



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 25901 OF 2024 (GM-FC)

BETWEEN:

SMT. SNEHA HARISHCHANDRA SUMITHRA
W/O SRI. SUDHIR DAS VENKATA DAS
AGED ABOUT 42 YEARS,
PERMANENTLY
RESIDING AT 120
CINDER ROAD,
EDISON,
NEW JERSEY -08820
UNITED STATES OF AMERICA

...PETITIONER

(BY SMT.S.SUSHEELA, SENIOR COUNSEL A/2W

SMT.JEEVIKA, ADVOCATE)

AND:

MR.SUDHIR DAS VENKATA DAS
AGED ABOUT 46 YEARS,
R/AT NO. 760,
7th CROSS,





5th MAIN,
MC LAYOUT,
VIJAY NAGAR,
BANGALORE – 560 040
KARNATAKA

...RESPONDENT

(BY SRI.D.R.RAVISHANKAR, SENIOR COUNSEL A/W
SRI. MANJUNATH S., ADVOCATE)

THIS PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO
QUASH THE IMPUGNED ORDER IN IA NO. 3/2021 DATED:
08.11.2022 IN G AND WC NO. 7/2020 PASSED BY THE
FAMILY COURT, BENGALURU WHICH WAS ALLOWED VIDE
ANNEXURE-G.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED ON 03.07.2025, COMING ON FOR
PRONOUNCEMENT OF ORDER THIS DAY, THE COURT
PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



CAV ORDER

Aggrieved by the order passed in I.A.No.3/2021 in G&WC.No.7/2020 dated 08.11.2022 by the III Additional Principal Judge, Family Court, Bengaluru, the petitioner/mother is before this Court.

2. The parties are referred to as father and mother for the sake of convenience.

3. The father had filed G&WC.No.7/2020 for declaration that the child is in his lawful custody and to restrain the mother from interfering with his lawful guardianship and custody of the child. In that, the mother had filed I.A.No.3/2021 under Section 9 of the Guardians and Wards Act, 1890, stating that the Family Court at Bangalore has no jurisdiction.

4. The facts of the case as stated in the G&WC by the father is that the marriage between the parties was solemnized on 21.12.2008 and they are blessed with a son on 30.08.2011. The father has stated about the relationship between the parties and the behaviour of the mother. The father was deployed to UK through his company on project work and after



making necessary arrangements, the mother and the child joined the father. After returning from UK, the mother felt that she needed to get international work experience and do a full time MBA abroad. Both of them discussed the health of the father-in-law and the need for them to be here to support him. Both of them have discussed the need for the child to grow up with the immediate and extended family and cousins in India and finally agreed on a time frame of around 2 years after which they would come back to Bangalore. To ensure that the wife could work as soon as possible which was her choice, the father took on a role that would allow him to go on a L1-A visa, which would allow the wife to get an employment authorization (EAD) at the earliest. The father was working with M/s. Cognizant Technology Solutions as a Senior Architect and on intra-company transfer, the father shifted to New Jersey along with the mother and the child in the month of October 2014. Then the child was enrolled to a play school there and the father has narrated about how the mother was behaving with the child.



5. It is the case that even in the U.S., the father has been taking care of the child. Thereafter, the mother started working with M/s. Investors Bank and has been gainfully employed. The relationship between both the mother and father was cordial until 2017. Subsequently, the mother started abusing the father in the presence of the son and she has been in the habit of constantly abusing both the father and the son. It is stated that the father had expressed his desire of changing his role from management to a technical role for which the father and mother would be required to go back to India. The father also expressed that this would also help him to attend to his father's health and the same was communicated to the mother way back in the month of June 2019 itself. However, the mother wilfully ignored the same. The father had accepted the change in his role in the end of July 2019 and he had all intentions to consider going back to US if his father's health was better and the same was also brought to the notice of the mother.

6. As a matter of ritual, Dhanvanthari pooja was scheduled on 10.08.2019 which was organised by the parents of the father for the well being of the son and he along with his



son came to India to attend the ritual on 26.07.2019. On 07.08.2019, the mother also arrived to participate in the said ritual and both the father and the mother performed the homa together. In the month of July 2019, the father of the respondent was diagnosed to be suffering from cardio vascular issues. Then the father decided to stay back in India and support his parents. He had informed the mother that he has taken up a role within the same company that requires him to be in Bangalore and this would also enable him to attend to his father's health. But the mother refused to stay with the father along with his parents in Bangalore. The reason given by the mother was that she wanted the American citizenship at any cost and she was not willing to stay back in Bangalore and left alone to New Jersey in the last week of August 2019. Over the years, the child had visited India many times and was always very happy in India. Then he admitted the child to the school on 23.08.2019 during which time the mother was very much with the father. The father has stated how comfortable the child was with the father.



7. On 11.12.2019, the mother along with the jurisdictional police approached the father and his parents and informed that the mother has secured an *ex-parte* order from the Superior Court of New Jersey, Chancery Division, Family Part Middlesex County, whereby the father was directed to return the child to the State of New Jersey. It is stated that the father is working with M/s. Salesforce.com as a Senior Architect and is drawing a salary of Rs.62,00,000/- per annum and is in a position to afford the child's well being. It is stated that the mother is only interested in her career prospective and to have an international exposure and she is making hectic attempts to take the child back to New Jersey, USA even without bothering about the wishes of the child who time and again mentions that India is a happy place. It is stated that the cause of action arose on 03.12.2019 when the mother has obtained an order before the Superior Court of New Jersey. It is stated that the child is born in Bangalore and ordinarily resides within the jurisdiction of the Family Court, Bengaluru.

8. The Family Court had rejected the application filed by the mother. While rejecting the application filed by the mother,



the Family Court had observed that it is an admitted fact that the High Court of Karnataka passed orders on 22.12.2021 in WPHC.No.145/2019 in the petition filed by the father and also order dated 22.12.2020 in the application filed by the mother. Admittedly, issue relating to the jurisdiction of the Court as required under Guardian and Wards Act has not been adjudicated either directly or indirectly. It is observed that it is not in dispute that the son is born in India. Thereafter, the son travelled abroad with the parents and the parents of the child were employed in UK for sometime and thereafter in USA. The parents travelled to India along with the son and as on the date of filing of the petition, the son was in India and it is not in dispute. The said admitted facts lead to the conclusion that as on the date of filing of this petition, the child was ordinarily residing within the jurisdiction of the Family Court along with the natural guardian father. Hence, the Family Court had held that it is having jurisdiction to decide the same. Aggrieved thereby, the mother is before this Court.

9. Learned Senior counsel appearing on behalf of the mother submits that the order impugned is contrary to the



settled law and the same is liable to be set aside. It is submitted that the learned Judge has erred in finding that 'admittedly the parents of the child travelled to India along with the child' when the factual matrix surrounding the travel of the child from the US to India is in dispute and ought to be adjudicated in trial. The finding of the Family Court that the child is ordinarily residing within the jurisdiction of the Family Court is also without looking into the facts and circumstances of the case. The Family Court without any basis had decided that the ordinary residence of the minor child is in Bangalore. It is submitted that the Family Court has failed to consider the application that is filed by the mother and in a mechanical manner has held that the Family Court has got the jurisdiction.

10. Learned Senior counsel appearing for the father submits that the child has been residing in India. He joined in school and he is residing in India right from the year 2019. Even in Habeas Corpus Petition also, the Division Bench of this Court had dismissed the petition filed by the mother and when the matter had approached the Hon'ble Apex Court, the same was confirmed. It is submitted that the Family Court had rightly



rejected the application filed by the mother and there are no grounds to interfere with the order passed by the Family Court.

11. The writ petition is filed in the year 2024. Notices were ordered and this matter came up before this Court on 10.06.2025, this Court had passed the following order:

"Learned Senior Counsel appearing for the respondent/father submits that on 05.06.2025, the mother had gone to the school and had taken away the child. The child was usually residing with the father. Even as per the order of the Hon'ble Apex Court with regard to the custody and visitation of the child, the mother was permitted to visit the child and this is an highhanded action on the part of the mother and as such they are constrained to move the I.A. Learned counsel appearing for the mother submits that the incomplete I.A. was served on her and the papers that are served on her are not legible. She was only informed in the morning and she submits that she needs to get instructions in this regard.

Considering the submission of the Learned Senior Counsel appearing for the father and the fact that the boy was residing with the father from last 3 years and the mother had taken the child without information to the father from the school, this Court deems it appropriate to direct the mother to be present before this Court along with the child on 11.06.2025.

List this matter on 11.06.2025."

12. When the matter came up on 11.06.2025, this Court had passed the following order:



"In spite of an order passed by this Court on 10.06.2025, the mother had failed to appear before this Court along with the child. Serious allegations are made by the father stating that the mother had sent certain mails from New Jersey as if it has been sent by the child from India. The mother on 05.06.2025 had gone to the School and had taken the child with her.

It is submitted by the learned counsel appearing for the mother that there is an order by the Division Bench of this Court that whenever she comes to India, she can have the custody of the child and the son has sent the messages to her saying that the father was not treating him properly. As such, she had to go to the School and taken him along with her. As per the order passed by the Hon'ble Apex Court, she has already moved the Division Bench of this Court and she filed an application and served a copy on the counsel appearing for the father. Learned counsel appearing for the father had denied the same and submitted that no such papers are served on them.

This Court, when specifically directed the mother to be present before the Court, today she is not present and it is submitted that she has some personal inconvenience and she will come before the Court on Friday i.e., on 13.06.2025. The Division Bench of this Court, in the order has observed that the mother can have custody of the child, whenever she comes to India, that does not mean that when the cases are pending before the Courts, the mother can take the child from School.

Considering serious allegation made on behalf of both the parties and also the welfare of the child, the mother is directed to appear before the Court along with child tomorrow i.e., on 12.06.2025 by 10.30 a.m. The counsel's repeated submission that it is not possible for the mother to appear without giving any specific reason, cannot be accepted and particularly having taken the law into her hands, she has to be present before this Court or else the Court will be left with no other option, but to take coercive steps.

List this matter on 12.06.2025. It is also made it clear that the mother shall not take the child outside the jurisdiction of this Court."

13. On 13.06.2025, this Court had passed the following order:



"As per the order passed by this Court, the mother and the son are present before the Court. It is submitted by the learned counsel appearing for the petitioner/mother that as she was not properly advised, she couldn't appear before the Court. It is submitted that if the Court interacts with the child, the Court will be able to understand what are the difficulties that are faced by the child which prompted him to write mails to the mother.

The custody of the boy is with the father from the last 8 years and when a Division Bench of this Court in a Habeas Corpus petition has passed an order that the father has to send the tickets every 6 months and whenever she is in India she can have the exclusive custody of the child. That order was questioned before the Hon'ble Apex Court and the Hon'ble Apex Court had refused to interfere with the said order passed by the Division Bench and however, gave liberty to the petitioner/mother to file appropriate application before this Court seeking visitation/custody. It is an admitted fact as of now no such application is filed. The writ petition is before this Court questioning the order passed by the Family Court that it has jurisdiction to deal with this case. Considering all these aspects and particularly the fact that the custody of the child is with the father from the year 2019, this Court is passing the following:

ORDER

- i. The mother shall immediately hand over the child to the custody of the father.***
 - ii. If mother wants to file any application for the visitation during her stay or how the visitation has to go on in future, in that regard an application shall be filed and this Court will pass appropriate orders.***
 - iii. The mother, father and the child shall be present before the Court at 2.00 pm. on 17.06.2025.***
- List this matter on 17.06.2025."***

14. Pursuant to the said order, this Court had interacted with both the parties in the chambers on 18.06.2025. During the interaction, the boy has expressed that he wants to go



along with his mother and he is not interested to stay with the father. As the father was having some visa issues, sending the child to U.S. at that point of time was not in the interest of the parties. This Court has passed an order on 23.06.2025 which reads as follows:

"Heard the learned counsel appearing for the petitioner/ mother and the Learned Senior Counsel appearing for the respondent/father. As far as the earlier proposal with regard to the boarding school is concerned, it is submitted that the boy is not interested and in the middle of the year it is not feasible to join the boy as no admissions are open. The same is denied by the learned counsel appearing for the petitioner/mother. The mother's concern was that as the boy is interested to go to US and stay with her, she wants to take the boy to US.

2. This Court had interacted with the boy on the last occasion. Sending the boy to US at this stage where the father will not be in a position to meet his son in view of his Visa issue is not a right decision in the interest of the parties. The main concerns of the mother is about his academics, curricular, extracurricular activities, medical concerns both physical and psychological etc. In this regard, what she expects the father to do, when she wants to speak with the child and what are the other things she wants the father to do in the interest of the boy. All these requirements shall be placed before this Court and in advance a copy of the same shall be given to the learned counsel appearing for the father and basing on the inputs from both the sides, this Court will pass an order wherein there will be a periodical monitoring by the Family Court with regard to the orders passed by this Court which is in the best interest of the child.

3. As per the earlier order passed by this Court, the mother had handed over the child to the custody of the father. Now the mother is staying in India as per the order passed by the Hon'ble Supreme Court as well as the Division Bench of this Court. The mother can have custody of the child when she is in India. Hence, the



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father is directed to hand over the custody of the child to the mother and the mother shall take care of all the activities that the child is doing in usual course.

4. It is brought to the notice of this Court that the mother has applied for the renewal of passport. The same is denied by the learned counsel appearing for the mother and the mother is also before this Court. The G & WC. petition filed by the father is pending before the Courts in India. It is needless to say that without the permission of the Court, the boy shall not be taken outside the country.

5. When the boy is in the mother's custody, the father can have access to the audio and video calls every day.

6. List this matter on 30.06.2025."

15. Pursuant to the orders passed by this Court, the mother had filed a parenting proposal before this Court. It is stated that until the G&WC case is decided, the child may be permitted to stay with her in India. This will ensure that the child does not miss both parents and his extended family. The mother will stay with her brother so that the child can continue to go to the same school that he is attending presently. In the event the mother needs to return to her work, in dire situations, for a temporary period in between, her mother, brother and sister-in-law will continue to look after the son. The son will attend counselling sessions to help him heal from the trauma he has gone through, get a medical check-up and get pending immunizations. During her stay, the mother will ensure



that the son does not feel alienated from the father and he communicates with the father through audio/video calls at his convenience and continues to receive the love and affection of his father. As the second and least desired option, if the child is sent to a boarding school until the G&WC petition is decided, until he gets admitted to a boarding school, the child may be permitted to stay with the mother and her family in India. It is stated that keeping in mind the child's best interests, the mother will request for exception approvals from her employer to work from India in the short term, given the extenuating circumstances until the G&WC case is decided and the child can continue to stay with his mother and brother's family. It is stated that the child has already been denied a normal childhood for much of his formative years i.e., between the age of 8 to 14 years of life and does not deserve for this to continue any longer.

16. The father has also filed a parenting proposal. It is stated that joint decision making can be done with regard to education, healthcare, extracurricular and developmental activities of the child. In the event of disagreement, both



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parties shall attempt resolution through direct telephonic communication. In emergency situation, the father shall take necessary action in the best interest of the child and inform the mother. The communication between the parties shall be respectful, professional and strictly related to the minor child. It is stated that father ensures that the mother has regular access to the child via phone or video calls subject to the child's school, health and activities scheduled. If the child is unresponsive, the parent seeking communication may contact the other to coordinate access. The mother shall intimate the father of her intended visit at least two weeks in advance, clearly specifying her arrival and departure dates, as well as her proposed custody schedule during the stay and both parents shall have access to the child's records and activities, health care, extra curricular activities. Till the time the custody of the minor child is adjudicated by the Family Court, the father undertakes to ensure that the child is raised in a nurturing, emotionally secure and culturally enriched environment which includes regular engagement with immediate and extended family. Whenever the mother visits India, she shall have the exclusive custody during her stay. During her stay in India, she



shall have to assume full responsibility with regard to school, educational, medical, healthcare, coaching, tuition and extracurricular activities of the child. The maternal grandparents/uncle may meet the child once every 15 days for a maximum of 2 hours on a weekend, subject to prior written intimation and scheduling with the father. The father will file a compliance affidavit/report before the Court once every two or three months.

17. The father has filed a reply to the proposal of the mother. It is stated that the proposal made by the mother essentially seeks custody of the minor child to be granted to the mother and her parents, despite the proceedings under G&WC being pending before the Family Court. Such a claim is not maintainable and violates the findings recorded in WPHC.No.145/2019. The Division Bench while disposing of WPHC.No.145/2019 has clearly observed that in the best interest of the child, he should continue residing with the father in India until custody is adjudicated. The judgment in WPHC.No.145/2019 has attained finality. The mother has not challenged the said judgment and therefore she cannot seek to



modify the findings in this writ petition. Further, the mother's proposal is vague and it does not specify the duration of her stay in Bangalore. The proposal of the mother to send the child to the boarding school cannot be accepted. The child has been with the father for six long years and the father has consistently attended to all aspects of the child's growth.

18. As there was no scope for settlement, this Court has taken up the matter for hearing.

19. Having heard the learned Senior counsels on either side, perused the entire material on record. The father has filed the G&WC before the Family Court, Bengaluru. Admittedly, the parties have come to India on 10.08.2019 to perform a religious ceremony. The mother and father participated in the pooja. In the month of July, the paternal grandfather was diagnosed to be suffering from cardiovascular issues. Then the father decided to stay back in India and support his parents. Till such time, the ordinary residence of the boy is in U.S. On 26.08.2019, the mother received an email from the father that the son has been admitted to the school in Bangalore. It is the case of the mother that the father has forcibly detained the



child with him. Having no other go, the mother had gone to the U.S.

20. The mother had filed a case before the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County and an order was passed directing the father to return the child to the State of New Jersey and she came back to India. Then the mother had filed a Habeas Corpus petition in WPHC.No.145/2019. In the Habeas Corpus petition, the Division Bench at paragraph No.14 of the order dated 22.12.2021 had observed that in the best interest of the child, he should be allowed to stay with the father in India till decision of the issue pertaining to custody of the son in a proceeding under Guardian and Wards Act is adjudicated, needless to state that the mother is at liberty to prosecute her remedy in the courts in U.S. In view of the law laid down by the Supreme Court in case of ***Yashita Sahu Vs. State of Rajasthan and Others¹***, it is trite law that extraordinary jurisdiction of the Court can be invoked in the best interest of the child. It is also well settled in law that concept of guardianship of a ward is

¹ (2020) 3 SCC 67



essentially different from custody of the ward. The Court has to ensure that sufficient visitation rights to a parent who is not given child's custody should be granted so that the child may not lose social, physical and psychological contact with her. The parent who is denied the custody of the child should have access to the child specifically where both parents live in different countries. The parents are under an obligation to provide for an environment which is reasonably conducive to the development of the child. It is in the best interest of the child to have parental care of both the parents if not joint then at least separate. Then the Division Bench had passed an order permitting the mother to communicate with the child and also the father shall inform the day to day developments of the child to the mother. The father shall provide tickets by air to the mother every six months to enable her to travel to India to meet the child at her convenience. During the period of her stay, when she comes to India from the USA, the child will be in the exclusive custody of the mother.

21. The mother had carried this matter to the Hon'ble Apex Court by filing SLP(Crl.)No.1127/2022 and by order dated



15.02.2022, the Hon'ble Apex Court had dismissed the special leave petition observing that they see no reason to interfere with the order passed by the High Court. However, the trial Court may decide the petition filed under Guardianship and Wards Act expeditiously.

22. Then the mother had filed I.A.No.3/2021 stating that the Family Court at Bangalore has no jurisdiction. This Court had perused the order passed by the trial Court on jurisdiction. The trial Court had observed that there is no dispute that the child is born in India. Thereafter, the child travelled abroad with the parents and the parents of the child were immediately employed in UK for some time and thereafter, in USA. Admittedly, the parents of the child travelled to India along with the child and as on the date of filing of the petition, the child was in India and it is not in dispute. The said admitted facts leads to the conclusion that as on the date of filing of this petition, the child was ordinarily residing within the jurisdiction of the trial Court along with the natural guardian father and accordingly, the Court had rejected the objections raised by the mother regarding the jurisdiction of the Court.



23. In the considered opinion of this Court, the reasons that are assigned by the trial Court are contrary to law and contrary to the pleadings of the parties. From the very pleadings of the father, they have come to India only for attending a pooja. It is his case that after coming to India, as his father was unwell, he decided to stay back in India. The mother did not want to stay back and according to her, the son will have a better future in U.S.

24. Before dwelling into the merits of the matter, it is appropriate to look at Section 9(1) of the Guardians and Wards Act.

***"9. Court having jurisdiction to entertain application.—
(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides."***

25. The expression 'ordinarily resides' is not defined in the Act. The Hon'ble Apex Court and also several other High Courts in catena of judgments have considered what is the ordinary residence of a minor child. The Courts have consistently held that a child's mere physical presence in a new place, especially due to unilateral relocation does not



automatically create ordinary residence for jurisdictional purposes. Jurisdiction cannot be artificially created by removing the child to another place. The Hon'ble Apex Court deprecated the practice of unilateral removal of child and parent cannot take advantage of his or her own wrong and observed that welfare of the child includes stability, continuity and protection from forum shopping, illegal/unilateral removal cannot become the foundation of jurisdiction.

26. Family disputes often produce collateral damage in the form of custody battles over minor children. The Courts are coming across the cases where one parent unilaterally removes the child from the shared matrimonial home and relocates to another city or states. Thereafter initiates custody or guardianship proceedings in the new place. This poses serious concern relating to jurisdiction, forum shopping, abuse of legal process and the welfare and stability of the children. Custody litigation can never be permitted to become a strategic weapon in matrimonial warfare. The law has evolved clear principles to discourage unilateral child removal and to prevent jurisdiction from being artificially created by such conduct. In child custody



matters, the welfare of the child is the paramount consideration.

27. The jurisdiction is the threshold issue, then comes the question of welfare of the child. The Courts have a responsibility to strike a fine balance between parental rights to custody and child's rights to stability and relationship with both the parents. It is settled law that where statutory language is clear mandatory and unambiguous, the Courts are bound to give effect to it as enacted. The Hon'ble Apex Court in case of ***Padma Sundar Rao Vs. State of Tamilnadu and Others***² held that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature not a plaything of interpretation. The word "shall" be used in the provision leaves no discretion to the Court.

28. At any stretch of imagination, Bangalore cannot be the ordinary residence of the boy and the Family Court at Bangalore has no jurisdiction. As on the date the petition is filed, the boy is an ordinary resident of U.S. Unfortunately, the

² 2002 (3) SCC 533



mother could not succeed in the litigation from the last 6 years and she is made to run from pillar to post. In the upward trend of litigation in matrimonial disputes, no person shall be permitted to take advantage of the procedural latches. When both the parents were working in U.S., they could have submitted themselves to the jurisdiction of the Court at New Jersey and the father could have obtained an order from the Court at U.S. It is the argument of the father that the mother could have stayed back in India. When the mother is having a flourishing career in U.S., she cannot be compelled to stay in India and the father keeping the child in India cannot compel the mother to stay back in India. The mother has every right to continue her profession and have a happy life along with her family. This is nothing but blackmailing the mother to come in terms with the expectations of the father.

29. When this Court had interacted with the boy in the chambers, he had literally pleaded this Court that he wants to go along with the mother to the U.S.. He has stated that he and his father stays alone in the house and he is very much missing his mother and he wants to go along with the mother.



The child was consistently stating that he wants to go to U.S. along with the mother. When this Court has asked the child earlier he has stated before the Courts that he wants to stay with the father, why he is expressing otherwise. The boy has replied that not to hurt the father's feelings he has stated before the Courts in that way. But it is not possible for him to stay away from the mother. It is also stated that in view of the differences between the mother and father he had to face the consequences and sometimes, the frustration of the father. While interacting with this Court, the mother has expressed what mistake she had committed, for no fault of the mother and her son, they are made to suffer for years. She wanted to have a flourishing career and she wants to give the child a good future. For that she is working and from the last 8 years, she has been travelling every two months to India to be with the child and she is not able to understand how many years it would take for the legal battle where the future of the child is at stake. She has expressed lot of concerns about the health of the child. Though this Court is not aware of the health condition of the child, for his age, he looks very thin and weak. The father had expressed before the Court that both the father and



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son are sharing a good bond and in all respects, he is taking care of the child.

30. At this juncture, it is appropriate to refer to various judgment of the Hon'ble Apex Court. In case of **V. Ravichandran Vs. Union of India and others**³, the Hon'ble Apex Court had observed as follows:

"8. On June 28, 2007 respondent no.6 brought minor Adithya to India informing the petitioner that she would be residing with her parents in Chennai. On August 08, 2007, the petitioner filed the petition for modification (Custody) and Violation Petition (Custody) before the Family Court of the State of New York on which a show cause notice came to be issued to respondent no.6. On that very day, the petitioner was granted temporary sole legal and physical custody of Adithya and respondent no. 6 was directed to immediately turn over the minor child and his passport to the petitioner and further her custodial time with the minor child was suspended and it was ordered that the issue of custody of Adithya shall be heard in the jurisdiction of the United States Courts, specifically, the Albany County Family Court. It transpires that the Family Court of the State of New York has issued child abuse non-bailable warrants against respondent no.6.

29. While dealing with a case of custody of a child removed by a parent from one country to another in contravention to the orders of the court where the parties had set up their matrimonial home, the court in the country to which child has been removed must first consider the question whether the court could conduct an elaborate enquiry on the question of custody or by dealing with the matter summarily order a parent to return custody of the child to the country from which the child was removed and all aspects relating to child's welfare be investigated in a court in his own country.

³ 2010 (1) SCC 174



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Should the court take a view that an elaborate enquiry is necessary, obviously the court is bound to consider the welfare and happiness of the child as the paramount consideration and go into all relevant aspects of welfare of child including stability and security, loving and understanding care and guidance and full development of the child's character, personality and talents. While doing so, the order of a foreign court as to his custody may be given due weight; the weight and persuasive effect of a foreign judgment must depend on the circumstances of each case.

38. In a case such as the present one, we are satisfied that return of minor Adithya to United States of America, for the time being, from where he has been removed and brought here would be in the best interest of the child and also such order is justified in view of the assurances given by the petitioner that he would bear all the traveling expenses and make living arrangements for respondent no. 6 in the United States of America till the necessary orders are passed by the competent court; that the petitioner would comply with the custody/parenting rights as per consent order dated June 18, 2007 till such time as the competent court in United States of America takes a further decision; that the petitioner will request that the warrants against respondent no. 6 be dropped; that the petitioner will not file or pursue any criminal charges for violation by respondent no. 6 of the consent order in the United States of America and that if any application is filed by respondent no. 6 in the competent court in United States of America, the petitioner shall cooperate in expeditious hearing of such application. The petitioner has also stated that he has obtained confirmation from Martha Hunt Elementary School, Murphy, Texas, 75094, that minor son Adithya will be admitted to school forthwith.

39. The learned Senior Counsel for respondent no. 6 sought to raise an objection regarding the maintainability of habeas corpus petition under Article 32 of the Constitution before this Court but we are not persuaded to accept the same. Suffice it to say that in the peculiar facts and circumstances of the case which have already been noticed above and the order that we intend to pass, invocation of jurisdiction of this Court under Article 32 cannot be said to be inappropriate.

40. We record our appreciation for the work done by the concerned officers/officials of CBI in tracing the minor child Adithya and producing him in less than two



months of the order passed by this Court, although, the Police Officers and Officials of different States failed in tracing the child Adithya and respondent no. 6 for more than two years. But for the earnest efforts on the part of the CBI authorities, it would not have been possible for this Court to hear and decide this habeas corpus petition involving the sensitive issue concerning a child of seven years who is a foreign national.

41. In the result and for the reasons stated, we pass the following order :

(i) The respondent 6 shall act as per the consent order dated June 18, 2007 passed by the Family Court of the State of New York till such time any further order is passed on the petition that may be moved by the parties henceforth and, accordingly, she will take the child Adithya of her own to the United States of America within fifteen days from today and report to that court.

(ii) The petitioner shall bear all the traveling expenses of the respondent no. 6 and minor child Adithya and make arrangements for the residence of respondent no. 6 in the United States of America till further orders are passed by the competent court.

(iii) The petitioner shall request the authorities that the warrants against respondent no. 6 be dropped. He shall not file or pursue any criminal charges for violation by respondent no. 6 of the consent order in the United States of America.

(iv) The respondent no. 6 shall furnish her address and contact number in India to the CBI authorities and also inform them in advance the date and flight details of her departure along with child Adithya for United States of America.

(v) In the event of respondent no. 6 not taking the child Adithya of her own to United States of America within fifteen days from today, child Adithya with his passport shall be restored to the custody of the petitioner to be taken to United States of America. The child will be a ward of the concerned court that passed the consent order dated June 18, 2007. It will be open to respondent no. 6 to move that court for a review of the custody of the child, if so advised.

(vi) The parties shall bear their own costs."



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31. The Hon'ble Apex Court in case of ***Ruchi Majoo Vs. Sanjeev Majoo***⁴ had observed as follows:

"24. It is evident from a bare reading of the above that the solitary test for determining the jurisdiction of the court under Section 9 of the Act is the 'ordinary residence' of the minor. The expression used is "Where the minor ordinarily resides". Now whether the minor is ordinarily residing at a given place is primarily a question of intention which in turn is a question of fact. It may at best be a mixed question of law and fact, but unless the jurisdictional facts are admitted it can never be a pure question of law, capable of being answered without an enquiry into the factual aspects of the controversy.

45. It is difficult to appreciate how the respondent could in the light of the above communications still argue that the decision to allow the appellant and master Kush to stay back in India was taken under any coercion or duress. It is also difficult to appreciate how the respondent could change his mind so soon after the above E-mails and rush to a Court in U.S. for custody of the minor accusing the appellant of illegal abduction, a charge which is belied by his letter dated 19th July, 2008 and the E-mails extracted above. The fact remains that Kush was ordinarily residing with the appellant his mother and has been admitted to a school, where he has been studying for the past nearly three years. The unilateral reversal of a decision by one of the two parents could not change the fact situation as to the minor being an ordinary resident of Delhi, when the decision was taken jointly by both the parents.

46. In the light of what we have stated above, the High Court was not, in our opinion, right in holding that the respondent's version regarding the letter in question having been obtained under threat and coercion was acceptable. The High Court appeared to be of the view that if the letter had not been written under duress and coercion there was no reason for the respondent to move a guardianship petition before U.S. Court. That reasoning has not appealed to us. The question whether

⁴ (2011) 6 SCC 479



or not the letter was obtained under duress and coercion could not be decided only on the basis of the institution of proceedings by the respondent in the U.S. Court. If the letter was under duress and coercion, there was no reason why the respondent should not have repudiated the same no sooner he landed in America and the alleged duress and coercion had ceased. Far from doing so the respondent continued to support that decision even when he was far away from any duress and coercion alleged by him till the time he suddenly changed his mind and started accusing the appellant of abduction. The High Court failed to notice these aspects and fell in error in accepting the version of the respondent and dismissing the application filed by the appellant. In the circumstances we answer question no.1 in the negative.

62. It does not require much persuasion for us to hold that the issue whether the Court should hold a summary or a detailed enquiry would arise only if the Court finds that it has the jurisdiction to entertain the matter. If the answer to the question touching jurisdiction is in the negative the logical result has to be an order of dismissal of the proceedings or return of the application for presentation before the Court competent to entertain the same. A Court that has no jurisdiction to entertain a petition for custody cannot pass any order or issue any direction for the return of the child to the country from where he has been removed, no matter such removal is found to be in violation of an order issued by a Court in that country. The party aggrieved of such removal, may seek any other remedy legally open to it. But no redress to such a party will be permissible before the Court who finds that it has no jurisdiction to entertain the proceedings.

63. We have while dealing with question No.1 above held that the Court at Delhi was in the facts and circumstances of the case competent to entertain the application filed by the appellant. What needs to be examined is whether the High Court was right in relying upon the principle of comity of courts and dismissing the application. Our answer is in the negative. The reasons are not far to seek. The first and foremost of them being that 'comity of courts' principle ensures that foreign judgments and orders are unconditionally conclusive of the matter in controversy. This is all the more so where the courts in this country deal with matters concerning the interest and welfare of minors



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including their custody. Interest and welfare of the minor being paramount, a competent court in this country is entitled and indeed duty bound to examine the matter independently, taking the foreign judgment, if any, only as an input for its final adjudication. Decisions of this Court in Dhanwanti Joshi, and Sarita Sharma's cases, (supra) clearly support that proposition.

64. Secondly, the respondent's case that the minor was removed from the jurisdiction of the American Courts in contravention of the orders passed by them, is not factually correct. Unlike V. Ravi Chandran's case (supra), where the minor was removed in violation of an order passed by the American Court there were no proceedings between the parties in any Court in America before they came to India with the minor. Such proceedings were instituted by the respondent only after he had agreed to leave the appellant and the minor behind in India, for the former to explore career options and the latter to get admitted to a school. The charge of abduction contrary to a valid order granting custody is, therefore, untenable.

65. Thirdly, because the minor has been living in India and pursuing his studies in a reputed school in Delhi for nearly three years now. In the course of the hearing of the case, we had an occasion to interact with the minor in our chambers. He appears to be happy with his studies and school and does not evince any interest in returning to his school in America. His concern was more related to the abduction charge and consequent harassment being faced by his mother and maternal grandparents. We shall advert to this aspect a little later, but for the present we only need to mention that the minor appears to be settled in his environment including his school studies and friends. He also holds the respondent responsible for the troubles which his mother is undergoing and is quite critical about the respondent getting married to another woman.

66. Fourthly, because even the respondent does not grudge the appellant getting custody of the minor, provided she returns to America with the minor. Mr. Shishodia was asking to make a solemn statement that the respondent would not, oppose the appellant's prayer for the custody of the minor, before the American Court. All that the respondent wants is that the minor is brought up and educated in America, instead of India,



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as the minor would benefit from the same. The appellant was not willing to accept that proposal, for according to her she has no intentions of returning to that country in the foreseeable future especially after she has had a very traumatic period on account of matrimonial discord with the respondent. Besides, the offer was according to the appellant, only meant to score a point more than giving any real benefit to the minor.

67. In the light of all these circumstances, repatriation of the minor to the United States, on the principle of 'comity of courts' does not appear to us to be an acceptable option worthy of being exercised at this stage. Dismissal of the application for custody in disregard of the attendant circumstances referred to above was not in our view a proper exercise of discretion by the High Court. Interest of the minor shall be better served if he continued in the custody of his mother the appellant in this appeal, especially when the respondent has contracted a second marriage and did not appear to be keen for having actual custody of the minor. Question No.2 is also for the above reasons answered in the negative."

32. The Hon'ble Apex Court in case of **Lahari Sakhamuri**

Vs. Sobhan Kodali⁵ had observed as follows:

"2. The persons who are affected are the minor children who have been directly impacted because of the fact that their parents have not been able to resolve their differences. Children are very sensitive and due to the conflict of their parents if could not be resolved at the earliest, the minor children became the victim of time for which they are not at fault but indeed the sufferers. It has to be examined in different perspective also that rights of the child as a progressive approach to the best interest of the child and what is needed in the best interest of the child is the one which has to be deciphered by us in the instant proceedings through the manifold arguments being advanced from both sides keeping in view the principles of law on the subject but still remain a guess work.

⁵ (2019) 7 SCC 311



12. Thereafter, the respondent (Sobhan Kodali) moved an application under Order 7 Rule 11 CPC in the proceedings instituted in the Family Court, Hyderabad asserting that the Family Court, Hyderabad has no jurisdiction to decide the application for the custody of minor children as they are not the ordinary resident of Hyderabad but that came to be rejected vide order dated 15 th September, 2017 holding that the Family Court, Hyderabad is competent to exercise jurisdiction to examine the application filed at the instance of the appellant (Lahari Sakhamuri) on merits.

45. Undisputedly, the appellant (Lahari Sakhamuri) and respondent (Sobhan Kodali) both were residing in US since 2004 2005 and are well educated as the appellant (Lahari Sakhamuri) did Biomedical Engineering and the respondent (Sobhan Kodali) is a Cardiologist by profession. Their marriage was solemnized on 14 th March, 2008 and two loving children namely, Arthin and Neysa, were born from this wedlock in US on 14 th March, 2012 and 13th October 2014. Both have started going to school. They purchased a house in their joint name and moved to the new house in January, 2016. Something must have been gone wrong between them which compelled the appellant (Lahari Sakhamuri) in filing a divorce and custody petition of the minor children in the Court of Common Pleas of Lehigh County, Pennsylvania Civil Division on 21st December, 2016, seeking divorce, equitable distribution of marital property, primary physical and shared legal custody of the minor children. In the divorce petition, the appellant (Lahari Sakhamuri) made a specific averment about the permanent residence in US for both the parties and securing children's custody and also admitted that both the minor children were residing in US. It was also admitted that both the children were in joint custody of the appellant (Lahari Sakhamuri) and respondent (Sobhan Kodali) and they resided at 2085, Bellflower Lane, Canter Valley, Pennsylvania 18034.

46. It was her own admission in the declaration form annexed to the application that no mode of domestic violence or abuse was ever subjected upon her or upon the minor children by the respondent (Sobhan Kodali). The respondent (Sobhan Kodali) had purchased to and fro tickets of the appellant (Lahari Sakhamuri) and of minor children as also of his mother in law who was staying together in their matrimonial home, US with return tickets of 24th April, 2017 but after coming to India on 23rd March, 2017, because of the alleged death



of her maternal grandmother, the appellant (Lahari Sakhamuri) refused to return back and was advised to file a Guardianship Petition before the Family Court, Hyderabad on 12 th April, 2017 and took the exparte order concealing the material facts from the Family Court that such a petition is pending in US filed at her instance and there was an order passed on 21 st December, 2016 restraining both the parties not to change residence of the children which would affect the other parties ability to exercise custodial rights.

47. It is not in dispute that both the minor children, from the very inception of their birth, till removal from the US on 23 rd March, 2017 were living with their parents in US. This fact was admitted by the appellant (Lahari Sakhamuri) also in the guardianship petition filed before the Family Court, Hyderabad and also in the divorce and custody petition filed by her in US and only after hearing learned counsel for the parties, order was passed by the US Court on 22nd May, 2017 on the emergency custody petition granting temporary physical custody of the children with further direction to the appellant (Lahari Sakhamuri) to return along with the children to the jurisdiction of US Court on 2 nd June, 2017. In case she was aggrieved by the order dated 22 nd May, 2017 passed by the US Court after affording an opportunity of hearing which she contested through her Attorney, all the courses were available to her to assail the order of the Court. Since the appellant (Lahari Sakhamuri) failed in returning the children to the jurisdiction of the US Court despite order dated 22nd May, 2017, there was no option left with the respondent (Sobhan Kodali) but to file a Habeas Corpus Petition and pray that the children be repatriated back to US in compliance of the order of the US Court.

48. It is true that this Court has to keep in mind the best interest of the child as the paramount consideration. The observations of the US Court clearly show that principle of welfare of the children has been taken into consideration by the US Court in passing of the order as it reiterates that both the parties are necessary for proper upbringing of the children and the ultimate decision of custody and guardianship of the two minor children will be taken by the US which has the exclusive jurisdiction to take the decision as the children happened to be the US citizens and further order been passed on the respondent's emergency petition with special release in custody on 9th March, 2018 permitting the respondent (Sobhan Kodali) to apply for US



passports on behalf of the minor children without appellant (Lahari Sakhamuri) being mother's consent. The appellant (Lahari Sakhamuri) cannot disregard the proceedings instituted at her instance before the US Court and she must participate in those proceedings by engaging solicitors of her choice to espouse her cause.

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



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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.

53. The child's psychological balance is deeply affected through the marital disruption and adjustment for changes is affected by the way parents continue positive relationships with their children. To focus on the child rights in case of parental conflict is a proactive step towards looking into this special situation demanding a specific articulation of child rights.

54. The judicial resolution of a custody dispute may permanently affect or even end the parties' legal relationship but the social and psychological relationship will usually continue and it seems appropriate that a negotiated resolution between the parents is preferable from the child's perspective for several reasons. A child's future relationship with each of his parents may be better maintained and his existing relationship is less damaged by a negotiated settlement than by one imposed by a court after adversarial proceedings.

55. In the present case, there is every possibility that the parties may reconcile and start over their relationship afresh, at least for the sake of happiness of their own offspring if for no other reason. The parties are indeed mature and sensible enough to understand that the ordinary wear and tear of married life has to be put up in within the larger interests of their own happiness and of the healthy, normal growth and



development of their offspring, whom destiny has entrusted to their joint parental care. Spouses must come over the temperamental disharmony which usually exists in every marriage, rather than magnifying it with impulsive desires and passions. Parents are not only caretakers, but they are instrumental in the development of their child's social, emotional, cognitive and physical wellbeing and work harmoniously to give their children a happy home to which they are justly entitled to. We hope and trust that the parties will forget and forgive their differences and join hands together in providing the congenial atmosphere which may be good not for themselves but also for the development of their minor children.

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.

57. We accordingly direct the appellant (Lahari Sakhamuri) to return to US along with both the children, namely, Arthin and Neysa, within a period of six weeks from today. We further direct respondent (Sobhan Kodali) to make all arrangements of stay and travel expenses(including air tickets) of the appellant (Lahari Sakhamuri) and both the children as well as her companion, if any, in their own house or if she is not willing to stay for any personal reasons, make all arrangements for stay at the place of her choice at reasonable cost. In case the appellant (Lahari Sakhamuri) reports that she is not inclined to travel to US along with the minor children, or do not show any interest to accompany the children, the respondent (Sobhan Kodali) shall deposit a sum of Rs. 15 lakhs in the bank account of the appellant (Lahari Sakhamuri) and proof of deposit shall be placed in the Registry of the High Court of Andhra Pradesh who shall thereupon call upon the Consulate General of the US at Hyderabad to take the custody of the minor children, namely, Arthin and Neysa, along with their passports and other travel documents from the appellant (Lahari Sakhamuri) and hand over the same to the respondent (Sobhan Kodali) with a condition for taking the custody of the minor children (Arthin and Neysa) for being taken to US and hand over to the jurisdictional Court in US until further orders are passed in the pending proceedings by the US Court. The appellant (Lahari Sakhamuri) will be



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at liberty to utilize the money deposited by the respondent (Sobhan Kodali) in connection with her visit to US, if so desired, in future and the respondent (Sobhan Kodali) shall not take any coercive steps against her which in any manner may result in adverse consequences."

33. Coming to the facts of the present case, the boy is aged about 15 years and he wants to stay and spend time with the mother. Having spent these many years with the father, the boy is entitled to spend time with the mother. The present case is not merely a dispute between two litigating parents asserting their legal rights over the minor child but it reflects the tragic consequences of prolonged litigation in which innocent child becomes the silent sufferer. A mother's love and affection occupy a unique and irreplaceable place in the emotional development of the child. The nurturing care, emotional warmth and psychological security a mother provides are fundamental to the balanced growth of the child. This kind of alienation from the mother, particularly at the tender age, leaves emotional consequences on the child which will have a long lasting effect. Childhood is a delicate phase of life in which emotional bonds play a very crucial role in shaping personality and emotional stability. A prolonged alienation from one parent,



particularly from the mother may create feelings of confusion, insecurity and emotional deprivation. This Court cannot lose sight of the fact that the mother had to wage relentless legal battles over the past six years merely to regain the companionship and affection of her own child. This will inflict deep psychological distress upon the parent who is deprived of the company of the child. This Court is conscious of the fact that no judicial order can compensate the six long years of separation and the childhood years that have passed cannot be restored. Custody litigation, when prolonged, often degenerates into a contest of endurance between the parents, but the child becomes the victim of such conflict. The Courts must therefore guard against permitting the legal process to become an instrument that perpetuates emotional separation between a child and a loving parent. The Hon'ble Apex Court has repeatedly emphasized that custody disputes must not be treated as adversarial battles. The ultimate focus of the Court must always remain on psychological and emotional welfare of the child which includes preserving and nurturing the bond between the child and both parents.



34. The Courts must not permit circumstances where a parent, by retaining the child during the pendency of litigation is able to create a situation, whereby the passage of time itself becomes an argument against restoring the earlier position. Time spent in litigation should not become a weapon to defeat the legitimate emotional claims of a parent or to perpetuate the separation between a child and the parent who seeks only to nurture and care for him. This case is a classic example and a reminder that custody disputes must be resolved with sensitivity. Urgency and a constant awareness that the true stake holder in such proceedings is the child, whose childhood continues to pass while the litigation persists. In the considered opinion of this Court, Bangalore is not the ordinary residence of the child and the Family Court at Bengaluru has no jurisdiction and the Family Court ought to have allowed the application. Accordingly, this Court is passing the following:

ORDER

- i. The order passed in I.A.No.3/2021 in G&WC.No.7/2020 dated 08.11.2022 by the III Additional Principal Judge, Family Court,



Bengaluru, is set aside and I.A.No.3/2021 is allowed.

- ii. The respondent/father is at liberty to file an appropriate application seeking custody of the son before the Courts at U.S. which is the ordinary residence of the child.
- iii. The respondent/father shall handover the custody of the child to the mother by 1st week of May 2026 and by that time, the academic year of the child will be completed and the custody shall remain with the petitioner/mother till the respondent/father obtains necessary orders from the competent Court.
- iv. The petitioner/mother shall come to India along with the child every six months, subject to the academic requirements of the boy, so that the respondent/father will be able to spend time with the child.



- v. Whenever the respondent/father visits U.S., he shall have the exclusive custody of the child subject to the child's academic and other activities.
- vi. Accordingly, the writ petition is ***allowed***.
- vii. All I.As. in this petition shall stand closed.

Sd/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 SI No.: 2