiance of judicial orders or for creating a *fait accompli* through unilateral conduct coupled with prolonged non-compliance. Such a proposition would strike at the very foundation of equitable principles and orderly administration of justice. The law cannot permit a party to derive legal advantage from her own wrong.

63. Any interpretation to the contrary would amount to legitimising conduct whereby a parent, after removing or retaining a child contrary to law and in violation of a subsisting judicial mandate, could subsequently rely upon the very consequences of such unlawful retention to defeat the rights of the other parent and the authority of the court whose order has been violated.

64. The six-year period of residence of the Minor Child in India, which Respondent No. 2 seeks to rely upon so as to contend that the child is now firmly rooted in India, must therefore be viewed in its proper factual and legal perspective. The said period cannot be treated as an independent, neutral, or organically evolved circumstance detached from the events that led to its creation. The genesis of the child's continued stay in India is itself tainted by unilateral action and continued non-compliance with a subsisting judicial order.

65. The record reveals that the child was removed from Canada without the consent of the Petitioner-father. Thereafter, the competent

Canadian Court, after hearing both parties, specifically directed the return of the child to Canada and granted temporary custody in favour of the Petitioner. The said Order continues to remain operative and has neither been stayed, modified, nor set aside by any competent forum. Despite this, Respondent No. 2 consciously chose not to comply with the said direction and continued to retain the child in India.

66. The resultant passage of time and the circumstances flowing therefrom are, therefore, direct consequences of Respondent No. 2's own conduct. In such circumstances, the "*roots*" which the child is stated to have developed in India cannot be elevated to a determinative or overriding factor so as to defeat the very judicial order whose breach enabled those roots to emerge in the first place. To permit such a consequence would effectively amount to recognizing an advantage flowing directly from continued disobedience of the law.

67. It is equally important to underscore that the concept of a "*settled environment*" cannot be assessed merely by reference to the duration of the child's stay in a particular country, his schooling, social interactions, or day-to-day assimilation viewed in isolation. The inquiry into settlement must necessarily take into account the legal legitimacy and juridical basis of the child's continued presence in that environment.

68. This Court is of the considered opinion that if courts were to attach determinative weight to a situation brought about through unilateral retention of a child in breach of lawful orders, it would create a dangerous incentive structure whereby a parent could remove or retain a child across jurisdictions, resist lawful directions of competent courts, prolong proceedings, and thereafter rely upon the

efflux of time itself as a defence against restoration of the original position.

69. The acceptance of the argument canvassed by Respondent No. 2 would have far-reaching and deeply troubling consequences. It would set a precedent whereby a parent could effectively defeat the jurisdiction of a competent court and the custodial or parental rights of the other parent merely by retaining the child in another country for a sufficient length of time. In practical terms, such an interpretation would encourage unilateral removals and wrongful retentions of children across borders, with the expectation that prolonged pendency of proceedings would ultimately operate in favour of the parent in breach.

70. Equally, this Court finds that the Petitioner-father cannot be faulted for the passage of time in the present case. The record clearly demonstrates that immediately upon removal of the child from Canada, the Petitioner initiated legal proceedings before the competent Canadian Court. Thereafter, within a reasonable period, the Petitioner also approached this Court by way of the present proceedings. The material on record further indicates that the parties had initially attempted mediation and reconciliation efforts, which consumed considerable time. The record also reflects that the present petition remained pending before this Court for adjudication over a prolonged period.

71. It is further borne out from the record that the Petitioner was constrained to approach the Hon'ble Supreme Court, whereafter appropriate directions came to be passed for early adjudication of the matter. Thus, the prolonged pendency of the present proceedings

cannot be attributed to any inaction, acquiescence, negligence, or abandonment on the part of the Petitioner.

72. In such circumstances, permitting the passage of time during the pendency of judicial proceedings to operate against the Petitioner would be manifestly unjust and would effectively penalize a litigant who diligently pursued lawful remedies without undue delay. The law cannot countenance a situation where the very pendency of judicial proceedings, over which a litigant has limited control, is subsequently invoked to defeat his substantive rights. To hold otherwise would amount to allowing procedural delay to extinguish the legitimate claims of a party who has acted *bona fide* and with promptitude throughout.

73. In these circumstances, the balance must necessarily tilt in favour of restoring the position that existed prior to the wrongful removal and continued retention of the child, particularly where such restoration is supported by a subsisting judicial determination passed by the court of the child's habitual residence. The welfare of the child, in cases of this nature, is not necessarily served by validating a situation brought about through unilateral conduct in defiance of law. Rather, welfare is ordinarily best secured by ensuring that the issue of long-term custody is adjudicated comprehensively by the forum which is most closely connected with the child's ordinary and habitual residence and which had already assumed jurisdiction over the dispute at the earliest point in time.

74. The competent Canadian Court, being the court of the child's habitual residence and already seized of the custody dispute, is best equipped to undertake a complete evaluation of all relevant factors concerning custody, visitation, parenting rights, educational

arrangements, social environment, and long-term welfare considerations in accordance with applicable law.

75. In view of the aforesaid discussion, this Court is of the considered opinion that the six-year residence of the Minor Child in India during the pendency of the present proceedings cannot, in the peculiar facts of the case, constitute a valid ground to deny relief to the Petitioner. The said period, having arisen directly as a consequence of continued non-compliance with the order passed by the competent Canadian Court, cannot be permitted to override considerations of legality, judicial discipline, comity of courts, and orderly administration of justice.

76. This Court is also guided in this regard by the observations made by the Hon'ble Supreme Court in analogous matters concerning transnational child custody disputes, wherein the Apex Court has repeatedly emphasized the importance of the doctrine of comity of courts and has taken note of the disturbing tendency of parties, after having participated in proceedings before foreign courts and suffered adverse orders therein, to subsequently initiate or prolong proceedings in India so as to frustrate or circumvent those determinations.

77. Viewed cumulatively, therefore, this Court finds that the plea of "*settled residence*" raised by Respondent No. 2 is legally untenable in the peculiar factual circumstances of the present case. The very foundation of such a plea rests upon continued retention of the child in breach of a subsisting judicial order passed by a court of competent jurisdiction. A circumstance brought about through continued non-compliance with the law cannot be accorded determinative weight so as to defeat the Petitioner's claim.

78. This Court is also guided by the Judgement of the Apex Court in ***Yashita Sahu*** *(supra)* wherein, the Apex Court has held that when a child is removed by one parent from one country to another, especially in violation of the orders passed by a Court, the country to which the child is removed, must consider the question of custody and decide whether the Court should conduct an elaborate inquiry on the question of the child's custody or deal with the matter summarily, ordering the parent to return the custody of the child to the jurisdiction from which the child was removed and all aspects relating to the child's welfare be investigated in a Court in his/her own country.

79. In that case, the Hon'ble Court reiterated that in such matters of custody of a child, the primary and paramount consideration is the welfare of the child. While deciding the welfare of the child, it is not the view of one spouse alone that has to be taken into consideration; the Court must decide the welfare of the child, keeping in view a host of circumstances, like the age of the child, the nationality of the child, the facilities of education, social security, and other welfare indicators.

80. While looking at the facts of the present case holistically, the precedent laid down in ***Nithya Anand*** *(supra)* guides this Court, wherein the Hon'ble Supreme Court held that while adjudicating issues concerning the custody and welfare of a minor child, which may be required to be done summarily, the Court must undertake an evaluation of all relevant circumstances.

81. In the said case, the Hon'ble Supreme Court further observed, *inter alia*, that in transnational custody disputes, additional considerations such as the principle of comity of courts, the child's intimate and closest connection with the foreign jurisdiction, orders passed by competent foreign courts, and the citizenship and ordinary

residence of the child and the parents assume considerable importance and may, in an appropriate case, weigh heavily in the Court's determination.

82. At this stage, this Court notes that there has been no serious allegation, much less any cogent material placed on record, to demonstrate that the Minor Child or Respondent No. 2-mother would be exposed to any physical danger, abuse, neglect, or other grave harm upon return to Canada.

83. No circumstance has been brought to the notice of this Court suggesting that the Petitioner-father suffers from any incapacity, violent disposition, instability, or conduct which may endanger the physical, emotional, educational, or psychological welfare of the Minor Child. Equally, there is no material to indicate that the child would be deprived of appropriate care, safety, education, healthcare, emotional support, or developmental assistance upon his return to Canada.

84. The primary thrust of the submissions advanced on behalf of Respondent No. 2 has substantially revolved around the contention that the minor child has now remained in India for a prolonged duration and has become "*well-settled*" in the Indian environment. It has repeatedly been argued that the child is presently studying in India, is accustomed to the social and familial surroundings available here, and that directing his return to Canada would amount to "uprooting" him from a settled environment, thereby adversely affecting his emotional and psychological well-being. In essence, the argument sought to be canvassed is that the welfare principle, which remains paramount in custody matters, mandates continuation of the

present arrangement solely because the child has remained in India for a considerable period of time.

85. Apart from the aforesaid contention, an attempt was also made to question the financial capacity and economic stability of the Petitioner-father by referring to the income documents and financial disclosures placed on record. It was sought to be contended that the Petitioner may not possess adequate financial means to provide a stable and secure environment for the child in Canada. This Court now proceeds to examine the said submissions.

86. The financial capacity of the Petitioner-father is borne out from the income affidavit and supporting material placed on record before this Court. The said affidavit reflects that the Petitioner is gainfully employed in Canada and possesses a stable, consistent, and substantial source of income. The material further demonstrates that the Petitioner has maintained financial regularity and possesses sufficient means to provide for the educational, medical, residential, emotional, and developmental needs of the Minor Child.

87. Nothing has been brought on record to indicate that the Petitioner is financially unstable or incapable of discharging his parental obligations. On the contrary, the documents placed before this Court disclose that the Petitioner possesses the economic capacity necessary to provide a secure and structured environment for the upbringing of the child. The financial disclosures also indicate that the Petitioner has the means to ensure continuity in the child's education, healthcare, and overall welfare upon return to Canada.

88. The financial stability of the Petitioner assumes considerable significance while evaluating the welfare and best interests of the Minor Child. In contemporary custody jurisprudence, welfare cannot

be confined merely to emotional attachment or continuity of residence; it necessarily encompasses the ability to provide a stable standard of living, access to quality education, adequate healthcare facilities, emotional security, and developmental support systems suited to the child's long-term growth.

89. The material available on record indicates that while residing in Canada, the child had access to structured educational systems, specialized medical facilities, and developmental support mechanisms. The Court cannot lose sight of the fact that the child had earlier received medical and developmental assistance in Canada, and there is nothing to indicate that comparable or continued support would be unavailable upon his return. The Petitioner's financial wherewithal ensures that the child will continue to have access to such institutional support systems, healthcare infrastructure, educational opportunities, and developmental facilities in Canada.

90. In assessing the welfare of the child, the Court is required to consider not merely present comfort, but also long-term developmental prospects. The Petitioner's demonstrated financial stability substantially supports the conclusion that the child's long-term welfare would remain adequately protected and secured in Canada.

91. Equally important is the fact that the income affidavit filed by the Petitioner does not merely demonstrate earning capacity in abstract terms, but also reflects a degree of financial responsibility, consistency, and transparency. The Petitioner has disclosed his financial position before this Court and has demonstrated readiness and willingness to undertake all obligations concerning the child's upbringing, education, healthcare, residence, and overall welfare.

92. This Court finds no material whatsoever to doubt either the *bona fides* or the capability of the Petitioner in ensuring not only the physical well-being of the minor child, but also his emotional, psychological, and developmental needs. Importantly, the record also reflects that the Petitioner has consistently shown a willingness to ensure continued interaction and emotional bonding between the child and Respondent No. 2-mother in a manner conducive to the welfare of the child.

93. The Petitioner's conduct during the pendency of the proceedings does not indicate any intention to alienate the child from the mother. Rather, the material on record suggests that the Petitioner seeks restoration of custody primarily within the framework of lawful adjudication and not as an instrument to sever maternal ties.

94. In contrast, while Respondent No. 2 has strongly emphasized the present stability and comfort of the child in India, no compelling material has been placed before this Court to establish that the Petitioner would be unable to provide an equal or superior environment for the child's holistic development in Canada. The submissions advanced on behalf of Respondent No. 2 have largely proceeded on apprehensions and speculative concerns rather than demonstrable evidence showing that return to Canada would be detrimental to the child's welfare.

95. On the contrary, the comparative financial capacity of the Petitioner, coupled with the availability of structured institutional systems in Canada, including educational infrastructure, healthcare support, developmental facilities, and social welfare mechanisms, reinforces the conclusion that the welfare of the child would not be jeopardized by his return to Canada.

96. The Court is unable to accept the proposition that the mere fact that the child has presently adjusted to life in India necessarily implies that a return to Canada would be harmful or contrary to his welfare. Children, particularly of tender age, possess considerable adaptive capacity, especially when adequate parental support, educational continuity, emotional care, and stable living arrangements are available. There is nothing on record to suggest that the child would be incapable of readjusting to life in Canada or that such a transition would result in irreparable psychological or emotional harm.

97. Thus, the financial position and overall circumstances of the Petitioner, as borne out from the material placed before this Court and as elaborated during the course of proceedings, constitute an additional factor reinforcing the conclusion that the welfare, security, educational interests, healthcare requirements, and developmental needs of the child would remain adequately safeguarded upon repatriation to Canada.

98. This Court is, therefore, unable to accept the contention that the child's return to Canada would expose him to any financial insecurity, deprivation, or instability. On the contrary, the material on record sufficiently establishes that the Petitioner possesses the means, willingness, and institutional support necessary to ensure the child's overall welfare.

99. This Court further notes that material has been placed on record by both parties, indicating that the Minor Child shares a bond and emotional attachment with both parents. Naturally, considering that the child has been residing primarily with Respondent No. 2-mother for a prolonged duration, the child may presently exhibit greater emotional dependence and attachment towards the mother. Such a

circumstance is neither unusual nor unexpected in custody matters involving a child of tender age.

100. However, at the same time, the record also reflects that pursuant to the various interim orders passed by this Court, the Petitioner-father has remained in regular contact with the child and has consistently attempted to maintain emotional and parental engagement with him. There is nothing on record to suggest complete estrangement, alienation, or absence of emotional bonding between the father and the child. On the contrary, the interactions facilitated during the pendency of the proceedings indicate that the child recognizes and maintains a relationship with the Petitioner-father.

101. This Court is therefore unable to accept the contention that relocation of the child to Canada would result in such substantial emotional or psychological trauma as would outweigh all other relevant considerations in the present case. Emotional comfort, attachment, and relational bonds are dynamic human experiences capable of being nurtured and strengthened over time. With appropriate arrangements, sensitivity, and parental cooperation, the child can continue to maintain and develop meaningful emotional relationships with both parents even upon return to Canada.

102. This Court also notes that Respondent No. 2 sought to contend that the shifting of the Minor Child to Canada pursuant to any order passed by this Court may adversely affect the child's health, education, care, and overall welfare. However, this Court does not find any convincing material on record to substantiate such apprehensions.

103. There is no evidence before this Court to demonstrate that Canada lacks adequate medical infrastructure, healthcare facilities,

educational systems, therapeutic support mechanisms, or child welfare institutions necessary for the child's continued growth and well-being. Equally, no circumstance has been shown to establish that the child would be deprived of educational continuity or developmental opportunities upon return to Canada.

104. This Court is of the considered opinion that the apprehensions expressed by Respondent No. 2 remain largely speculative and cannot override the larger factual and legal circumstances governing the present case. Mere anxiety or emotional reluctance associated with relocation cannot, by itself, constitute sufficient ground to disregard a subsisting judicial determination of the court of habitual residence, particularly in the absence of any concrete material showing that return would expose the child to actual harm or serious prejudice.

105. Finally, upon an anxious, careful, and holistic consideration of the entire conspectus of facts and circumstances placed before it, this Court is satisfied that the welfare and best interests of the Minor Child, which remain the paramount and overriding considerations in all custody matters, would be best served by directing the return of the child to the jurisdiction of the competent Canadian Court.

106. In arriving at this conclusion, this Court has not proceeded mechanically, nor has it based its determination solely upon the existence of the foreign order passed by the competent Canadian Court. Rather, this Court has undertaken an independent and comprehensive examination of the entire factual matrix emerging from the pleadings, documents placed on record, and the extensive oral submissions advanced by the learned counsel for the parties over the course of hearings conducted on several dates.

107. This Court has carefully considered the conduct of both parties, the welfare and best interests of the minor child, the child's present emotional, educational, social, and developmental circumstances, the financial and emotional capacities of both parents, the legality and implications surrounding the continued retention of the child in India, and the broader principles governing transnational child custody disputes, including the doctrine of comity of courts and the principle of restoration to the court of habitual residence.

108. The Court has also consciously examined whether any circumstance exists that would indicate that return of the child to Canada may expose him to physical harm, emotional trauma, insecurity, neglect, or any situation detrimental to his welfare. Equally, the Court has considered the nature of the child's bonding with both parents, the continuity of parental contact during the pendency of the proceedings, the educational and medical infrastructure available to the child in Canada, and the overall ability of the Petitioner-father to provide a stable, secure, and nurturing environment for the child's upbringing.

109. This Court is therefore of the considered opinion that directing the return of the child to Canada would not amount to the execution of a foreign decree. Instead, such a course would restore the child to the jurisdiction of his habitual residence, *namely* Canada, where all questions relating to long-term custody, parenting rights, visitation, care, education, upbringing, and welfare can be comprehensively adjudicated by the competent court already seized of the matter.

110. The Petitioner-father has demonstrated not only financial capability and stability, but also a genuine commitment towards the emotional, educational, developmental, and psychological well-being

of the child. The material on record does not indicate any circumstance warranting the denial of restoration of temporary custody in terms of the Canadian Court's order.

111. Simultaneously, this Court is also conscious that the relationship between the child and Respondent No. 2-mother is of immense importance and deserves full protection. Appropriate arrangements concerning access, visitation, interaction, communication, and participation in the child's upbringing can always be structured by the competent Canadian Court so as to preserve and nurture the maternal bond in a manner consistent with the child's welfare.

112. To permit continuation of a situation brought about in derogation of a subsisting judicial order passed by a court of competent jurisdiction would, in the considered opinion of this Court, be contrary to law, equity, judicial discipline, and the doctrine of comity of courts. Courts cannot permit their processes to be employed in a manner that legitimizes prolonged non-compliance with lawful judicial determinations.

113. This Court is therefore of the considered opinion that the ends of justice, the sanctity of judicial process, the principles governing transnational custody disputes, and above all, the paramount welfare of the Minor Child, warrant restoration of temporary custody in terms of the order passed by the competent Canadian Court, while leaving the parties at liberty to agitate and pursue their substantive rights concerning permanent custody, parenting arrangements, visitation, and other related issues before the said competent forum in accordance with law.

CONCLUSION:

114. Keeping in mind the aforesaid, this Court deems it appropriate to pass the following directions while allowing the present writ Petition:

(i) Respondent No. 2 shall return the Minor Child to the jurisdiction of the competent Canadian Court within a period of six weeks from the date of this judgment by handing over temporary custody of the Minor Child to the Petitioner. The handing over shall take place before the learned Registrar General of this Court on a date mutually convenient to the parties, as may be fixed by the learned Registrar General.

(ii) The Petitioner shall file an Affidavit of Undertaking, in terms of sub-paragraphs (a) to (c) of paragraph 17 of this Judgment, within a period of two weeks from the date of this Judgment.

(iii) Respondent No. 2 shall be at liberty, if she so desires, to accompany the Minor Child to Ontario, Canada. In such event, she shall communicate her intention to travel, to the Petitioner, at least four weeks prior to the proposed date of travel. Respondent No. 2 shall be at liberty to join the Minor Child at a later point in time as well, as per her convenience.

(iv) The travel arrangements of the parties and/or the Minor Child shall be mutually coordinated and finalized between the parties.

(v) In the event Respondent No. 2 accompanies the Minor Child to Canada or she wishes to join later, the Petitioner shall provide accommodation in the residence where the parties had earlier resided together, while the Petitioner shall himself reside separately in the second property owned by him.

(vi) To facilitate the return of the Minor Child to Canada, Respondent No. 2 shall hand over the passport and all travel documents of the Minor Child to the Petitioner or his parents at the time of handing over temporary custody.

(vii) Respondent No. 2 shall take necessary steps for the withdrawal of the Minor Child from his present school in India, and the Petitioner shall ensure his admission to an appropriate school in Canada with minimal disruption to the child's education and other necessities.

(viii) In the event Respondent No. 2 fails to hand over custody of the Minor Child in terms of the present directions, the Petitioner shall be entitled to seek police assistance for implementation of this order. The SHO, Police Station-Vikas Puri, Delhi, shall extend all necessary assistance to the Petitioner for ensuring compliance with the present directions.

115. The Registry of this Court is directed to communicate the copy of this Order to the SHO, Police Station Vikas Puri, Delhi as well as the learned Registrar General of this Court.

116. In view of the aforesaid directions, the present Petition, along with pending application(s), if any, shall stand disposed of.

117. No Order as to Costs.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

JULY 02 , 2026/sm/va