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* **IN THE HIGH COURTOF DELHIAT NEW DELHI**

% ***Judgment reserved on: 16.12.2025***
Judgment pronounced on: 23.01.2026

\+ CONT.CAS(C) 203/2025

SUMAN SANKAR BHUNIA .....Petitioner

Through: Mr. Prosenjeet Banerjee, Ms. Shreya Singhal, Ms. Mhasilenuo Keditsu, Ms. Kushagra and Ms. Anshika, Advocates along with Petitioner in person.

versus

DEBARATI BHUNIA CHAKRABORTY .....Respondent

Through: Ms. Padma Priya, Ms. Chitrangda Rastrauara, Mr. Abhijeet Singh, Mr. Anirudh Singh, Mr. Aishwary Mishra, Mr. Dhananjay Shekhawat, Mr. Sakshi Aggarwal, Mr. Yuvraj Singh, Ms. Pearl Pundir and Ms. Bhumika, Advocates.

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\+ MAT.APP.(F.C.) 279/2024, CM APPL. 48675/2024 (Stay), CM APPL. 48676/2024 (Addl.Doc), CM APPL. 58539/2024 (Dir.) & CM APPL. 70136/2025 (filed by appellant for clarification and modification of the order dt. 04.11.2025)

DEBARATI BHUNIA CHAKRABORTY .....Appellant

Through: Ms. Padma Priya, Ms. Chitrangda Rastrauara, Mr. Abhijeet Singh, Mr. Anirudh Singh, Mr. Aishwary Mishra, Mr. Dhananjay Shekhawat, Mr.

Sakshi Aggarwal, Mr. Yuvraj Singh, Ms. Pearl Pundir and Ms. Bhumika, Advocates.

versus

SUMAN SANKAR BHUNIA .....Respondent

Through: Mr. Prosenjeet Banerjee, Ms. Shreya Singhal, Ms. Mhasilenuo Keditsu, Ms. Kushagra and Ms. Anshika, Advocates with Respondent in person.

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, being ***MAT.APP.(F.C.) 279/2024***[1], filed by the Appellant-Wife-Mother, assails the **Judgment dated 01.07.2024**[2] passed by the learned **Family Court, Patiala House Courts, New Delhi**[3], whereby the learned Family Court, in Guardian Petition No. 22/2021 instituted by the Husband-Father under Section 7 read with Section 25 of the **Guardians and Wards Act, 1890**[4], directed that the custody of the two minor children, *namely*, SSB, aged about 12 years, and DW, aged about 6 years, be handed over to the Respondent-Husband-Father.

[1]Matrimonial Appeal
[2]Impugned Judgement
[3]Family Court
[4]G&W Act

2. The Impugned Judgment further lays down detailed directions regulating the manner in which the Respondent-Father is to exercise custody of the minor children. These directions include modalities relating to visitation, communication, and the sharing of relevant information and particulars concerning the children *vis-à-vis* the Appellant-Mother. Additional directions have also been issued regarding the mode and frequency of interaction with the children, as well as the apportionment of interim custody during school vacations.

3. Insofar as the contempt proceeding is concerned, ***CONT.CAS(C) 203/2025***[5] has been filed by the Husband-Father against the Wife-Mother alleging violation of the Interim Order dated 23.08.2024, read with the subsequent Interim Order dated 25.10.2024, passed by this Court in the Matrimonial Appeal. The alleged non-compliance pertains to the Husband-Father's rights of access to and continued contact with the minor children, as well as directions relating to the updation of records concerning the paternity of the children.

4. With the consent of the parties, the Matrimonial Appeal as well as the Contempt Petition were taken up for final hearing and are being disposed of by this common Judgment. For the sake of uniformity and consistency, and in order to avoid any ambiguity, the parties shall hereinafter be referred to in the same rank and position as assigned to them in the Matrimonial Appeal.

BRIEF FACTS:

5. The brief conspectus of the facts, as emerging from the record, is as follows:

[5]Contempt Petition

a) The Appellant-mother and the Respondent-father were married on 26.09.2011. From the said wedlock, two children were born, *namely*, a son on 29.04.2013 and a daughter on 24.01.2019. After the marriage, the parties resided together at Habra, District North 24 Parganas, West Bengal, along with the parents of the Respondent-father. During this period, the son was enrolled in school at Habra, West Bengal, and the family lived together until September 2018.

b) It is the case of the Respondent-father that on 04.09.2018, the Appellant-mother left the matrimonial home on the pretext of proceeding to her workplace. Later that evening, she sent an SMS expressing her intention to go to her parental home at Siliguri, District Darjeeling, West Bengal, leaving the minor son behind. It is further alleged that on 09.09.2018, the Appellant-mother, accompanied by her father and others, removed the minor son from the Respondent-father's paternal home at Habra, West Bengal, without any order passed by a competent court.

c) The Appellant-mother, however, disputes the aforesaid version and alleges that she was subjected to regular physical assault, verbal abuse, and mental harassment at the hands of the Respondent-father. According to her, on the night of 03.09.2018, she was physically assaulted despite being approximately four months pregnant, which compelled her to leave the matrimonial home on 04.09.2018 for the safety of her unborn child. Thereafter, the Appellant-mother lodged an FIR against the Respondent-father and his family members under

Sections 498A and 506 of the **Indian Penal Code, 1860**[6], and also initiated proceedings under the **Protection of Women from Domestic Violence Act, 2005**[7].

d) Aggrieved by the removal of the child, the Respondent-father approached the Calcutta High Court on 11.09.2018 and also instituted Guardianship proceedings on 29.10.2018 under the G&W Act, before the learned Additional District Judge, Darjeeling, West Bengal.

e) By Order dated 21.02.2019, passed in Civil Revision (*C.O. No. 4105/2018*), the Calcutta High Court directed transfer of the guardianship proceedings from Darjeeling, West Bengal, to the Court at Barasat, West Bengal, noting that both parties were then working in and around Kolkata, West Bengal.

f) The Respondent-father alleges that, as a counterblast to the guardianship proceedings initiated by him, the Appellant-mother lodged FIR No. 04/2019 dated 09.01.2019 under Sections 498A and 506 IPC read with Sections 3 and 4 of the Dowry Prohibition Act, 1961.However, the said criminal proceeding was subsequently found to be without merit.

g) In the meantime, on 24.01.2019, the Appellant-mother gave birth to the daughter at Siliguri, West Bengal. It is the case of the Respondent-father that he was not informed of the childbirth or the related medical details at the relevant time.

h) At the time of leaving the matrimonial home, the Appellant-mother was completing her Associateship/Fellowship at

[6]IPC
[7]DV Act

Kolkata, under **CSIR**[8], Pusa, New Delhi. On 02.03.2019, the Appellant-mother resigned from her Associateship and subsequently relocated with the children to different cities. Between July 2019 and June 2021, she resided in Jodhpur, Rajasthan, while being associated with IIT Jodhpur. Thereafter, she shifted to Vijayawada, Andhra Pradesh, and subsequently to Bangalore, Karnataka.

i) On 05.03.2019, the Appellant-mother instituted multiple proceedings against the Respondent-father at Siliguri, including:

   (i) Criminal case arising out of C.R. Case No. 202/2019 under Sections 406, 120B, and 34 of the IPC;

   (ii) Criminal Miscellaneous Case No. 31/2019 under the DV Act; and

   (iii) Maintenance Case No. M.R. 939/2019 under Section 125 of the Code of Criminal Procedure, 1973.

j) The complaint under Section 406 IPC was later quashed by the Calcutta High Court. The guardianship proceedings, along with connected matters, were ultimately transferred to the Family Court, Patiala House Courts, New Delhi, pursuant to an order passed by the Hon'ble Supreme Court dated 25.06.2021.

k) During the pendency of proceedings, including this Guardianship Petition, in India, the Appellant-mother secured employment as a Lecturer at the University of Hull, United Kingdom, and has been residing there since August 2023. The

[8]Council of Scientific & Industrial Research

children, however, continued to remain in India and were residing in Bangalore with the maternal grandparents.

l) The learned Family Court also referred the children for counselling. The counsellor's report indicated that while the son initially expressed reluctance and distress at the prospect of meeting the father, positive engagement was observed within a short span of counselling sessions, suggesting that the child's apprehensions were capable of being addressed through sustained and structured interaction.

m) Thereafter, by the Impugned Judgment dated 01.07.2024, the learned Family Court adjudicated the issues relating to custody and allied matters, recording findings, *inter alia*, on parental alienation, conduct of the parties, and the welfare of the children. The learned Family Court, upon appreciation of the material on record, returned findings against the Appellant-mother and held that her conduct reflected sustained parental alienation of the children from the Respondent-father.

n) The learned Family Court found that the allegations raised by the Appellant-mother were unsubstantiated and that repeated relocation of the children had adversely impacted their welfare. Applying the paramount consideration of the best interests of the children, the learned Family Court appointed the Respondent-father as the sole custodian of both the son and the daughter, while granting structured visitation and interim custody rights, along with directions relating to counselling and restrictions on relocation.

o) Aggrieved by the Impugned Judgment dated 01.07.2024, the Appellant-Mother has preferred the present Matrimonial Appeal, assailing the findings and directions contained therein.

p) During the pendency of the Matrimonial Appeal, the Contempt Petition came to be filed by the Respondent-Father against the Appellant-Mother, alleging violation of the Interim Order dated 23.08.2024, read with the subsequent Interim Order dated 25.10.2024, passed by this Court. The alleged non-compliance relates to the Respondent-Father's rights of access to and continued contact with the minor children, as well as to the directions issued regarding the updation of records concerning the paternity of the children.

CONTENTIONS OF THE APPELLANT:

6. Learned counsel for the Appellant-wife would submit that the Impugned Judgment is riddled with grave infirmities and material irregularities.

7. Learned counsel for the Appellant would contend that the learned Family Court has failed to apply the settled principles governing the grant of custody, inasmuch as the paramount consideration of the welfare of the children has not been accorded due primacy. In support of this submission, reliance would be placed on the decisions of the Hon'ble Supreme Court in ***Gaurav Nagpal v. Sumedha Nagpal***[9] and ***Rosy Jacob v. Jacob A. Chakramakkal***[10], which reiterate that the welfare of the child is the controlling and

[9] (2009) 1SCC 42
[10] (1973) 1 SCC 840

overriding consideration in all matters relating to guardianship and custody.

8. She would further submit that the learned Judge has overlooked the undisputed position that the Appellant-mother has been the primary and consistent caregiver of the minor children since their separation from the Respondent-father. It would be contended that continuity of care provided by a parent constitutes a vital consideration in matters of child custody and ought to have been accorded due weight. In support of this proposition, reliance would be placed on the decisions in ***Devika Mehra v. Prashant Prakash Sahini***[11] and ***Anuradha Sharma v. Anuj Sharma***[12], wherein the Courts have underscored that sustained care giving by one parent ought to receive due primacy while determining custody.

9. It would further be contended that the learned Judge has not adequately considered the deleterious impact of any disruption or break in the stability and continuity presently being enjoyed by the children.

10. Learned counsel would contend that the learned Judge failed to take into account the minimal involvement of the Respondent-father in the upbringing and day-to-day care of the children.

11. She would further contend that the Impugned Judgment has failed to accord due weight to the expressed preference of the children, particularly that of the son, who is approximately 12 years of age and, according to the Appellant, has consistently exhibited reluctance to meet the Respondent-father. It is urged that the material on record, including observations emanating from counselling

[11] 2021 SCC OnLine Del 4302
[12] 2022 SCC OnLine Bom 1489

sessions, reflects that the child experiences stress at the very thought of such interaction. In this regard, learned counsel would place reliance on the decisions in ***Mamta v. Ashok Jagannath Bharuka***[13] and ***Surinder Kaur Sandhu v. Harbax Singh Sandhu***[14], to submit that the wishes of a child, particularly one capable of forming an intelligent preference, constitute a relevant and important consideration in matters of custody.

12. Learned counsel would also submit that the learned Judge has not accorded due weight to the proactive and sustained role played by the Appellant-mother in attending to the emotional, educational, and developmental needs of the child.

13. She would strenuously contend that the Impugned Judgment gives a complete go-by to serious allegations, which are stated to be founded on disclosures made by the minor son concerning alleged sexually inappropriate behaviour on the part of the Respondent-father.

14. Learned counsel would assert that the principle of the "*Best Interest of the Children*" has not been properly applied, and that the learned Judge failed to undertake a holistic consideration of all relevant factors, including, most significantly, the comparative financial capacity of the parents.

15. She would further supplement her submissions by contending that the Appellant-mother earns substantially more than the Respondent-father, whose income is stated to be only about Rs. 17,000/- per month, and that, consequently, the Appellant is in a far better position to adequately provide for the educational, emotional, and material needs of the children.

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[13](2005) 12 SCC 452
[14](1984) 2 SCC 698

16. Learned counsel for the Appellant-mother would submit that the learned Family Court has erroneously treated the Appellant's pursuit of her professional career as a factor militating against her claim for custody. It would further be submitted that a mother cannot be penalised for being gainfully employed or for improving her career prospects, particularly when such advancement is intended to secure a better future for the children. Reliance would be placed on ***Vikram Vir Vohra v. Shalini Bhalla***[15] and ***Yashita Sahu v. State of Rajasthan***[16], wherein it has been held that a working mother's career progression, by itself, cannot be a determinative factor against the grant of custody, and that the welfare of the child must be assessed holistically.

17. Learned counsel would further submit that the cultural ethos, traditions, and activities emphasised by the Respondent-father are equally accessible to the children even outside West Bengal, and that their absence from the said State does not prejudice their cultural upbringing.

18. She would lastly contend that the "*tender years doctrine*" continues to hold relevance and, having regard to the age of the children, particularly the younger child, custody ought ordinarily to remain with the mother unless compelling circumstances dictate otherwise.

CONTENTIONS OF THE RESPONDENT:

19. ***Per contra***, learned counsel appearing for the Respondent-father would vehemently support the Impugned Judgment and contend

[15](2010) 4 SCC 409
[16](2020) 3 SCC 67

that the same has been rendered after a full-fledged and prolonged trial, wherein all relevant facts, pleadings, evidence, and circumstances were meticulously examined and duly appreciated by the learned Family Court.

20. He would submit that the present appeal is an attempt to reagitate issues which were either not urged before the learned Family Court or were consciously abandoned, and that the Appellant-mother now seeks to introduce documents and materials which never formed part of the record before the learned Family Court and, therefore, cannot be looked into at the appellate stage.

21. Learned counsel would further contend that it is deeply unfortunate that, in matrimonial and custody disputes, allegations invoking the provisions of the **Protection of Children from Sexual Offences Act, 2012**[17], are increasingly being raised as a matter of course, often without any foundational pleadings or credible supporting material. In support of this submission, reliance would be placed on the decision of the Kerala High Court in ***XXX v. State of Kerala***[18] and ***XXX v. State of Kerala***[19], wherein the Court cautioned against the tendency to lodge false or unsubstantiated complaints under the POCSO Act in custody disputes, particularly with a view to frustrating or obstructing the other parent's claim for custody of a minor child.

22. He would submit that in the present case, the allegations of sexual abuse are wholly devoid of substance, inasmuch as no such allegations were raised by the Appellant-mother in her pleadings or in

[17] POCSO
[18] 2024:KER:56778
[19] 2025:KER:10981

her reply to the custody petition, and were introduced for the first time in her affidavit of evidence. Even otherwise, such allegations were bereft of particulars, dates, or supporting material. It would be contended that the very nature of such allegations demonstrates the extreme lengths to which the Appellant-mother is willing to go in order to retain custody of the children.

23. Learned counsel would further contend that the conduct of the Appellant-mother has rightly been held by the learned Family Court to be highly reprehensible, as it reflects a continuous and deliberate pattern of behaviour calculated to ensure parental alienation of the Respondent-father.

24. Learned counsel for the Respondent-father would draw the attention of this Court to the repeated and frequent relocations undertaken by the Appellant-mother within a short span of time, whereby the children were moved across multiple jurisdictions, including Jodhpur in Rajasthan, Vijayawada in Andhra Pradesh, Hyderabad in Telangana, and Bangalore in Karnataka, without obtaining leave of the jurisdictional court or any other competent court. It would be contended that such continuous relocation deprived the children of stability and continuity, and seriously undermined their welfare.

25. Learned counsel would further submit that the Appellant-mother has clearly abused the process of law by initiating multiple criminal proceedings, *inter alia*, under Sections 498A and 506 of the IPC, which ultimately culminated in the acquittal of the Respondent-father.

26. He would also point out that another complaint filed by the Appellant under Section 406 of the IPC came to be quashed by the Calcutta High Court *vide* Order dated 13.10.2023.Placing reliance on the findings of the Calcutta High Court, learned counsel would submit that the said Court observed that the possibility of the FIR under Section 498A of the IPC being a counterblast to proceedings initiated by the Respondent-father could not be ruled out.

27. He would further contend that apart from deliberate acts aimed at ensuring parental alienation - which by themselves disentitle the Appellant-mother from seeking custody even during the pendency of the appeal - the Appellant has also indulged in acts which are contumacious in nature, leading to the filing of contempt proceedings. It would be submitted that she has consistently obstructed any form of access to the children, whether physical or telephonic. In this regard, learned counsel would place reliance upon the reports of counsellors, particularly the report of Samadhaan, Delhi High Court Mediation Centre, which records that within a few counselling sessions the child responded positively to the father, thereby negating the Appellant's claim that the child was unwilling to interact with him.

28. He would submit that any reluctance displayed by the child is a direct consequence of sustained and systematic alienation from the father since 2018, save for minimal interactions that occurred only pursuant to repeated judicial intervention.

29. Learned counsel would further submit that the prolonged litigation over the past several years has afforded the Appellant-mother and her parents ample opportunity to tutor the child and instil negative perceptions about the Respondent-father, resulting in the

child's present state of mind.

30. He would argue that the Appellant-mother, without any justifiable reason, chose to leave the matrimonial home and thereafter engineered circumstances driven by deep-seated animosity towards the Respondent-father, with the singular objective of alienating the children and poisoning their minds against him. It would be contended that the best interests of the children demand that the father be reintroduced into their lives, as they have been deprived of his presence and affection for several formative years.

31. Learned counsel would further contend that, in any event, the Appellant-mother is not presently taking care of the children herself, as she is residing in the United Kingdom, while the children are admittedly staying with their maternal grandparents. It would be urged that the welfare of the children would be better served in the custody of a biological parent rather than grandparents, howsoever well-intentioned.

32. He would further take technical objections with respect to the fact that numerous documents that have been sought to be placed before this Court are beyond the scope of consideration of this Court, since none of these have been accorded any consideration by the learned Judge.

33. He would also contend that undue emphasis is sought to be placed by the Appellant on comparative financial capacity, which, by itself, is not determinative of custody. It would be submitted that the cost of living in West Bengal is modest, and the Respondent-father is fully capable of providing appropriate care, education, and upbringing commensurate with a stable middle-class household.

34. In conclusion, learned counsel would submit that the Respondent-father has clearly established a case of sustained parental alienation coupled with abuse of the judicial process by the Appellant-mother, and that no grounds are made out warranting interference by this Court with the well-reasoned judgment of the learned Family Court.

ANALYSIS:

35. We have heard learned counsel for the parties at considerable length and, with their able assistance, have carefully perused the pleadings, evidence, and the record of the case. We have also had the benefit of interacting with the minor children on 15.12.2025, which interaction has aided us in appreciating certain aspects bearing upon their welfare.

36. At the outset, we deem it necessary to deal with the contention of the so-called *Tender Years Doctrine*. We believe that this doctrine is founded on a highly stereotypical premise. In the present day and age and the time in which we currently inhabit this Earth, and having regard to the advancement in the social and cultural ethos of society and the sensitivities that now prevail, the invocation of the *Tender Years Doctrine* in custody battles such as the present one may no longer be apposite.

37. Historically, the doctrine appears to have evolved at a time when societal norms rigidly ascribed the role of breadwinner to the father and that of homemaker and primary caregiver to the mother, with attendant responsibility for the day-to-day upbringing of children. Such rigid compartmentalisation of parental roles no longer accords with contemporary realities, more so in cases where both

spouses are gainfully employed and leading their respective lives in fairly urbanised towns or cities.

38. It would, therefore, be more prudent for courts to anchor the adjudication of custody disputes firmly in the overarching principle of the *best interests of the children*, rather than in presumptive doctrines. It is this exercise that we propose to undertake in the present appeal.

39. In this context, reference may be made to the decision of a Co-Ordinate Bench in ***JK v. NS***[20], wherein, relying upon the judgment of the Hon'ble Supreme Court in ***Lahari Sakhamuri v. Sobhan Kodali***[21], the Court held that the welfare and *best interests of the child* are paramount and must prevail over the application of the *Tender Years Doctrine*, and on the facts of that case found that the child's best interests lay in being raised under the joint parentage of both parents despite contentions to the contrary. The relevant portion of ***JK*** *(supra)* reads as follows:

> "**27.** Ms. Rajkotia has strongly urged that the appellant has claimed custody based upon the legal doctrines of tender years and matrimonial preferences. It is submitted that both these doctrines have been developed for the welfare of the children. It would be in the welfare of the children to be with the mother. Reliance is placed on ***Bindu Philip Vs. Sunil Jacob***, (2018) 12 SCC 2003, ***Mohan Kumar Rayana vs. Komal Rayana***, 2010 (5) SCC 657, ***Vivek Singh vs. Romani Singh***, 2017 (3) SCC 231, ***Palmira Vs. Cruz Fernandes***, 1992 MHLJ 1048, ***Dhanwanti Joshi vs. Madhav Unde***, 1998 (1) SCC 112, ***Mrs. Elizabeth Dinshaw vs. Arvand M. Dinshaw & Anr***, 1987 (1) SCC 42, ***Surjeet Singh Vs. State***, 189 (12), DLT 460, ***Surinder Kaur Sandhu Vs. Harbax Singh Sandhu &Anr***, 1984 (3) SCC 698, ***Sarita Sharma vs. Sushil Sharma***, 2000 (3) SCC 14, ***Gaurav Nagpal vs. Sumedha Nagpal***, AIR 2009 SC 557. In support of her submission, Ms. Rajkotia while placing reliance on *Bindu Philip* (supra), submits that the role of the mother in child care is greater than the father, based on the tender years' doctrines. It is contended that the appellant is a biological mother and not disqualified in any way and thus her custody is

[20]2019:DHC:3125-DB
[21]2019 SCC OnLine SC 395

lawful. There is a statutory presumption in her favour under Section 6 of the Hindu Maintenance & Guardianship Act which has not been rebutted. She is the primary care giver of her children. Her intention to make India as her residence is unrevocable, the children are thus, to be ordinary residents with her. It is also submitted before us that in view of the tender years' doctrine and maternal preference as well as the statutory presumption, the custody must continue to be with her. Reliance is placed on *ABC vs. State (NCT of Delhi)*, 2015 (10) SCC 1.

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46. Finally, Ms. Rajkotia has contended that the most important criterion and consideration to decide the custody of the children will be the welfare of the children. She submits that the daughter is about 7 years of age and the son is about 3 years of age. At this tender age, the welfare of the children lies with the primary care giver and which is the mother. The day-to-day needs of the children at this tender age can be best looked after by the mother.

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84. Having traversed the law on the subject, we find that the jurisprudence that has evolved in matters relating to custody of minor children is that the 'welfare and best interest of the child', are the paramount considerations. Mr. Malhotra is thus right in his contention that the law has drifted towards a 'child welfare' centric jurisprudence. In fact, during the course of the arguments, learned counsel for the respondent has also referred to and relied on the latest judgment of the Apex Court in the case of ***Lahari Sakhamuri vs. Sobhan Kodali***. We have perused the entire judgment and we find that the Hon'ble Supreme Court has again reiterated the crucial factors which should be applied to decide the custody cases and has held that the welfare of the child has to be the focal point in deciding the custody. We quote some of the relevant paragraphs from the said judgment:

> "*49.* The crucial factors which have to be kept in mind by the Courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual.
>
> *50.* While dealing with the younger tender year doctrine, Janusz Korczar a famous Polish-Jewish educator & children's author observed "children cannot wait too long and they are not people of tomorrow, but are people of today. They have a right to be taken seriously, and to be treated with tenderness and respect. They should be allowed to grow into whoever they are meant to be-the

unknown person inside each of them is our hope for the future." Child rights may be limited but they should not be ignored or eliminated since children are in fact persons wherein all fundamental rights are guaranteed to them keeping in mind the best interest of the child and the various other factors which play a pivotal role in taking decision to which reference has been made taking note of the parental autonomy which courts do not easily discard.

51. The doctrines of comity of courts, intimate connect, orders passed by foreign courts having jurisdiction in the matter regarding custody of the minor child, citizenship of the parents and the child etc., cannot override the consideration of the best interest and the welfare of the child and that the direction to return the child to the foreign jurisdiction must not result in any physical, mental, psychological, or other harm to the child. Taking a holistic consideration of the entire case, we are satisfied that all the criteria such as comity of courts, orders of foreign court having jurisdiction over the matter regarding custody of the children, citizenship of the spouse and the children, intimate connect, and above all, welfare and best interest of the minor children weigh in favour of the respondent (Sobhan Kodali) and that has been looked into by the High Court in the impugned judgment in detail. That needs no interference under Article 136 of the Constitution of India.

52. Before we conclude, we would like to observe that it is much required to express our deep concern on the issue. Divorce and custody battles can become quagmire and it is heart wrenching to see that the innocent child is the ultimate sufferer who gets caught up in the legal and psychological battle between the parents. The eventful agreement about custody may often be a reflection of the parents' interests, rather than the child's. The issue in a child custody dispute is what will become of the child, but ordinarily the child is not a true participant in the process. While the best-interests principle requires that the primary focus be on the interests of the child, the child ordinarily does not define those interests himself or does he have representation in the ordinary sense.

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56. In our view, the best interest of the children being of paramount importance will be served if they return to US and enjoy their natural environment with love, care and attention of their parents including grandparents and to resume their school and be with their teachers and peers."

85. We have thus no doubt in our mind that the present case would have to be decided on the touchstone of the principles laid down by the Apex Court and the most important being the best interest and the welfare of the children.

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88. In the present case, both the appellant and the respondent are highly educated, professionals and are well-settled in their life. The appellant had at a very early stage of her life, elected to leave India and study in USA and pursue her career. She chose to marry the respondent in USA out of her free will and if we may say, it was a love-cum-arranged marriage. Both acquired American citizenship and worked jointly as Dentists till 2016. At the cost of repetition, we may say that the elder child was born in USA and the second one was conceived in USA. Both parties had acquainted themselves with the systems and the environment of that country. They had their friends and colleagues in USA and the appellant also had an extended family in USA. The conduct of the parties clearly shows that they had, in fact, abandoned their domicile of origin. Ishnoor is undoubtedly an American citizen by birth and we cannot but accept the contention of Mr. Malhotra that Paramvir is not an Indian citizen though born in India, by virtue of Section 3(1) of the Citizenship Act, which we have quoted above.

89. The two children are, thus, entitled to, as a matter of right, all the privileges, security, both social and financial, in America. At the age in which the two children are, we do not think that it would be difficult for them to get accustomed to the life and environment at America. Ishnoor is now nearly 7 years of age and once she starts going to School in USA, she would make her own circle of friends and with the help of her parents, she would soon acclimatize herself in that country. Insofar as Paramvir is concerned, he is a little over two years, and would be in a position to adapt to the lifestyle and customs in that country, more particularly, with the love and affection of the parents and his sister. Insofar as the welfare aspect is concerned, it can hardly be said that the environment, education and the day-to-day living in USA would be inferior to that in this country or in any manner detrimental to the interests and upbringing of the children. The present is also not a case where the children are very grown up or have spent many years in India, so as to develop their roots here. Perhaps if that was the case then uprooting them may have been detrimental to their welfare. In fact, Ishnoor had spent about 4 years in USA, before she was brought to India.

90. We also find that while there may be some marital discord between the parties, but the appellant has never alleged that the respondent is an irresponsible or an unfit father. The appellant has not been able to place on record any material to infer that the

respondent would have an adverse influence on the minor children. In fact, in our view, the children have a right to be brought up with the love and affection of both the parents and more particularly, when the father is not only willing to look after the children, but is litigating to get their custody. Thus, the best interest of the children, in our view, would be if the children are brought up in USA and by a joint parenting plan of both the parties.

91. The Family Court has rightly observed, in our view, that there cannot be a holistic growth of the children in the sole custody of the appellant. Parental alienation, as rightly held by the Family Court, is not conducive to a good upbringing of the children and can lead to psychological problems in some cases. While we do see the point that the appellant herself feels more comfortable under the umbrage of her parents in India, but the question here is not about her comfort zone but about the welfare of the children. Mr. Malhotra is also right in his submission that just as the appellant wants the love and affection of her father, with whom she is extremely attached, the two minor children would also need the umbrage of their father and in case the father is willing to look after them and give them the love and affection, we see no reason why the two children should be deprived of his love, affection, care and support. As we had observed above, we are not dealing with the case of a lady who is uneducated or unprofessional. We are dealing with an appellant who is highly educated and chose to live in America to give herself the best in life. We see no reason why we should deprive the children of good education, good environment, good medical care and the joint love of both parents.

92. While we have no doubts in our mind that the mother is a primary care giver, but we cannot also shut our eyes to the fact that even the father can contribute a lot to the upbringing of a child and, in fact, the love, affection, guidance and moral support of a father is extremely important in shaping the life of the children. Thus, the requirement of the respondent in the lives of the children, in our view, is, if not more, equally important for the holistic growth of the children. Paramount consideration being the crucial factor, we hold that the welfare of the children lies with both the parents and in shared parenting."

(***emphasis supplied***)

40. It is a trite law that in custody matters, the overarching and paramount consideration is the "*welfare and best interest of the child*", which far outweighs the competing rights or entitlements of either parent. The Hon'ble Supreme Court has reiterated this principle in

Sheoli Hati v. Somnath Das[22],of which the relevant paragraphs read 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)
>
> > "*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.
> > *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.
> > *45*. In ***Saraswatibai Shripad Vad v. Shripad VasanjiVad*** 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 …*'
> > *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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> > *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

[22](2019) 7 SCC 490.

> weigh with the court as well as its physical well-being. 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)
>
> > "*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 added)***

41. In custody disputes, and particularly between estranged spouses, it is not uncommon to find allegations and counter-allegations being levelled, at times in an exaggerated or unsubstantiated manner. While this Court cannot dictate the contours of pleadings that parties may choose to file, it considers it necessary to observe that both litigants and counsel must exercise restraint and responsibility. Pleadings or recourse to legal processes which are calculated to harass, prejudice, or needlessly malign the other party ought to, as far as possible, be eschewed.

42. Bearing the aforesaid caveat in mind, we are of the considered view that the learned Family Court, in the Impugned Judgment, has undertaken a detailed, careful, and holistic examination of all factors germane to the issue of custody, strictly on the basis of the pleadings, material, and evidence consciously placed before it by the parties. The aspects which the Appellant-mother now seeks to highlight, most notably her alleged salary particulars and asserted financial capacity, as the record reflects, were admittedly not brought on record before the learned Family Court, despite the availability of adequate opportunity to do so.

43. In the circumstances of the present case, such omission cannot be permitted to be rectified at the appellate stage so as to reopen, unsettle, or derail a comprehensive adjudication that has already been undertaken after due consideration of the material already on record. More so, even assuming, *arguendo*, that the comparative financial capacity tilts in favour of the Appellant-mother, the same cannot be treated as the sole or decisive factor, as the paramount consideration in matters of child custody remains the overall welfare and best interests of the children, which necessarily transcend mere financial capability. The law in this regard has been succinctly laid down by the Hon'ble Supreme Court in the Judgement of ***Mausami Moitra Ganguli* v. *Jayant Ganguli***[23], of which the relevant portion reads as follow:

> "**19.** The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a

[23] (2008) 7 SCC 673

statute. Indubitably the provisions of law pertaining to the custody of a child contained in either the Guardians and Wards Act, 1890 (Section 17) or the Hindu Minority and Guardianship Act, 1956 (Section 13) also hold out the welfare of the child as a predominant consideration. In fact, no statute, on the subject, can ignore, eschew or obliterate the vital factor of the welfare of the minor.

20. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned. It is, no doubt, true that father is presumed by the statutes to be better suited to look after the welfare of the child, being normally the working member and head of the family, yet in each case the Court has to see primarily to the welfare of the child in determining the question of his or her custody. Better financial resources of either of the parents or their love for the child may be one of the relevant considerations but cannot be the sole determining factor for the custody of the child. It is here that a heavy duty is cast on the Court to exercise its judicial discretion judiciously in the background of all the relevant facts and circumstances, bearing in mind the welfare of the child as the paramount consideration."

(***emphasis added***)

44. For reasons that remain wholly unexplained, certain vital and relevant particulars were not disclosed resulting in the inability of the learned Family Court to examine and consider them during the proceedings before the learned Family Court, despite the Appellant-mother having had sufficient and repeated opportunity to do so. These details have surfaced for the first time only at the appellate stage. It is pertinent to note that the petition was originally instituted in the year 2018, was transferred to Delhi in 2021, and thereafter stood adjudicated by the learned Family Court upon due compliance with the prescribed procedure in mid-2024.

45. Notwithstanding the passage of several years, the Appellant-mother failed to place on record any material substantiating her alleged financial capacity before the Trial Court. In this backdrop,

considerable merit is found in the submission advanced on behalf of the Respondent-father that documents which did not form part of the trial court record ought not, as a matter of course, to be entertained at the appellate stage, unless the stringent requirements of Order XLI Rule 27 of the Code of Civil Procedure, 1908, are duly satisfied.

46. In the facts and circumstances of the present case, we are of the considered view that the belated production of such material does not justify reopening the adjudicatory process afresh. While it is trite that custody proceedings are governed by the paramount consideration of the welfare and best interests of the children, such proceedings cannot be permitted to remain perpetually fluid or uncertain at the behest of a litigant who, having failed to place relevant material at the appropriate stage, seeks a second opportunity at the appellate forum. Judicial finality, subject to statutory exceptions, is an equally important consideration, and no case has been made out to invoke such exception in the present matter.

47. Even otherwise, comparative financial capacity, assuming it to be in favour of the Appellant-mother, does not, by itself, outweigh the cumulative considerations of emotional security, psychological stability, continuity, and the imperative need to arrest further parental alienation. We accordingly find no justification to defer or dilute the finality of the comprehensive adjudication undertaken by the learned Family Court.

48. We take note of the extremely detailed consideration accorded by the learned Family Court Judge and the meticulous reasons recorded by him in concluding that the conduct of the Appellant-mother is consistent with a sustained effort to deny the Respondent-

father access to the children from the date of her unexplained voluntary departure from the matrimonial home. We concur with the view of the learned Judge that there appears to be no apparent or cogent reason which could justify the Appellant-mother's decision to leave the matrimonial home.

49. The allegations raised by the Appellant-mother attributing her departure subject to cruelty are unsubstantiated and do not find support from the record. We also agree with the finding of the learned Family Court Judge that the said departure does not appear to have been premised on any immediate or perceived threat to the well-being of the minor son, particularly since the Appellant chose to leave on her own and, as the record would show, returned only after a few days accompanied by police personnel to ostensibly "rescue" the child from the custody of the Respondent-father.

50. Thus, we are of the considered opinion that the Appellant-mother's decision to leave the matrimonial home does not appear to have been occasioned by any immediate act or perception of threat, but rather constitutes a voluntary act undertaken for reasons best known to her.

51. We have also carefully considered the various submissions advanced on behalf of the Appellant regarding her role as the primary caregiver, the need to preserve stability and continuity in the lives of the children, and the alleged deleterious effect that any change in their present environment may entail. These submissions are closely interlinked with the further assertions relating to the alleged minimal involvement of the Respondent-father in the upbringing of the children, as well as the expressed preference of the children to

continue residing with the mother rather than with the father.

52. In our view, these aforesaid contentions cannot be examined in isolation, as they are directly connected with the issue of voluntary alienation arising from the manner in which the Appellant has chosen to lead a life marked by the complete exclusion of the Respondent-father from her own life and that of the children. We are of the considered view that after deliberately keeping the children away from one parent, the other cannot assert, as a *fait accompli*, that he/ she has been the primary care-giver. Permitting custody on this basis would only serve to encourage parents to follow a *modus operandi* of deliberate exclusion of one parent and subsequently raise a plea that he/ she has been the primary care-giver and resultantly should be permitted to retain custody of the children.

53. We do, however, concur with the conclusions of the learned Family Court Judge insofar as they relate to the abuse of the process of law. The record clearly indicates that the Respondent-father and his parents were acquitted in proceedings arising out of complaints and FIR under Section 498A of the IPC, and that the proceeding under Section 406 IPC was quashed by the Calcutta High Court. We also strongly deprecate the conduct of the Appellant-mother in levelling allegations of sexual abuse against the Respondent-father in relation to the minor son, which appear to be clearly motivated and in the nature of a counterblast to the proceedings initiated by the Respondent-father.

54. It is significant to note that such allegations were never raised in the Appellant-mother's reply to the custody petition, despite the claim that the alleged disclosures by the child came to her knowledge as

early as the year 2021. The absence of any reference to such grave allegations at the stage of pleadings leads us to conclude that the same do not inspire confidence or appear to be genuine. We also take note of the fact that it is only in the affidavit of evidence that these allegations surfaced for the first time in any judicial proceedings.

55. We now turn to the wishes of the children. There can be no quarrel with the proposition that the views of a child, particularly one of sufficient age and understanding, merit due and careful consideration. However, the Court must remain vigilant to ensure that such wishes are not merely echoes of a sustained narrative shaped by prolonged exposure to one-sided perceptions.

56. The pronounced and unyielding hostility expressed by the son towards the father, seen in the backdrop of prolonged minimal contact and systematic exclusion, appears not to stem from an independent or spontaneous articulation, but is more consistent with a conditioned or influenced response. A child's preference, when formed in an environment marked by alienation, cannot be elevated to a veto over judicial determination, for to do so would be to allow the consequences of alienation to harden into its justification. The law in this regard has been succinctly laid down by the Hon'ble Supreme Court in ***Rohith Thammana Gowda v. State of Karnataka***[24], of which the relevant portion reads as follows:

> **"11.**At the outset we may state that in a matter involving the question of custody of a child it has to be borne in mind that the question 'what is the wish/desire of the child' is different and distinct from the question 'what would be in the best interest of the child'. Certainly, the wish/desire of the child can be ascertained through interaction but then, the question as to 'what would be in the best interest of the child' is a matter to be decided by the court taking into account all the relevant circumstances.

[24](2022) 20 SCC 550.

> **12.**When couples are at loggerheads and wanted to part their ways as parthian shot they may level extreme allegations against each other so as to depict the other unworthy to have the custody of the child. In the circumstances, we are of the view that for considering the claim for custody of a minor child, unless very serious, proven conduct which should make one of them unworthy to claim for custody of the child concerned, the question can and shall be decided solely looking into the question as to, 'what would be the best interest of the child concerned'. In other words, welfare of the child should be the paramount consideration. In that view of the matter we think it absolutely unnecessary to discuss and deal with all the contentions and allegations in their respective pleadings and affidavits."
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> (***emphasis added***)

57. Equally, we are of the considered view that separating siblings, particularly at a stage when both are navigating their formative years, would be inimical to their holistic development and emotional stability. Siblings constitute a shared emotional universe, and their bond often functions as an anchor of continuity and reassurance amidst parental discord. To divide them at this stage would risk compounding the emotional trauma already occasioned by prolonged litigation and familial fragmentation.

58. The welfare and best interests of the children, therefore, lie not in fragmented or divided custodial arrangements, but in a unified upbringing, as much as possible, that preserves sibling companionship while simultaneously facilitating the restoration of a balanced and healthy parental influence. We are satisfied that, at this juncture, the Respondent-father is best placed to provide such an environment, one that is stable, inclusive, and oriented towards healing and continuity, rather than one that risks deepening existing emotional divides.

59. At the same time, we deem it necessary to underscore that the conferment of custody upon the father does not, and cannot, diminish

or marginalise the role of the mother in the lives of the children. The Appellant-mother, who has consistently asserted her financial capacity and professed an abiding commitment to the welfare of the children, is expected to give meaningful expression to that assertion through tangible and constructive support, commensurate with her means and responsibilities.

60. In our considered view, the continued financial contribution of the Appellant-mother towards the children's education, healthcare, extracurricular development, and overall well-being would not only advance their material interests but would also serve to reaffirm and strengthen her enduring parental bond with them. Parenthood does not recede or dissolve with the loss of custody; it subsists as a shared and continuing responsibility, one that calls for cooperation rather than contestation, and for contribution in furtherance of the children's welfare rather than an assertion of control.

61. For the most part, the contentions on behalf of the Appellant-mother centred around the apparent superiority of her earnings. We are of the view that the same cannot form the predominant consideration, particularly in the given facts of the present case. In any event, and as already noted, the Appellant-mother is well poised to adequately contribute towards the welfare of the Children, and the same would in line with the finances she has already proposed to be set aside for their upbringing.

62. At this juncture, it is apposite to note the observations of the Madras High Court in ***X v. Y***[25], wherein the Court observed that situations of parental alienation may, over time, operate to the

[25]2022 SCC OnLine Mad 4609

emotional detriment of a child. Where a child is repeatedly exposed to fear or hostility towards one parent, such an environment can adversely affect the child's welfare. The Court further observed that a child's expressed reluctance in such circumstances may not always represent an independent or fully informed preference, and that prolonged restriction of access to one parent may impair the child's entitlement to the love, care, and affection of both parents. The relevant portions of the said judgment are reproduced hereinbelow for reference:

> "**22.** To turn a child against a parent is to turn a child against himself. Parental alienation is inhuman and it is menace to a child, who direly needs two hands to hold both the mother and father till he/she walks throughout the life or at least till he/she attains majority. In fact, hatred is not an emotion that comes naturally to a child against his/her mother/father unless it is taught by the person whom the children believes. A parent indulging in parental alienation, means, he/she is polluting the tender mind of the innocent child by potraying the mother/father as a villian, which would have a considerable impact on him/her throughout his/her life and he/she develops ill feelings towards the parent and started hating his own father/mother.
>
> **23.** This Court, on occasions, has witnessed the behviour of the children in open Court while entrusting the interim custody or visitation rights to one of the parents, not only expressing sheer protest to join the parent but also questioning the parent as, who is he/she? This is only because of parental alienation. But due to the parental alienation, the child is not in a position to express it openly in front of the alienated parent. In reality, the child would react otherwise when he/she happens to see a family living together happily with children and the child may feel much envy and curse his/her fate, which means the child needs love and affection of both the parents. In the present case also, this Court witnessed high drama when the children were being handed over to the applicant/mother. If the children continue to hate their mother due to parental alienation, it will cause mental and physical disorders including psychological pain, anger and depression, which in the opinion of this Court, would certainly cause harm to the welfare of the children.
>
> **24.** If the respondent is incapable to teach or persuades the children to love their own mother, then there involves a serious parental

alienation which is not good for the welfare of the children. Welfare of the child is paramount consideration, but being with the parent who is not ready to teach and persuade his children to love their own mother, cannot be accepted. It is pertinent to note that the applicant and respondent are just separated from being husband and wife, but they will always be the father and mother for their children. The said relationship of father and mother will not be changed despite the parents re-marry with any other.

25. The respondent/father who possesses the custody of the minor children with him, must understand and feel the same pain and suffering undergoing by the applicant/mother, who all along lost the company of her children. It is not fair on the part of the respondent in not accommodating the children to spend with their mother and allowing the mother to spend with her children despite the orders of this Court granting visitation rights to the applicant/mother.

26. Children have a fundamental right and need for an unearthened and loving relationship with their father and mother and denying the said right of the children, would amount to child abuse. In the present, the respondent, without justification, has been indulging in such child abuse. For the parent who didn't get the custody, the loss is irreconcilable. Only when there is healthy co-parenting, the children will lead a happier childhood instead of becoming an emotionally broken adults who will in turn become not understanding and unsympathetic citizens.

27. The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured only by money and by physical comfort. Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living. While material considerations have their place, they are secondary matters, the primary considerations of matters are the stability and the security, the loving and understanding, care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents.

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33. Denying the right of the innocent children to spend with the separated parent by the parent who retains the custody of the children amounts to causing mental cruelty to the children, in which case, there is no healthy environment in which, they would grow.

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39. Though Courts are mindful of the interest of the child, yet, it to be lamented that the law leaves the child with only one hand, rather than the two with which the child would merrily hold his parents.

Law can satisfy the ego, but it can never the satisfy the requirements of the child, as the framers of the law were only conscious of the welfare of the child and not on the mental turmoil that would be faced by a child in such a calamitous situation.

40. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. Parents are the best judge on the mental turmoil that their child faces and when they become the perpetrator of the said holocaust, the *'home'* a heavenly abode, turns into a *'house'*, which is just built with brick and mortar, whereas a *'home'* is build with love and affection of all the persons who reside in the said heavenly abode.

41. Division between parents is unfair and confusing and weakens the foundations of the family. Those to whom a child should look for guidance must be united in the guidance they give. Before breaking a familial bond, due to *ego*, a little introspection on the welfare of the child would let the couples to shed the *ego* and one the '*e*' is let to *'go'*, miracles happen and the *house* turns into a *home*, which would be a better place to live.

42. In the present case, the parents were separated only due to misunderstandings that arose between the two, when the applicant/wife sought the respondent/husband to extend his supportive hand to her professional career, while the respondent/husband insisted upon her to be at home and look after the needs of the children and the household chores. This misunderstanding sparked the couple to take divergent views and they started living separately for more than four years, in the process, wasting their time, energy and money in instituting litigations before various fora, ignoring their obligation towards their children, that of co-parenting. There is still time for them to rectify their mistakes by setting aside their personal indifferences, not for themselves, but in the interest of the welfare of their children. Being parents means sacrificing their future for the sake of their children's future. However big a sacrifice that is made by one or both the parents is not enough unless and until that makes the children's lives peaceful and secure.

43. Having given birth to the children, no parent should get frustrated of any issue atleast until they attain majority, even if his/her ambition fails, but on the converse, they should mould and shape their children's future keeping in mind the ambitions their young ones have. Both parents should start to live for the sake of their children by reconciling their differences and resolving the disputes that have arisen between them. They should be mindful of their responsibility towards their children, so as to bring them up as

responsible citizens who would be in a position to contribute to the society in the years to come.

44. From birth, children depend upon their parents, whose prime duty is to protect their children's rights at least until their kids grow up and are old enough to make their own way in this world. If one observes Nature around us, we witness how animals, birds and all creatures of God feed their young ones, teach them how to move about, look after them by staying with them and protecting them from predators until they are strong enough to look after themselves.

45. While so, it is very unfortunate that being well educated and civilized like the estranged couple in the case on hand, being parents to their childrens who are Gods precious gifts, are giving least importance to the well being of their children and are failing to discharge their parental duty by constantly fighting each other, that too for years together, which would have a considerable impact on the psyche of the children all througout their lives.

46. Generally, Courts will pass orders after hearing both sides and on perusal of oral and documentary evidence. In matters relating to custody of children, primarily, the Court will consider the welfare of the children and decide which parent is suitable to look after the child in a better manner by providing them all necessary facilities and comforts. However, what the Court cannot evaluate is to find out whether the child feels happy with one or other parent in whose it's custody is being handed over, while losing the companionship of another parent. Ultimately, the child is the silent sufferer, having lost the love and affection of other parent.

47. In order to know the preference or choice of the child, even when the Court interacts with the child, due to parental alienation at the instance of one parent, the child is not in a position to express on it's own view, except expressing a dislike of the other parent.

48. Therefore, in order to enable the child to get the love and affection of the parent who does not have the custody of the child, this Court has permitted visitation rights and even directed both the parents to move amicably by keeping aside their personal indifferences and create a healthy atmosphere so that the child can enjoy the moments of their lives by spending time with both parents. One such order passed by this Court in O.A. No. 633 of 2021 etc. dated 13.07.2022 is extracted as under:

> *6.* Marriage is a sacrosanct and holy union of two individuals and a child is the fruit of marriage. Bringing up a child is a duty for both parents.
> *7.* Separation is a misfortune, not much for spouses, but great for the children born to them, who are the ultimate

sufferers undergoing emotional pain and mental trauma silently. During separation, both spouses are not required to treat each other with equal respect or with love, but humanity demands to be nice to the other in front of their children.

8. Every child has a right to access both parents and get the love and affection of both parents. Whatever be the differences between the spouses, the child cannot be denied company of the other spouse.

9. Taking into consideration the concern and eagerness of estranged parents to see his/her child, this Court permits him/her to have access and spend some time with the child. But unfortunately, taking advantage of custody of the child, some spouses, having developed animosity towards the other, giving scant regard to the orders/directions of this Court, used to misbehave and indulge in ill-treating the spouse who visits to see his/her child which leads to quarrelling each other in front of the child, by which, the child gets extremely disappointed rather disturbed. Further, this creates a sensation of panic within the child and he/she feels frightened and helpless. These feelings of vulnerability and insecurity can shape a child's personality and last a lifetime.

10. Further, this Court also came across the instances wherein some parents are even indulging in parental alienation which drives the child to behave indifferently with the visiting parent, which is an inhuman act which deliberately poisoned the minds of the children against the mother/father to whom, they formerly loved and needed.

11. Every child has a right and need for an unthreatened and loving relationship with both the parents. To be denied that right by one parent, without sufficient justification, is itself a form of child abuse. Severe effects of parental alienation on children are self hatred, lack of trust, depression etc., as the children lose the capacity to give and accept love from a parent. Hatred is not an emotion that comes naturally to vast majority of children; it has to be taught. A Parent who would teach a child to hate or fear the other parent represents a grave and persistent danger to the mental and emotional health of that child. Alienated children are no less damaged than other child victims of extreme conflict, however abusive that relationship may be.

12. Therefore, in the interest and welfare of the children, it is the prime duty of both the parents to act and behave friendly before their child so that the child feels secured and enjoys the moments in the company of both parents which develops positive feelings in him and at the same

time, parents regain peace and happiness in the company of the children.

13. This Court expects that the spouses would comply with the orders/direction of this Court in the matter of visitation rights granting in favour of the spouses, without any deviation and only due to parental alienation, sometimes, the children are not willing and cooperating to see their mother/father, in which case, it is the obligation of the parents to explain the visitation rights of the abandoned parent and convince the children to move and spend with their mother/father. In the event there is failure on the part of the spouse who possesses the custody of the child, he/she will be held responsible for non-compliance of the order and ultimately, it would be considered that he/she is incapable of maintaining the child in his/her custody.

14. The spouse shall treat other spouse, though not as wife/husband due personal indifferences, but atleast treat him/her as a guest by paying more attention than wife/husband since in our customs and practice, a guest is treated as "Athidi Devo Bhava (Guest is God)" and show kindness and empathy towards the guest who is none other than the parent of the child and respect him/her in front of the child."

49. Children have two hands to hold both the mother and father till they walk throughout the life at least till they attain majority. This Court hopes and trusts that both the applicant-mother and respondent - father, being highly educated, cultured with all modern outlook and well off, would maintain cordial relations and conduct themselves decently, courteously and extend full cooperation for the well-being of minor children and take earnest efforts to join together by burying their ego and personal indifferences and start to live together along with their children and turn the house into a beautiful home if both of them want to see the real happiness of their children and for their bright future."

63. Before we part with this issue, we consider it necessary to sound a note of caution which transcends the adversarial confines of the present *lis*. Parental discord, when allowed to spill over into the consciousness of a child, has the potential to inflict wounds far deeper than those visible on the record of a case. The gradual and often imperceptible process by which a child is drawn into the vortex of

inter-parental conflict may culminate in a day when the child, having internalised fear, resentment, or indifference, no longer recognises one parent as a source of love, guidance, or security.

64. Such an outcome would represent not a victory for either parent but a collective failure of both. Courts can regulate custody, visitation, and access, but they cannot repair the emotional estrangement that follows when a child is compelled - consciously or otherwise - to take sides. It is, therefore, incumbent upon both parents to ensure that their personal grievances do not eclipse the child's right to an unburdened childhood, free from choices of loyalty, conflicts and emotional coercion. The future of a child ought not to become collateral damage in the battle between adults, for the cost of such alienation is borne not in the courtroom, but in the silent recesses of a child's developing mind.

65. We next turn to the aspect of cultural ethos and activities, which learned counsel appearing for both parties have argued, in equal measure, would be available to the children were custody to be granted to either parent.

66. In our considered opinion, the cultural ethos and activities relied upon by the parties would indeed be accessible to the children, irrespective of which parent they reside with. That said, it cannot be gainsaid that the presence of the children in West Bengal would provide a deeper and more immersive exposure to their native cultural milieu. At the same time, we take judicial notice of the fact that across the country, and particularly in cosmopolitan cities, Bengali communities have successfully preserved and practised their cultural traditions and activities.

67. There is yet another aspect which merits consideration, namely the application seeking permission for relocation filed by the Appellant-wife. In our view, the reliefs sought therein do not warrant acceptance. We are of this opinion for the reason that permitting the children to leave the Indian jurisdiction may result in a situation where, upon relocation, the children may not effectively return to India.

68. We also take note of the financial constraints presently faced by the Respondent-father and the undeniable reality that any relocation of the children outside the Indian jurisdiction would, in effect, extinguish the possibility of sustained and meaningful physical interaction between him and the children. Such an arrangement would reduce the paternal role to one of episodic virtual presence, a substitute that is neither adequate nor appropriate for children in their formative years. The law must recognise that childhood is not lived on screens, and the bond between a parent and a child cannot be sustained across time zones through intermittent digital interfaces alone.

69. A wholesome upbringing demands more than periodic visual access; it requires the daily, tangible presence of a parent who can guide, correct, comfort, and nurture. The presence of the father in the lives of the children is not a matter of parental entitlement but a facet of the children's own right to balanced emotional development. Having regard to the totality of circumstances, and particularly the need to restore and preserve the children's access to both parents in real and meaningful terms, we are satisfied that their welfare is best secured by their continued residence in India under the custody of the Respondent-father, with the Appellant-mother participating in their

lives through structured access and responsible co-parenting.

70. During the course of arguments, learned counsel appearing for the Appellant submitted that she was willing to abide by any Order of this Court to the effect that, in the event relocation were permitted, the terms and conditions of visitation granted in India could also be mirrored in an order before the relevant English Court(s). However, in light of the reasoning given hereinbefore, we are of the firm opinion that such an arrangement may not, in practical terms, be feasible or beneficial.

71. We now turn to the contention that the learned Family Court Judge has allegedly held the Appellant's desire to pursue her career against her, thereby denying her custody. In our considered view, the Impugned Judgment does not proceed on such a premise. Rather, the judgment reflects that the Appellant was unable to satisfactorily justify the repeated relocations from one city to another and, given the limited material placed before the learned Family Court Judge, no other reasonable conclusion could have been drawn from the record then available.

72. Insofar as the Contempt Petition is concerned, the same has been instituted by the Father against the Mother, alleging willful and deliberate disobedience of the Interim Order dated 23.08.2024, read with the subsequent Interim Order dated 25.10.2024, as passed by this Court in the pending Matrimonial Appeal. The said interim orders were issued during the pendency of the appeal and, *inter alia*, pertained to the Father's rights of access to and continued contact with the minor children, as well as directions relating to the updation of records concerning the paternity of the children.

73. The contempt proceedings thus emanate from alleged non-compliance with Interim Orders of this Court passed during the subsistence of the appeal. However, at this stage, the matrimonial appeal itself is being finally adjudicated and disposed of on merits. In such circumstances, this Court is of the considered view that it would neither be appropriate nor judicially expedient to undertake a detailed enquiry into the disputed questions of fact relating to compliance or otherwise of interim directions, particularly when the very substratum of those Interim Orders stands eclipsed by the final adjudication and disposal of the appeal.

74. It is trite that the jurisdiction in contempt is not intended to be invoked as a substitute for execution proceedings, nor as a forum for adjudicating contested factual narratives set up by rival parties. The power of contempt, being extraordinary in nature, is required to be exercised sparingly, cautiously, and only in cases where wilful and contumacious disobedience of court orders is clearly established. At the same time, this Court is conscious of the equally settled principle that no litigant can be permitted to undermine the authority of judicial orders or treat them as optional or inconsequential.

75. Balancing these competing considerations, and having regard to the fact that the interim directions were operative only during the pendency of the appeal, this Court does not deem it appropriate to proceed further with the present contempt petition or to render findings on the alleged non-compliance thereof. This, however, shall not be construed as condoning any breach, if any, of the orders of this Court.

76. It is clarified that both parties shall remain at liberty to pursue such remedies as may be available to them in law, in accordance with the final adjudication rendered in the Matrimonial Appeal. For the aforesaid reasons, we refrain from examining the issue of compliance with the said Interim Orders in the contempt proceedings.

CONCLUSION:

77. In light of the foregoing analysis, we proceed to conclude the *lis* as under:

I. We hold that the *Tender Years Doctrine* cannot be applied as a determinative principle in the present case, and that the issue of custody must necessarily be governed by the paramount consideration of the best interests of the children.

II. The application seeking relocation is rejected, and it is directed that the children shall not be removed from the territorial jurisdiction of the Indian courts.

III. Guided solely by the paramount consideration of the welfare and best interests of the children, and bearing in mind the need to preserve sibling unity, emotional continuity, and balanced parental presence, we direct that the custody of both minor children shall vest with the Respondent-father.

IV. We are satisfied that separating the siblings would be detrimental to their holistic growth and emotional well-being. Their joint upbringing under the care of the Respondent-father would best subserve their long-term psychological, moral, and emotional development, while also arresting the adverse effects of prolonged parental alienation.

V. We clarify that the present adjudication is confined solely to the

issue of custody. If either party seeks formulation, modification, or enforcement of visitation or access arrangements, including physical meetings, telephonic or electronic interaction, or interim custody during vacations or special occasions, it shall be open to the concerned party to approach the learned Family Court, which shall consider such request independently and pass appropriate directions in accordance with law, keeping the welfare and best interests of the children as the paramount consideration.

VI. The conferment of custody upon the Respondent-father shall not be construed as diminishing the role or responsibility of the Appellant-mother. On the contrary, consistent with her stated financial capacity and professed commitment to the children's welfare, she is expected to continue to contribute meaningfully towards their education, healthcare, and overall development. Such contribution is an integral facet of responsible co-parenting and operates independently of physical custody.

VII. To ensure the gradual restoration and strengthening of parental bonds, particularly between the father and the son, we direct that the children shall continue to undergo counselling under the supervision of qualified professionals at an institution of repute, as may be identified by the Respondent-father in consultation with the Appellant-mother.

VIII. We emphasise that both parents shall scrupulously ensure that the children are insulated from hostility, denigration, or emotional coercion against the other parent. The success of the custodial arrangement lies not merely in legal directions, but in

the maturity and cooperation with which the parents discharge their continuing obligations towards their children.

78. With the aforesaid directions and observations, the Matrimonial Appeal and the Contempt Petition, along with pending application(s), if any, stand disposed of.

79. No Order as to costs.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 23, 2026/ν/sm/kr