



2025:DHC:7829-DB



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

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*Judgment reserved on: 27.08.2025**Judgment pronounced on: 09.09.2025*

+ MAT.APP.(F.C.) 350/2023

ESAM AHMAD BILGRAMI

.....Appellant

Through: Mr. Varchaswa Singh,  
Advocate

versus

AALIYAH SAEED DANG

.....Respondents

Through: Ms. Nidhi Mehrotra, Advocate

**CORAM:****HON'BLE MR. JUSTICE ANIL KSHETARPAL****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN  
SHANKAR****J U D G M E N T****ANIL KSHETARPAL, J.**

1. The present Appeal under Section 19 of the Family Courts Act, 1984 assails the correctness of Order dated 17.08.2023 [hereinafter referred to as "Impugned Order"] passed by the learned Family Court [hereinafter referred to as the "Family Court"], whereby the Family Court allowed an interim application under Section 12 of the Guardians and Wards Act, 1890 [hereinafter referred to as "the Act"], filed by the Respondent-mother, granting her permission to relocate the minor child, Master Emad Ahmad Bilgrami, to Abu Dhabi, United Arab Emirates (UAE) with her, subject to certain undertakings and safeguards.



## **FACTUAL MATRIX**

2. The brief facts leading to the present Appeal, as pleaded, are that the marriage between the parties was solemnized on 30.06.2009 in Hyderabad, Telangana as per Muslim rites and ceremonies. Out of the said wedlock, a male child was born on 25.06.2013. Owing to the marital discord, the parties separated in or around the year 2014-15, and subsequently obtained divorce on 22.02.2017, evidenced by a certificate issued by the Wakf Board.

3. The case of the Appellant-father, before the Family Court, was that, upon dissolution of marriage, it was agreed between the parties that the custody of the minor child would remain jointly with the Appellant and his father (the child's paternal grandfather). He further asserted that the Respondent had, of her own volition, executed an Affidavit-cum-Undertaking dated 07.02.2017, wherein she relinquished all claims to custody, temporary or permanent, while retaining a limited right of visitation with prior permission.

4. On the other hand, the case of the Respondent-mother, before the Family Court, was that she had been the sole care giver of the minor child providing for all his financial, emotional, and educational needs, without any contribution from the Appellant. It was further stated that the minor child has remained in her uninterrupted custody since 2014, and that any time the child spent with the Appellant in Hyderabad was in the nature of visitation, voluntarily arranged for the welfare of the child.

5. On 10.03.2022, the Appellant instituted Guardianship Petition



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No. 376/2022 under Sections 7, 10 and 25 of the Act before the Family Court at Hyderabad, seeking permanent custody of the minor child. During the pendency of the said proceedings, the Respondent filed Transfer Petition No. 2487/2022 before the Supreme Court, *inter alia* on the ground of convenience and better access to justice. The same was allowed *vide* order dated 20.03.2023, transferring the proceedings to the Family Court, Saket, New Delhi, where it was re-numbered as GP No. 56/2023. In the said proceedings, the Respondent, on 07.06.2023, filed an application under Section 12 of the Act seeking interim permission to relocate the minor child with her to Abu Dhabi, on the ground that she had secured an employment opportunity with a company incorporated in Abu Dhabi.

6. The Appellant opposed the said application, asserting that the Respondent was attempting to unilaterally take the minor child out of India in violation of the mutual settlement and the Affidavit-cum-Undertaking dated 07.02.2017, and that such relocation would permanently deprive him of meaningful contact with the child, especially in view of pending custody proceedings.

7. The Family Court, after considering the submissions and the material on record, including an interaction with the minor child on 11.08.2023, allowed the application of the Respondent *vide* the Impugned Order. The Family Court held that the child had been residing with the Respondent for a significant period, and any disruption in this arrangement would not serve the welfare of the child. It was further held that the Respondent's employment opportunity in Abu Dhabi could not be curtailed merely due to the



pendency of proceedings, and that the child stood to benefit from the enhanced prospects of the Respondent. The Family Court permitted the relocation, subject to the Respondent furnishing certain undertakings ensuring the Appellant's continued access to the child through regular video conferencing, in-person visitation during school vacations, and other safeguards.

8. Aggrieved by the Impugned Order, the Appellant has filed the present Appeal.

### **CONTENTIONS OF THE APPELLANT**

9. Learned counsel for the Appellant submits that the Impugned Order suffers from material irregularity and is liable to be set aside, primarily on the ground that it permits the Respondent to relocate the minor child to Abu Dhabi, despite the pendency of guardianship proceedings, thereby effectively granting her sole custody without adjudication on merits.

10. Learned counsel for the Appellant relies on an Affidavit-cum-Undertaking dated 07.02.2017, purportedly executed by the Respondent at the time of divorce, wherein she unconditionally relinquished all present and future claims to the custody of the minor child, while retaining limited visitation rights. It is submitted that this affidavit was placed on record before the Supreme Court in Transfer Petition No.2487/2022, and remained undisputed by the Respondent at that stage.

11. It is contended that until 2019, the minor child was residing with the Appellant and his father (the child's paternal grandfather) in



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Hyderabad, where he was enrolled in school and received stable care. The paternal grandfather of the minor child is stated to have ceased his professional commitments entirely to focus on the child's upbringing. It is further submitted that the Appellant provided financial support, including through a dedicated bank account opened in the name of the child, which was accessed by the Respondent.

12. It is alleged that in 2019, the Respondent obtained physical custody of the minor child under the pretext of visitation, and subsequently retained him without consent. It is further alleged that the Respondent later arranged the child's schooling in Gurgaon to support her continued custody, and relied on the COVID-19 pandemic to delay his return to the Appellant.

13. It is further contended that the Impugned Order has led to a breakdown of the child's relationship with the Appellant and his family, resulting in near-complete estrangement. The limited visitation granted through Zoom calls is stated to be inadequate and unworkable, and the Respondent is alleged to have interfered with both physical and virtual access. A specific instance is cited where, as per communication dated 21.11.2024, the Respondent restricted the Appellant's visitation rights to merely one week during scheduled vacations.

14. Learned counsel for the Appellant further argues that the minor child has been deprived of the emotional support and nurturing relationship of his paternal grandfather, who is now elderly and unable to travel. The relocation, it is submitted, has disrupted a stable



caregiving arrangement to the child's detriment. It is also alleged that the minor child has faced emotional pressure and punitive behaviour from the Respondent following interactions with the Appellant.

15. It is contended that the Family Court failed to properly consider well-settled principles of child welfare, including:

- i. The financial and familial stability of the Appellant;
- ii. His ability to provide a structured and value-based upbringing in the child's native environment;
- iii. His legal status as the natural guardian under personal law; and
- iv. The lack of familial support for the Respondent in Abu Dhabi and the absence of a detailed caregiving plan, particularly considering Respondent's full-time employment.

16. Learned counsel for the Appellant further submits that the Respondent's relocation is driven purely by professional advancement, and not by any demonstrable necessity concerning the child's welfare. The relocation has, in substance, resulted in the *de facto* grant of sole custody to the Respondent, and the removal of the child from the jurisdiction of Indian courts, despite pendency of custody proceedings.

17. Finally, it is submitted that the Respondent has not approached this Court with clean hands, having allegedly suppressed material facts, including the Affidavit-cum-Undertaking dated 07.02.2017 and has acted with *mala fide* intent, using the minor child as leverage to extract concessions or exert emotional pressure on the Appellant.



## **CONTENTIONS OF THE RESPONDENT**

18. Learned counsel for the Respondent submits that the present Appeal is devoid of merit, constitutes an abuse of process of law and is intended to control the Respondent's personal and professional decisions under the guise of guardianship proceedings. It is contended that the Impugned Order was passed after due consideration of all relevant facts, including a personal interaction with the minor child, and is in consonance with the paramount consideration of child welfare.

19. It is contended that the Respondent has been the primary caregiver of the minor child since 2014, following her exit from the matrimonial home due to alleged instances of domestic violence and cruelty. The minor child has, accordingly, been in her continuous and uninterrupted custody since then, and the Appellant's access to the child has always been in the nature of visitation, arranged for the child's well-being.

20. Reliance is placed on a No Objection Certificate dated 24.12.2014 purportedly issued by the Appellant, which acknowledged that the child was residing with the Respondent. It is further submitted that the minor child's education from pre-school stage, including his admission and continued schooling in Gurgaon, has been solely managed and funded by the Respondent, without any financial or logistical support from the Appellant.

21. Learned counsel contends that the Respondent has single-handedly borne all the expenses i.e. educational, medical, and



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otherwise, pertaining to the minor child since 2014. It is submitted that the Appellant has neither contributed any maintenance nor has offered to share parental responsibilities, despite his assertions regarding financial superiority.

22. It is then submitted that the decision to relocate to Abu Dhabi arose from an employment opportunity secured by the Respondent in December 2022, initially on a hybrid basis. When her employer mandated full-time on-site presence in Abu Dhabi, she moved an application under Section 12 of the Act, in view of her role as the sole caregiver, which was allowed after full hearing. It is submitted that such relocation was not an attempt to evade Indian jurisdiction, but to secure the child's future and to improve the family's economic stability.

23. Compliance with the Impugned Order is demonstrated by the Respondent having:

- i. Furnished full residential and employment details in Abu Dhabi;
- ii. Enrolled the child in Raha International School, Abu Dhabi;
- iii. Arranged for the child to travel to India for visitation with the Appellant during school vacations;
- iv. Facilitated regular virtual contact between the Appellant and the child; and
- v. Borne all expenses related to travel, schooling and other needs



of the minor child.

24. Learned counsel for the Respondent further contends that the Appellant's conduct during visitation periods has demonstrated his unsuitability as a primary caregiver, with specific allegations including:

- i. Leaving the child under the care of domestic staff during visitation;
- ii. Instances where the child fell ill during visits, allegedly due to neglect;
- iii. The Appellant being absent from scheduled visits due to foreign travel;
- iv. Occasional disruption or denial of virtual contact; and
- v. Use of abusive language and threats directed at or in the presence of the child.

25. With respect to the alleged Affidavit-cum-Undertaking dated 07.02.2017, learned counsel for the Respondent denied its validity, asserting that no such relinquishment of custody was ever voluntarily executed. It is submitted that the document has not been produced in original, and that no legal effect can be attributed to it in the absence of proper proof. It was argued that if such a document genuinely existed, the Appellant would not have waited till 2022 to initiate guardianship proceedings.

26. Reliance is placed on various precedents, including *Anuradha*



*Sharma vs. Anuj Sharma*<sup>1</sup>, *Anjana Chandran vs. Haneesh*<sup>2</sup>, and *Aakriti Kapoor vs. Abhinav Agarwal*<sup>3</sup> to submit that a primary caregiving parent may relocate with the child if such relocation is in furtherance of the child's welfare and does not amount to a change in legal custody.

27. Lastly, it is contended that the present litigation is driven more by ego and control than genuine concern for the child's welfare. The child is stated to be well-settled in Abu Dhabi, receiving appropriate care, education, and emotional support. The Respondent, accordingly, prays for dismissal of the Appeal, with the continuation of the existing arrangement, in the best interest of the child.

### **FINDINGS & ANALYSIS**

28. This Court has considered the submissions advanced by learned counsel for the parties and perused the material on record.

29. At the outset, it must be reiterated that in matters relating to custody and guardianship, the paramount and overriding consideration is the welfare and best interests of the minor child. This principle, grounded in Section 13 of the Act, has been consistently affirmed by the Supreme Court and various High Courts. The touchstone is not the individual rights or preferences of the contesting parents, but rather a holistic assessment of what arrangement would best serve the child's physical, emotional, moral, and educational well-being. While the financial capacity or stability of a parent may be a relevant

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<sup>1</sup> Dated 08.07.2022 in W.P. No. 6569/2022

<sup>2</sup> Dated 31.03.2023 in O.P. (F.C.) No. 110/2023

<sup>3</sup> Dated 03.02.2023 in CM (M) No. 655/2022



consideration, it cannot, by itself, displace or eclipse the broader inquiry into the child's welfare.

30. In the present case, the Family Court has appropriately considered the child's welfare, having personally interacted with the minor child, who expressed comfort and emotional security in the care and company of the Respondent. The preference expressed by the child, though not decisive by itself, is a relevant factor, particularly when it reflects emotional security and continuity in caregiving. Courts have consistently held that where a child of tender age is found to be settled in a stable and nurturing environment, it would not be in the child's interest to disturb such arrangement solely on the ground of financial or material superiority of the other parent.

31. In the case of *Rosy Jacob vs. Jacob A. Chakramakkal*<sup>4</sup>, the Supreme Court emphasized that the object of the Act is not confined to determining mere physical custody but extends to securing the overall welfare of the minor, including the child's health, maintenance, education, and moral development. The Court cautioned that children are not chattels or playthings in the hands of parents, and that the absolute rights of parents must yield to the paramount consideration of the child's well-being. The principle of *parens patriae* is central to this approach — the Court acts not as an umpire between warring parents, but as a guardian concerned solely with the child's holistic welfare. The Family Court's approach in the present case aligns with this settled principle, insofar as it gives precedence to the emotional and psychological stability of the child over competing

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<sup>4</sup> (1973) 1 SCC 840



parental claims.

32. The present Appeal challenges the Impugned Order primarily on the ground that the Respondent's relocation to Abu Dhabi would effectively grant her sole custody of the minor child without adjudication on the merits of the guardianship petition, thereby prejudicing the Appellant's rights as the natural guardian. It must be noted that Section 12 of the Act empowers the Court to pass interim orders during the pendency of guardianship proceedings, which are provisional in nature and do not constitute final adjudication on custody rights. Furthermore, the safeguards put in place to ensure the Appellant's continued access and contact with the child mitigate concerns of estrangement or loss of a meaningful relationship.

33. The contention regarding the Affidavit-cum-Undertaking dated 07.02.2017, which allegedly relinquishes the Respondent's custody claims, is unsubstantiated. The original document has not been produced, nor has its authenticity been conclusively established. Moreover, the Respondent denies executing such an affidavit voluntarily. The mere existence of a purported document cannot outweigh the credible evidence relating to the child's actual caregiving arrangements and best interests over the years.

34. The Supreme Court in *Ritika Sharan v. Sujoy Ghosh*<sup>5</sup> has clarified the approach towards relocation of a child by the custodial parent. The Supreme Court reiterated that the welfare of the child is the paramount consideration, and the rights of the non-custodial

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<sup>5</sup> (2023) 12 SCC 579



parent, while important, must be balanced against the child's best interests. It emphasized that relocation may be permitted when justified by genuine reasons such as employment opportunities and better living conditions, provided adequate safeguards are in place to maintain the relationship between the child and the non-custodial parent.

35. In the present case, it is evident that the child has been in the continuous custody of the Respondent for a substantial period and that any sudden disruption to this arrangement could be detrimental to his welfare. The child's settled environment and emotional stability are critical considerations that this Court must give paramount importance to.

36. The Family Court also noted that the Respondent's employment opportunity in Abu Dhabi, provides better financial stability and the capacity to maintain the child's standard of living, education, and overall welfare. While the Appellant's apprehensions regarding diminished physical access and adequacy of virtual contact are noted, the Family Court has imposed reasonable safeguards to protect his visitation rights, including video conferencing and physical visit during school vacations.

37. It is relevant to note that the Respondent's employment contract in Abu Dhabi is for a fixed term of three years, having commenced on 16.01.2023. As on the date of this judgment, approximately two years of the contract period have elapsed. Although the contract contains a provision for automatic renewal on identical terms and conditions



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unless either party gives prior notice of non-renewal, with any changes in terms to be notified accordingly, the same underscores that the Respondent's relocation, while currently stable, is not unconditionally permanent and may be subject to change depending on the renewal or termination of the contract. This aspect reinforces the provisional nature of the interim order and the need for the Family Court to revisit the guardianship and custody arrangements upon conclusion of the substantive proceedings or if circumstances materially change.

38. In view of the foregoing, this Court holds that the welfare and best interests of the minor child weigh in favour of permitting the Respondent's relocation to Abu Dhabi as directed by the Family Court, subject to the undertakings and safeguards ensuring the Appellant's continued meaningful access and visitation rights. The interim order passed under Section 12 of the Guardians and Wards Act is, therefore, upheld.

39. Accordingly, having found no merit, the present Appeal is dismissed.

**ANIL KSHETARPAL, J.**

**HARISH VAIDYANATHAN SHANKAR, J.**  
**SEPTEMBER 09, 2025/jn/pl**