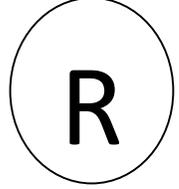


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF DECEMBER, 2023

PRESENT

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR



AND

THE HON'BLE MR. JUSTICE T.G. SHIVASHANKARE GOWDA

W.P.H.C NO. 43 OF 2023

BETWEEN:

...PETITIONER

(BY SHRI. PRAMOD NAIR, SENIOR ADVOCATE FOR
SHRI. SAMARTH M. RAJU, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
BY ITS HOME SECRETARY
DEPARTMENT OF HOME AFFAIRS
VIDHANA SOUDHA
BENGALURU-560 001.
2. UNION OF INDIA
REP. BY THE SECRETARY

MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI-110 011.
[DELETED IN TERMS OF ORDER DTD-26.05.2023]

3. CENTRAL BUREAU OF INVESTIGATION
OFFICE OF SUPERINTENDENT OF POLICE
NO.36, BELLARY ROAD
GANGANAGAR
BENGALURU-560 032.
[DELETED IN TERMS OF ORDER DTD-26.05.2023]
4. THE COMMISSIONER OF POLICE
COMMISSIONER OF POLICE
INFANTRY ROAD, VASANTH NAGAR
BENGALURU
KARNATAKA-560 001.
5. THE STATION HOUSE OFFICER
BASAVANAGAR
MARATHALLI .P.S
BENGALURU-560 037.
- 6.

...RESPONDENTS

(BY SHRI. M.V. ANOOP KUMAR, HCGP FOR R1, R4 AND R5;
SMT. JAYNA KOTHARI, SENIOR ADVOCATE FOR
SHRI. V. NAVEEN CHANDRA, ADVOCATE FOR R6;
V/O DATED 26.05.2023 R2 AND R3 ARE DELETED)

THIS WPHC IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE AN APPROPRIATE WRIT, ORDER OR DIRECTION IN THE NATURE OF HABEAS CORPUS TO RESPONDENT NOS. 1, 4 AND 5 TO IMMEDIATELY TRACE AND PRODUCE THE MINOR CHILD, MISS *****E BEFORE THIS HON'BLE COURT AND DELIVER HER CUSTODY TO THE PETITIONER-FATHER SO AS TO REPATRIATE HER TO USA IN COMPLIANCE WITH THE ORDER DATED 02.12.2022 PASSED BY THE FOREIGN COURT AND ETC.

THIS WPHC, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.11.2023, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, **P.S. DINESH KUMAR, J.**, PRONOUNCED THE FOLLOWING:-

ORDER

This writ petition by the father of a minor child, Miss *****e, aged 4 years, is presented with following prayers:

"a. Issue an appropriate writ, order or direction in the nature of Habeas Corpus to Respondent Nos. 1, 4 and 5 to immediately trace and produce the minor child, Miss Vindhya Kishore before this Hon'ble Court and deliver her custody to the Petitioner-father so as to repatriate her to USA in compliance with the order dated 02.12.2022 passed by the Foreign Court;

b. Issue an appropriate writ, order or direction in the nature of Habeas Corpus to Respondent No. 3 to trace Respondent No. 6 and through her produce Miss Vindhya Kishore before this Hon'ble Court, in view of the illegal detention of Miss Vindhya by Respondent No. 6 and violation of Custody Order dated 25.08.2022 passed by the Foreign Court;

*c. Issue appropriate directions to Respondent No. 6 to restore and handover legal and physical custody of Miss *****e to the Petitioner;*

d. Issue appropriate directions to Respondent No. 6 to facilitate Miss Vindhya's safe return to USA in compliance with the order dated 02.12.2022 passed by the Foreign Court;

*e. Issue appropriate directions to Respondent No. 6 to handover the requisite documents such as passport and other travel documents of the minor child, Miss *****e,*

which are in her custody, to the Petitioner- father in order to facilitate Miss Vindhya's return to USA;

f. Issue appropriate directions to Respondent No. 2 to provide requisite information pertaining to immigration of Miss Vindhya to India;

g. Allow costs of the present petition in favour of the Petitioner; and

h. Pass such other order or further orders and directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest justice."

2. Heard Shri. Pramod Nair, learned Senior Advocate for the Petitioner; Shri. M.V. Anoop Kumar, learned HCGP for the State; and Smt. Jayna Kothari, learned Senior Advocate for Respondent No.6.

3. Petitioner-Vayu Kishore's¹ case is, he is a citizen of the USA². Abhilasha (Respondent No. 6) is a citizen of Bharat by birth. They got married on 05.05.2018 in the USA. Their daughter-Vindhya was born on 19.05.2019 in the USA

¹ 'Kishore' for short.

² United States of America

and she is a citizen of the USA. Kishore, Abhilasha and their daughter Vindhya were residing peacefully in California, USA till October 2021, when Abhilasha decided to separate from Kishore under the pretext that he was forcing her to move to New Jersey, though that decision to move to New Jersey was taken jointly. However, Abhilasha refused to move, compelling Kishore to cancel the proposed shifting.

4. On 06.10.2021, Abhilasha, without the consent of Kishore, removed Vindhya from Kishore's legal and physical custody and moved to her parents' house in Discovery Bay, California. Thereafter, she continued to reside separately with Miss Vindhya. She rented an apartment near to her workplace. This restricted Kishore's access to Vindhya.

5. To Kishore's utter shock, on 30.03.2022, Abhilasha filed a Divorce Petition for dissolution of marriage in the Superior Court of California, County of Contra Costa on the ground of irreconcilable differences.

6. During the pendency of the Divorce Petition, Abhilasha filed an RFO³ seeking sole legal and physical custody of Vindhya on 03.05.2022. After hearing the parties, a Custody Order was passed on 25.08.2022 granting joint legal custody of the child to both Kishore and Abhilasha with 50:50 time share to each parent and Kishore was directed to pay child support for Vindhya and temporary spousal support to Abhilasha along with attorney's fees and costs. Additionally, the Foreign Court imposed travel restrictions, whereby any parent could not take Vindhya out of USA without the written permission of the other parent or the order of the Court.

7. On 30.07.2022, Kishore received an e-mail from Abhilasha, expressing her interest to visit Bharat for a three-week vacation along with Vindhya. Kishore replied to the said email on 31.07.2022, refusing to provide his consent on the ground that he was not comfortable with his daughter leaving the country. Despite that, on 08.09.2022, Abhilasha

³ Request for Order

left USA along with Vindhya and arrived in Bengaluru, Bharat. The e-mails did not provide any information regarding stay of Vindhya and Abhilasha in Bharat.

8. On 12.09.2022, Kishore sent an e-mail to Abhilasha stating that she had taken Vindhya without the Petitioner's written consent, in violation of Custody Order. Kishore demanded immediate return of Vindhya to USA along with the details of her current address in Bharat. He registered a complaint against Abhilasha for illegally removing Miss Vindhya from the Petitioner's custody. After the investigation, an incident report⁴ was filed reporting that Abhilasha had violated the Custody Order. The report also stated that Abhilasha departed from USA with Vindhya on 08.09.2022 by Singapore Airlines and arrived in Bengaluru. Various attempts were made by the Investigating Officer to contact Abhilasha but no response was received.

9. In the meanwhile, the Child Abduction Unit, District Attorney's Office filed felony charges for Child

⁴ dated 07.12.2022

custody deprivation and kidnapping against Abhilasha before the Foreign Court on 20.10.2022. On 16.10.2022, Kishore approached Ms. Sripriya Ranganathan, Deputy Chief of Mission, Indian Embassy. He also attempted to contact Consulate General Prasad on 04.11.2022 and 16.11.2022. Eventually, various correspondences were exchanged between the Petitioner and Mr. N.P. Singh, Consulate General of India, San Francisco, California from 29.09.2022 to 26.10.2022, it was informed to Kishore that no OCI Card or Visa was issued on Vindhya's passport for travelling to Bharat.

10. Kishore submitted his 'Supplemental Declaration' before the Foreign Court on 18.11.2022, seeking modification of the Custody Order in view of the non-compliance of Court's order by Abhilasha. Abhilasha was directed by the Foreign Court to immediately return Vindhya's custody to Kishore. The Foreign Court granted Vindhya's sole custody to Kishore for the purpose of obtaining and maintaining a passport. Additionally, the

Foreign Court also suspended Child and Spousal support granted to Abhilasha until she complied with the Custody Order passed by the Foreign Court.

11. Thus, Kishore's case in substance is, Abhilasha has illegally absconded to Bharat with Vindhya and remained untraceable since the past 8-9 months. Hence, this writ petition.

12. Praying to allow this Writ Petition, Shri. Pramod Nair, for Kishore, submitted that:

- Vindhya being a citizen of USA, is adapted to the cultural and social facets of USA;
- due to erratic decisions of Abhilasha, Vindhya had been exposed to various unknown locations even in USA including the day care and pre-school during the pandemic, which caused mental and psychological strain on Vindhya;
- Vindhya is being made to adjust in a new environment with new people and cultures

solely due to the unilateral decision of Abhilasha to move to Bharat without Kishore's consent in violation of the Custody Order and restraining orders of the Foreign Court;

- despite numerous attempts to locate Vindhya and Abhilasha in Bharat, they remained untraceable. Abhilasha has withheld all communications and continues to illegally detain Miss Vindhya in her unlawful custody in Bharat since the last 8-9 months;
- Abhilasha's actions have deprived Kishore of his lawful custody of Vindhya; and they are not only against Vindhya's interest and welfare but also in contravention of the travel restrictions imposed by the Foreign Court;
- Vindhya's presence in Bharat is illegal as no Visa or OCI Card was issued for her travel to Bharat;
- Abhilasha has acted in complete derogation of the International Travel Consent enshrined in

the laws of USA and the U.S. Customs and Border Protection laws, whereby a minor child of USA cannot travel internationally without consent of both parents;

- Abhilasha's allegations against Kishore has caused unwarranted mental agony to him. She has neglected Vindhya's physical, emotional and mental wellbeing and deprived her of love and care of her father and comfortable life which Vindhya was living in her home in USA;
- Vindhya will have better prospects upon return to USA as Kishore is well-placed and working in a high position with Google LLC and is competent to provide an highly productive and stable environment for her upbringing.
- the present petition has been filed within a few months of Vindhya's cross border parental abduction by Abhilasha and therefore, it cannot

be said that Vindhya has in the preceding 8-9 months developed roots in Bharat;

- there is no requirement of this Court to hold any elaborate inquiry into the question of custody of Vindhya as the Custody Order is for the welfare of Vindhya, which is of paramount consideration;
- the modern theory of conflict of laws prefers the jurisdiction of the State which has the most intimate contact with the issues arising in the case deciding custody of children;
- the Principle of Comity of Courts, though does not demand enforcement of an order passed by a Foreign Court, but deserves grave consideration;
- Abhilasha has knowledge of the Order dated 02.12.2022 passed by the Foreign Court, directing her to return Vindhya to the physical custody of Kishore.

13. Opposing the writ petition, Smt. Jayna Kothari, for Abhilasha submitted that:

- this writ petition is not maintainable as Vindhya is with her biological mother and therefore her custody cannot be held to be in unlawful;
- as per Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
- the fact that Vindhya was born in the USA, should not be a criteria for the adjudication, as Abhilasha is her natural guardian and the primary care giver who is a citizen of Bharat;
- welfare of a minor child is of paramount consideration;
- Vindhya, being a girl-child of tender age of 4 years, necessarily requires care and protection of her mother;

- Vindhya is living in Jamshedpur with her grandparents. She is admitted in one of the most reputed schools in Jamshedpur and she has developed roots and peer friendships within 1 year 2 months of schooling. She is well settled, comfortable and secured in surrounding environment in Jamshedpur;
- Abhilasha has secured a Government job, as a Medical Officer in Jamshedpur and is financially capable of providing all needs of her daughter;
- in September 2022, due to extenuating circumstances concerning the safety and security of the child, compelled Abhilasha to leave USA with her daughter;
- when Vindhya was sent to Kishore's house for an overnight stay, she came back with rashes, fecal staining on her genitals and complained of pain to such an extent that she could not even sit in the car due to rectal bleeding. Therefore,

the child cannot be sent back to such an environment as the child was not treated with proper care;

- the medical examination conducted in Bharat on 13.9.2022 showed that Vindhya had right posterior fissure, distension, tenderness of abdomen in the left lower quadrant. Her general condition was poor. In this kind of a condition sending Vindhya back to Kishore in the US would be of severe risk to her physical and mental health and safety;
- in matters involving custody of a minor, it is the interest and welfare of the child alone must be the primary consideration in adjudication of rival-claims;
- Abhilasha, along with Vindhya, was compelled to shift to Bharat from the US in September 2022 and she immediately informed Kishore

about them being in Bharat by an e-mail dated 10.09.2022;

- for 9 months, no action whatsoever was taken by Kishore to either contact the child or take any steps towards locating or meeting her, despite being fully aware that both Vindhya and Abhilasha were in Jamshedpur. Kishore's family members are also in Jamshedpur and he was well aware of Vindhya's whereabouts;
- this Court vide Order dated 20.06.2023, gave Kishore an opportunity to meet Vindhya, but, Kishore did not make any effort to meet or even contact Vindhya;
- a Guardianship Petition⁵ under the Guardian & Wards Act, seeking custody and guardianship of Vindhya, has been filed by Abhilasha before the Family Court at Jamshedpur, where Vindhya and the child are 'ordinarily residing' since

⁵ Original Suit No. 408/2023

September 2022 in terms of Section 9 of the said Act;

- this writ of Habeas Corpus cannot be used to execute foreign court orders, as foreign Court orders cannot over-ride the child's best interest.

14. We have carefully considered rival contentions and perused the records.

15. This is a case involving a girl child aged four years born to Kishore and Abhilasha. Kishore is an US Citizen and Abhilasha is a citizen of Bharat. Both parents hail from Jameshpur. The child was born in 2019 in the USA.

16. Abhilasha initiated legal proceedings against Kishore in the USA seeking divorce. In that case a Custody Order was passed 25.08.2022 holding that both the parents shall have the joint custody of the child.

17. In the light of the pleadings on record and submissions made on both sides, following points arise for consideration:

(i) Whether Vindhya's custody with Abhilasha is illegal?

(ii) Whether petitioner is entitled for Vindhya's custody and her return to the USA?

18. As both the above questions are interconnected they are considered together.

19. In substance, petitioner's case is that Abhilasha has illegally removed the Child, Vindhya from USA without his consent and thus violated the Foreign Court's order.

20. Abhilasha is Vindhya's biological mother. She is a citizen of Bharat, a Doctor hailing from Jamshedpur. Her husband Kishore works with Google Inc. Due to marital discord, Abhilasha moved out of the matrimonial home and started residing independently in the USA. She initiated proceedings in a Court in the USA seeking divorce. That

Court has passed a Custody Order holding that both parents shall have joint custody. Abhilasha's case is that when she had sent Vindhya to Kishore's house, Vindhya was not taken care of properly and when Abhilasha collected her, Vindhya was in a traumatic stage. Eventually, she took a decision to move to Bharat in 2022. Vindhya is now studying in Jamshedpur.

21. So far as Vindhya's custody with Abhilasha is concerned, we are inclined to hold that it is not an illegal custody because the law is fairly well settled on this point. As per Section 6 of Hindu Minority and Guardianship Act, 1956, custody of a female child aged below 5 years with the mother, is lawful.

22. In *Tejaswini Gaud Vs. Shekhar Jagdish Prasad Tewari*⁶, cited by Shri. Pramod Nair, is held as follows:

"19. Habeas corpus proceedings is not to justify or examine the legality of the custody. Habeas corpus proceedings is a medium through which the custody of the child is addressed to the discretion of the Court. Habeas

⁶ (2019) 7 SCC 42 (Paragraph 19)

*corpus is a prerogative writ which is an extraordinary remedy and the writ is issued where in the circumstances of the particular case, ordinary remedy provided by the law is either not available or is ineffective; otherwise a writ will not be issued. **In child custody matters, the power of the High Court in granting the writ is qualified only in cases where the detention of a minor by a person who is not entitled to his legal custody.** In view of the pronouncement on the issue in question by the Supreme Court and the High Courts, in our view, in child custody matters, **the writ of habeas corpus is maintainable where it is proved that the detention of a minor child by a parent or others was illegal and without any authority of law.**”*

(Emphasis Supplied)

23. Shri. Nair has next relied upon *Rajeswari Chandrashekar Ganesh Vs. The State of Tamil Nadu and others*⁷. In that case, the Apex Court adverting to *Nithya Anand Raghavan vs. State of NCT of Delhi*⁸, has held that the object and scope of a Writ of Habeas Corpus in the context of a claim relating to custody of a minor child is to ascertain whether the custody of child is unlawful and illegal

⁷ 2022 Live Law SC 605

⁸ (2017) 8 SCC 454

and whether the welfare of the child requires that the present custody should be changed and the child be handed over to the care and custody of any other person. We may record that in *Nithya Anand Raghavan*, it is held that the High Court must examine at the threshold whether the minor is in lawful or unlawful custody of another person. After noting that the minor child, in that case was in the custody of biological mother, it was held that the custody of minor was lawful.

24. In *Nithya Anand Raghavan*⁹, which is referred in *Rajeswari Chandrashekar*, the Apex Court has held as follows:

*"48. The next question to be considered by the High Court would be whether an order passed by the foreign court, directing the mother to produce the child before it, would render the custody of the minor unlawful? Indubitably, **merely because such an order is passed by the foreign court, the custody of the minor would not become unlawful per se.**"*

(Emphasis Supplied)

⁹ (2017) 8 SCC 454

25. Further, in para 49 and 50, the Apex Court has held as follows:

"49. On a bare perusal of this order, it is noticed that it is an ex parte order passed against the mother after recording prima facie satisfaction that the minor Nethra Anand (a girl born on 7-8-2009) was as on 2-7-2015, habitually resident in the jurisdiction of England and Wales and was wrongfully removed from England on 2-7-2015 and has been wrongfully retained in India since then. Further, the Courts of England and Wales have jurisdiction in the matters of parental responsibility over the child pursuant to Articles 8 and 10 of BIIR. For which reason, it has been ordered that the minor shall remain a ward of that Court during her minority or until further order; and the mother (appellant herein) shall return or cause the return of the minor forthwith to England and Wales in any event not later than 22-1-2016. Indeed, this order has not been challenged by the appellant so far nor has the appellant applied for modification thereof before the court concerned (foreign court). Even on a fair reading of this order, it is not possible to hold that the custody of the minor with her mother has been declared to be unlawful. At best, the appellant may have violated the direction to return the minor to England, who has been ordered to be a ward of the court during her minority and further order. No finding has been rendered that till the minor returns to England, the custody of the minor with the mother has become or will be treated as unlawful including for the

*purposes of considering a petition for issuance of writ of habeas corpus. We may not be understood to have said that such a finding is permissible in law. **We hold that the custody of the minor with the appellant, being her biological mother, will have to be presumed to be lawful.***

50. *The High Court in such a situation may then examine whether the return of the minor to his/her native state would be in the interests of the minor or would be harmful. **While doing so, the High Court would be well within its jurisdiction if satisfied, that having regard to the totality of the facts and circumstances, it would be in the interests and welfare of the minor child to decline return of the child to the country from where he/she had been removed; then such an order must be passed without being fixated with the factum of an order of the foreign court directing return of the child within the stipulated time, since the order of the foreign court must yield to the welfare of the child.** For answering this issue, there can be no straitjacket formulae or mathematical exactitude. Nor can the fact that the other parent had already approached the foreign court or was successful in getting an order from the foreign court for production of the child, be a decisive factor. Similarly, the parent having custody of the minor has not resorted to any substantive proceeding for custody of the child, cannot whittle down the overarching principle of the best interests and welfare of the child to be considered by the Court. That ought to be the paramount consideration."*

(Emphasis Supplied)

26. It is relevant to note that Abhilasha has moved to Bharat in September 2022 and since then Vindhya is living with her in Jamshedpur. It was submitted that Vindhya is also attending a School. Admittedly, the present Writ Petition was filed on May 25, 2023, which is nearly eight months after Vindhya's arrival in Bharat. Thus, in our view, in a case of this nature which involves emotional attachment and bonding, eight months is fairly a long period. Suffice to note that Kishore has not taken any immediate action.

27. It is also relevant to note that no evidence is forthcoming to show that any harm has been caused to Vindhya by Abhilasha except the violation of the Foreign Court's Order.

28. So far as the violation of the Foreign Court's order is concerned, the Apex Court in *Nithya Anand Raghavan*¹⁰, has held that 'the order of the foreign court must yield to the welfare of the child'. For considering the

¹⁰ Nithya Anand Raghavan Vs. State (NCT of Delhi) and Ors (para 51)

factum of interest of the child, the Court must take into account all the attending circumstances and totality of situation on case to case basis.

29. In *Vasudha Sethi and Ors. Vs. Kiran V. Bhaskar and Anr*¹¹, it was held as follows:

"33. A question was raised whether the High Court was justified in passing an order directing the appellant no.1 to return to USA along with the minor child on or before a particular date. **The issue of custody of a minor, whether in a petition seeking habeas corpus or in a custody petition, has to be decided on the touchstone of the principle that the welfare of a minor is of paramount consideration.** The Courts, in such proceedings, cannot decide where the parents should reside as it will affect the right to privacy of the parents. **We may note here that a writ Court while dealing with the issue of habeas corpus cannot direct a parent to leave India and to go abroad with the child. If such orders are passed against the wishes of a parent, it will offend her/his right to privacy.** A parent has to be given an option to go abroad with the child. It ultimately depends on the parent concerned to decide and opt for giving a company to the minor child for the sake of the welfare of the child. It will all depend on the priorities of the concerned parent. In this case, on a conjoint reading of

¹¹ AIR 2022 SC 476

clauses (i) to (iii) of paragraph 55 of the judgment, it is apparent that such an option has been given to the appellant no.1.”

(Emphasis Supplied)

30. In a case of similar nature, keeping in view the welfare of the minor child, this Bench in *Smt. Archana Pradhan Vs. State Of Karnataka*¹², has granted the custody of a minor child to his father though there was an order passed by a German Court.

31. It was urged by Smt. Kothari that, Guardianship Petition has been filed in the Family Court, Jamshedpur, where Vindhya is 'ordinarily residing' for past 9 months. However, Kishore has not made any efforts to meet Vindhya ever since her departure from the USA.

32. Smt. Kothari has relied upon *Vivek Singh Vs. Romani Singh*¹³, wherein, the Apex Court has held as follows:

¹² WPHC 79/2023 decided on 29.09.2023

¹³ (2017) 3 SCC 231

"17. While coming to the conclusion that the respondent as mother was more appropriate to have the custody of the child and under the given circumstances the respondent herein was fully competent to take care of the child, the High Court proceeded with the following discussion: (Romani Singh case, SCC OnLine Del paras 31-32)

31. The role of the mother in the development of a child's personality can never be doubted. **A child gets the best protection through the mother. It is a most natural thing for any child to grow up in the company of one's mother. The company of the mother is the most natural thing for a child. Neither the father nor any other person can give the same kind of love, affection, care and sympathies to a child as that of a mother. The company of a mother is more valuable to a growing up female child unless there are compelling and justifiable reasons, a child should not be deprived of the company of the mother.** The company of the mother is always in the welfare of the minor child."

(Emphasis Supplied)

33. After hearing the learned Senior Advocates on both sides, keeping in view the welfare of the child in mind, we heard the parties and their learned Senior Advocates in chamber on 18.11.2023. They reiterated their versions

elaborately which included allegations against each other and their interpersonal relation which are not part of the record. In our view, it is not desirable to place those versions verbatim in public domain. Suffice to record that Vindhya's demeanor firmly disclosed that she was comfortable only with her mother.

34. It was also contended on behalf of Kishore that he is well placed financially and he would make necessary arrangements for Abhilasha and the child. It was assured that Kishore would make all efforts to mitigate the consequences of violation of the Foreign Court's order.

35. Similarly, Abhilasha also submitted that she shall have no objection for Kishore to visit Vindhya in Jamshedpur and also communicate on phone.

36. Keeping in view the welfare of Vindhya, in our considered opinion, Vindhya being a four year old girl child, it would be in her best interest to remain in the custody of her mother.

37. Though, the husband may be financially well placed, in the facts and circumstances of this case and the bitter hostility between the couple, in our considered view, it would not be appropriate to compel Abhilasha to move to the USA. However, it is open for the parties to work out their rights with regard to custody of child and visitation rights separately. We trust and hope that Vindhya shall have the benefit of love and affection of both parents and they shall endeavour to achieve this goal.

38. In light of the above discussion, the writ petition is ***dismissed***.

No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**