



2025:DHC:4483-DB



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

Reserved on: 13.05.2025
Pronounced on: 28.05.2025

- + **MAT.APP.(F.C.) 135/2024**
SUNAINA RAO KOMMINENIAppellant
Through: Mr.Jai Sahai Endlaw, Ms.
Charu Dalal, Mr. Choudhary
Amit Bassoya & Ms. Simran
Johar, Advs.
- versus
ABHIRAM BALUSURespondent
Through: Mr. Prabhjit Jauhar, Mr.
Aadarsh Kothari, Advs.
- + **W.P.(CRL) 912/2023 & CRL.M.A. 8240/2023, CRL.M.A.
21862/2023, CRL.M.A. 35408/2023, CRL.M.A. 12885/2024,
CRL.M.A. 14772/2025**
- ABHIRAM BALUSU**Petitioner
Through: Mr. Prabhjit Jauhar, Mr.
Aadarsh Kothari & Ms. Sahej
Kataria, Advs.
- versus
STATE (GOVT. OF N.C.T. OF DELHI) & ORS.Respondents
Through: Mr. Rinku Garg, Mr. MK
Kunal Narang, Mr. Manik Rai
Bhalla, Mr. Prashant Dahiya &
Mr. Jitender Singh, Advs. for
R4.
Mr.Jai Sahai Endlaw, Ms.Charu
Dalal, Mr. Choudhary Amit
Bassoya & Ms. Simran Johar,
Advs. for R-2 & R-3.



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CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE RENU BHATNAGAR

J U D G M E N T

NAVIN CHAWLA, J.

1. **MAT.APP.(F.C.) 135/2024** has been filed by Smt. Sunaina Rao Kommineni (hereinafter referred to as the, 'Wife'), challenging the Order dated 15.04.2024, passed by the learned Judge, Family Court-01, South East District, Saket Courts, Delhi (hereinafter referred to as, 'Family Court'), in G.P. No. 27/2023, titled ***Smt. Sunaina Rao Kommineni v. Sh. Abhiram Balsus***, (hereinafter referred to as, 'GP'), whereby the GP filed by the wife under Sections 7, 8, 9 and 25 of the Guardians and Wards Act, 1890 (hereinafter referred to as the 'G&W Act') has been rejected by the learned Family Court for want of territorial jurisdiction.

2. **W.P.(CRL) 912/2023** has been filed by Mr. Abhiram Balusu (hereinafter referred to as the 'husband'), *inter alia*, praying for a Writ of Habeas Corpus, directing the production of the male minor child of the parties, and further seeking permission to take the minor child back to Arizona, USA.

3. As the appeal and the Writ Petition are based on identical facts and involve overlapping issues concerning the welfare of the minor child, they are being decided together by way of this common judgment.



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FACTS OF THE CASE:

4. The husband has been residing in the USA since January 2005. Since November 2012, he has been employed with Infineon Technologies in Arizona, USA. The parties were married in accordance with Hindu rites and ceremonies at Vijayawada, Andhra Pradesh on 15.08.2013. Immediately after the marriage, the wife travelled to the USA with the husband, and since then and till 25.11.2022, was residing in the USA with the husband. From the wedlock, a male child was born to the parties on 30.10.2017. Having been born in the USA, he is an American citizen by birth and resided with the parties in the USA till 25.11.2022, when he, along with his parents, travelled to India for a holiday with the return tickets booked for all three of them to return to the USA on 09.01.2023.

5. Admittedly, upon landing in Delhi on 25.11.2022, the wife, with the assistance of the Airport Security, took the minor child away from the husband.

6. She thereafter, on 01.12.2022, filed a Writ Petition, being W.P. (Crl.) No. 2888/2022, titled ***Sunaina Rao Kommineni & Anr. v. State Govt. of NCT of Delhi & Ors.***, seeking protective orders for herself and for her minor child.

7. This Court, by its Order dated 05.12.2022 passed in the said Writ Petition, directed that the numbers of the Beat Constable and the SHO be provided to the wife in case of any immediate threat. The Writ Petition was eventually disposed of as withdrawn by an Order dated 22.02.2023.



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8. The wife, in the meantime, on 02.01.2023, filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DV Act'), being CT No. 11/2023, before the Court of the learned Metropolitan Magistrate, Mahila Court, South East District, Saket Courts, Delhi.

9. She also claims to have got the minor child admitted to a Pre-school at DPS International School, Delhi, in January 2023.

10. As far as the husband is concerned, on 23.01.2023, upon his return to the USA, he filed an Emergency Motion for minor child Custody (Legal Decision Making and Parenting Time) for the minor son, in the Superior Court, Maricopa County, Arizona, USA. The Arizona Court, while declining the motion to pass an *ex-parte* order, *vide* Order dated 25.01.2023, issued notice on the same, directing the parties to appear virtually before it for a Resolution Management Conference on 27.02.2023. The husband then filed a motion before the Arizona Court, requesting it to convert the hearing on 27.02.2023 to a temporary order evidentiary hearing. On the said application, the Arizona Court, by an Order dated 06.02.2023, directed the parties to appear for an evidentiary hearing before it on 07.03.2023.

11. In the meantime, the wife filed a petition under Section 13(1)(ia) of the Hindu Marriage Act, 1955, seeking divorce from the husband before the learned Family Court at Saket, being HMA No. 282/2023.

12. By an Order dated 10.03.2023, the Arizona Court, upon hearing the parties, observed that, as the minor child's home State had been in



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Arizona within 6 months before the filing of the Motion for Temporary Order, and although the minor child was absent from the State, as a parent or person acting as a parent continued to live in Arizona, the said Court has jurisdiction and the Indian Court would lack territorial jurisdiction over the matter. The Court further directed that the minor child's best interest would lie with the primary residential parent, that is, the husband, to have the sole legal decision-making authority regarding the minor child. The Court also set down the parenting plans, directing the wife to return the minor child to the husband in Arizona no later than 17.03.2023. It was further directed that if the wife returns to Arizona and resides in the Phoenix Metropolitan Area, the parties shall share an equal parenting time schedule on a week-on/week-off basis, in order to minimize the parties' interaction. The exchange shall occur on Sundays at 05:00 P.M. in the parking lot of the police department that is the closest to the husband's residence. When the minor child is with the other parent, each parent shall have video calls with the minor child on Tuesdays and Thursdays at 05:00 P.M. for up to 20 minutes. Additionally, it was directed that if the wife does not return to Arizona and reside in the Phoenix Metropolitan Area, then she shall exercise parenting time on the second full weekend of each month, in Arizona, from Friday at 05:00 P.M. till Monday at 05:00 P.M.. The wife would also have video calls with the minor child on Tuesdays and Thursdays at 05:00 P.M., (Arizona time), with each call lasting up to 20 minutes. It was directed that the minor child will reside with the husband in



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Arizona at all times not specifically designated for the wife's parenting time. Other conditions of joint parenting were also stipulated in the order. It was specifically directed that in case the wife fails to return the minor child to the husband in Arizona as ordered, then the husband shall retrieve the minor child in India from the wife as early as 19.03.2023, paying all the travel expenses for himself and the minor child subject to reallocation. The wife was directed to cooperate in returning the minor child over to the husband at the airport upon his arrival.

13. As the wife did not return to the USA along with the minor child in compliance with the above order, the husband filed the present writ petition on 21.03.2023 before this Court.

14. Instead of complying with the above order, the wife, on 18.03.2023, filed the above-mentioned GP under the G&W Act, *inter alia*, seeking a declaration that she is the sole and legal guardian of the minor child and seeking permanent and sole custody of the minor child.

15. As far as the territorial jurisdiction is concerned, the wife contended as under:-

"27) That the Petitioner has left the matrimonial home and is currently residing with her parents in Delhi and within the territorial limits of this Hon'ble Court. Therefore, this Hon'ble Court has territorial jurisdiction to entertain the present case."

16. The husband filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) in the aforementioned GP,



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and the same has been allowed by the learned Family Court by way of its Impugned Order dated 15.04.2024. The learned Family Court observed that as the minor child had barely stayed in Delhi for 113 days prior to the filing of the petition under the G&W Act, the minor child cannot be said to be “ordinarily residing” in Delhi as on the date of the institution of the said petition and, therefore, the learned Family Court lacked the territorial jurisdiction to try and entertain the said petition. The learned Family Court further held that merely because a marital discord had arisen between the parties and the wife intends to reside in Delhi along with the minor child, it could not be a ground for her to claim permanent custody of the minor child within the legal system of India. Accordingly, the GP filed by the wife was rejected under Order VII Rule 11 of the CPC.

17. As noted hereinabove, the present appeal has been filed by the wife challenging the above order.

SUBMISSIONS ON BEHALF OF LEARNED COUNSEL FOR THE HUSBAND:

18. In the above factual background, Mr. Prabhjit Jauhar, the learned counsel for the husband, contends that the parties were settled residents of Arizona, USA, since August 2013. They have obtained Green Cards, that is, permanent residency in the USA, clearly indicating their intent to stay permanently in the USA. The minor child was also born in the USA on 30.10.2017 and remained there until the parties decided to visit India for a short vacation on 25.11.2022. The minor child was also, therefore, a permanent resident



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of the USA.

19. He submits that the minor child was well-settled in the USA and was, in fact, attending a school where he was performing well. In support of this submission, he places reliance on a certificate dated 12.01.2023 issued by the Head of School, Ahwatukee Foothills Montessori.

20. He places extensive reliance on the order passed by the Superior Court of Arizona, which has been referred by us in detail hereinabove. He submits that merely because the wife does not wish to reside with the husband, she cannot retain the custody of the minor child in India. He submits that a direction should, therefore, be passed for the return of the minor child to the USA, which is the country of his birth and permanent residence, so that he may reside with the husband, who is the natural guardian of the minor child.

21. He submits that the best interest of the minor child would also lie in returning to the USA, wherein he would be entitled to various other facilities such as better education, social security, and overall development.

22. In support of his prayer, he places reliance on the Judgments of the Supreme Court in *Surinder Kaur Sandhu v. Harbax Singh Sandhu & Anr.*, (1984) 3 SCC 698; *Rohith Tammana Gowda v. State of Karnataka & Ors*, (2022) 20 SCC 550; *Lahari Sakhamuri v. Sobhan Kodali*, (2019) 7 SCC 311; *Yashita Sahu v. State of Rajasthan & Ors.*, (2020) 3 SCC 67; and of the Bombay High Court in *Abhay v. Neha Joshi & Anr.*, 2023 SCC OnLine Bom 1943.



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23. On the issue of the lack of jurisdiction of the learned Family Court to entertain the GP filed by the wife under the G&W Act, placing reliance on the judgment of the Supreme Court in **Lahari Sakhamuri** (supra) and of this Court in **Paul Mohinder Gahun v. Selina Gahun**, (2006) 90 DRJ 77; and **Philip David Dexeter v. State of NCT of Delhi & Anr.**, (2013) 135 DRJ 537 (DB) and in **Akhilesh Kumar Gupta v. Ms. Gupta Snizhana Gryorivna & Ors.**, 2024 SCC OnLine Del 1877, he submits that the minor child cannot be said to be an “ordinarily resident” in Delhi. He submits that merely because the wife chose to keep him in Delhi for a few days without the consent of the husband, especially when the parties had travelled to India only for a short vacation, would not make the child an ordinary resident of Delhi. He submits that there was no intention between the parties to make the minor child reside in Delhi, for even a temporary period, which, he submits, is evident from the fact that return tickets had been booked for all three of them for their return to the USA. He submits that, therefore, the learned Family Court rightly passed the Impugned Order rejecting the petition filed by the wife under the G&W Act.

24. He further submits that the husband is willing not only to bear the travel expenses of the minor child but also those of the wife to Arizona, USA. The husband also undertakes to let the wife reside in the house where they were previously living, while he himself shall move out of that house, and further agrees to pay for the regular maintenance of the wife during her stay in the USA.



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SUBMISSIONS ON BEHALF OF THE LEARNED COUNSEL FOR THE WIFE:

25. On the other hand, Mr. Jai Sahai Endlaw, the learned counsel for the wife, submits that, as far as the Writ Petition is concerned, it would require a detailed inquiry for the determination of the welfare of the minor child. In such circumstances, this Court should refuse to entertain the present Writ Petition and leave the parties to determine their rights and the welfare of the minor child before the learned Family Court. In support, he places reliance on the judgment of the Supreme Court in *Nirmala v. Kulwant Singh and Ors.*, (2024) 10 SCC 595.

26. He further submits that merely because the Superior Court at Arizona has passed an order regarding the custody of the minor child, this Court is not bound to enforce the same by way of a Writ Petition. In support, he places reliance on *Nithya Anand Raghavan v. State (NCT of Delhi) & Anr.*, (2017) 8 SCC 454.

27. As far as the Impugned Order passed by the learned Family Court is concerned, placing reliance on the judgment of the Supreme Court in *Ruchi Majoo v. Sanjeev Majoo*, (2011) 6 SCC 479, he submits that the learned Family Court has erred in observing that the minor child must permanently reside within its jurisdiction for the purpose of Section 9 of the G&W Act to be invoked. He submits that the term ‘ordinary residence’ is a place where a person may reside permanently or temporarily. He submits that in the present case, the minor child was residing with the wife in Delhi; the minor child had



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been admitted to a school in Delhi; and now, was well-settled in Delhi at the time of filing the petition under the G&W Act. He submits that, therefore, the learned Family Court has erred in rejecting the petition by invoking Order VII Rule 11 of the CPC.

28. He submits that, even otherwise, the determination of the question of ‘ordinary residence’ of the child for the purpose of Section 9 of the G&W Act, will be a mixed question of law and facts, which cannot be determined in a summary manner by invoking Order VII Rule 11 of the CPC. In support, he places reliance on the judgment of the Supreme Court in *Eldeco Housing and Industries Limited v. Ashok Vidyarthi & Ors.*, 2023 SCC OnLine SC 1612.

29. He submits that the welfare of the minor child would lie in the child remaining in India and in the custody of the wife, who is able to provide a safe and loving environment for the minor child. He submits that the husband was, in fact, indulging in domestic violence and, therefore, it is not in the welfare of the minor child to return back to that environment. He submits that, as against the same, the minor child was earlier enrolled in a pre-school in Delhi, and is currently studying at a reputed school, that is, DPS International School, R.K. Puram, Delhi, which follows the Cambridge Education System, and is doing well both academically as well as socially. He submits that, therefore, the welfare of the minor child would be best served by allowing the minor child to remain in Delhi in the custody of the wife.

30. He submits that merely because a Foreign Court has taken a particular view on an aspect concerning the welfare of the minor child,



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it is not enough for the Courts in this country to shut out an independent consideration of the same. In support, he places reliance on ***Nithya Anand Raghavan*** (supra).

31. He submits that even in the petition filed by the wife under the DV Act, the husband sought to challenge the jurisdiction of the Court, which was rejected not only by the learned Metropolitan Magistrate, Mahila Court, South East District, Saket Courts, Delhi, by dismissing such application *vide* Order dated 24.06.2023, holding that the wife was residing in Delhi and that the Court had jurisdiction, but also by the Appellate Court *vide* its Order dated 31.10.2023. The said orders, in his submission, show that the minor child is also a resident of Delhi.

ANALYSIS AND FINDINGS:

32. We have considered the submissions made by the learned counsels for the parties.

33. These cases present a social problem where the parties move to a foreign country for their job and for better living and with an intent to reside there permanently, however, due to differences between them, one of the spouses comes back to India with the minor child, leaving this Court to determine not only the issue of jurisdiction of the Court where they were earlier residing *vis-à-vis* Court in India, but also of the welfare of the minor child as the two parents now wish to reside in different countries. It need not be re-emphasized that in such consideration, it is the welfare of the minor child which is paramount, and that the welfare of the parents cannot be confused as the welfare



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of the minor child. None of the warring parents can be allowed to dictate what the welfare of the minor child would be, and it would be for the Court to independently assess this issue taking into account all surrounding circumstances presented before it.

34. The Supreme Court, when faced with similar issues, in *Lahari Sakhamuri* (supra), placing reliance on its earlier Judgments in *Surinder Kaur Sandhu* (supra); *Mrs. Elizabeth Dinshaw v. Arvand M. Dinshaw & Anr.*, (1987) 1 SCC 42; *Surya Vadanana v. State Of Tamil Nadu & Ors*, (2015) 5 SCC 450; and in *Nithya Anand Raghavan* (supra), observed that the crucial factors which have to be kept in mind by the Court for determining the welfare of the child are, *inter alia*, maturity and judgment, mental stability, ability to provide access to schools, moral character, ability to provide continuing involvement in the community, financial sufficiency, and the relationship of the warring parents with the child. In cases, such as the present, the doctrine of comity of Courts, intimate connection, orders passed by Foreign Courts having jurisdiction in the matter regarding custody of the minor child, and the citizenship of the parents and the child, etc., can override the consideration of the best interest and the welfare of the child. However, the Court must ensure that any direction to return the child to a foreign jurisdiction, does not result in any physical, mental, psychological, or other harm to the child. A holistic consideration of the entire case must be undertaken.

35. In *Yashita Sahu* (supra), the Court held that a Writ of Habeas Corpus is maintainable even if the child is in the custody of another



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parent. It held that when a child is removed by one parent from one country to another, especially in violation of the orders passed by a Court, the country to which the child is removed, must consider the question of custody and decide whether the Court should conduct an elaborate inquiry on the question of the child's custody or deal with the matter summarily, ordering the parent to return the custody of the child to the jurisdiction from which the child was removed and all aspects relating to the child's welfare be investigated in a Court in his/her own country. The Court reiterated that in such matters of custody of a child, the primary and paramount consideration is the welfare of the child. While deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration; the Court must decide the welfare of the child keeping in view a host of circumstances, like the age of the child, the nationality of the child, the facilities of education, social security, and other welfare indicators.

36. In ***Rohith Tammana Gowda*** (supra), the Court reiterated that in a matter involving the question of custody of a child, it has to be borne in mind that the question '*What is the wish/desire of the child*' is different and distinct from the question '*What would be in the best interest of the child*'. Certainly, the wish/desire of the child can be ascertained through interaction, but '*What would be in the best interest of the child*' is a matter to be decided by the Court taking into account all the relevant circumstances.

37. In ***Arathy Ramachandran v. Bijay Raj Menon***, 2025 INSC 587, the Court, while reiterating that the paramount consideration



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should be the welfare of the child, held that utmost sincerity, love and affection showered by either party, by itself, cannot be a ground for deciding the custody of a child.

38. In *Nirmala* (supra), the Supreme Court cautioned that in a child custody matter, the power of the High Court in granting the Writ of Habeas Corpus is not restricted only in cases where the detention of a minor is by a person who is not entitled to his legal custody; the Writ is also maintainable where it is proved that the detention of the minor child by a parent or others was illegal and without any authority of law. It was held that no hard and fast guidelines can be laid down insofar as the maintainability of a Writ Petitioner for Habeas Corpus in matters of custody of a minor child is concerned; it will depend upon the facts and circumstances of each case.

39. Having discussed the principles that are applicable to the present appeal and the Writ Petition, a few facts again need to be highlighted:

- a) The parties were residing permanently in the USA since August 2013 till 25.11.2022, when they travelled to India for a short vacation that was to last only till 09.01.2023;
- b) The parties are Green Card holders, that is, they have permanent residency in the USA, thereby clearly evidencing their intent to permanently reside in the USA;
- c) The minor child was born in the USA on 30.10.2017 and is, therefore, a citizen of the USA by birth;
- d) The minor child throughout has been residing in the USA



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till he travelled to India with his parents for a short vacation on 25.11.2022;

- e) The minor child was studying in the USA and there is no allegation of any misconduct by the husband towards the minor child. At best, the only allegation of the wife is of misconduct towards herself, for which, even on a *prima facie* view, we do not find sufficient evidence to be treated as a ground not to invoke our summary jurisdiction;
- f) The minor child has remained in India only because the wife unilaterally removed the minor child away from the husband at the airport, against the wishes of the husband, and decided to remain in India, keeping the minor child with herself;
- g) The Superior Court in Arizona has, at least *prima facie*, considered the welfare of the minor child and has passed directions for the return of the minor child to the USA and for the joint parenting of the minor child, which we find to be just and proper in the facts of the present case, and see no reason to disagree with the same. In our opinion also, the directions passed are in the best interest and welfare of the minor child, wherein the minor child will get the love and affection of both the parents; and,
- h) The husband has offered to bear the costs of return travel for both, the wife and the minor child, to the USA and also for their residence and for the wife's maintenance while she is



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in the USA. The husband has also assured us that he would, in order to maintain the welfare of the minor child, stay away from the wife while she is in the USA and at his own expense. It is, therefore, for the wife to decide whether she wishes to return to the USA with the minor child and adhere to the joint parenting order passed by the Superior Court of Arizona.

40. Being influenced by the above factors, and taking note of the fact that the minor child was accustomed to the environment in the USA, was attending a good school in the USA against which there is no complaint from the wife, and being a citizen of the USA, would be entitled to various rights and opportunities which may not be available to him if he were to stay back in India only because of the wishes of the wife, we find merit in the Writ Petition filed by the husband.

41. Coming to the question of the jurisdiction of the learned Family Court to entertain the petition filed by the wife under the G&W Act, we first reproduce Section 9 of the G&W Act as under: -

“Section 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.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court



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having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.”

42. A reading of the above would show that, for invoking the jurisdiction of the Family Court under the G&W Act, it has to be shown that the minor ‘*ordinarily resides*’ within its jurisdiction. The forceful removal of a minor child from his original place of residence and shifting him to a new residence will not make him an ordinary resident of the new place.

43. In ***Lahari Sakhamuri*** (supra), where the child was born in the USA and was brought to India by the appellant therein despite an *interim* order of the USA Court, and an application for the custody of the minor child was filed in the learned Family Court at Hyderabad within 20 days of her arrival in India, the Court held that the minor child was not an ordinary resident of Hyderabad (India), as envisaged under Section 9(1) of the G&W Act.

44. This Court in ***Paul Mohinder Gahun*** (supra), while considering a case where the respondent therein had come to India along with the child for a planned short vacation and, thereafter, filed a petition under Section 9 of the G&W Act in India, held that a residence by



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compulsion, howsoever long, cannot be treated as a place of ordinary residence. Where the child is removed by mischief to an interim location, the place of his/her original residence would alone have jurisdiction.

45. In ***Philip David Dexeter*** (supra), the Court emphasized that to ordinarily reside at a place should be more than a flying visit to or a casual stay at a particular location.

46. In ***Ruchi Majoo*** (supra), on which much reliance has been placed by the learned counsel for the wife, the Court emphasized that a challenge to the jurisdiction of the Family Court will have to be examined in the context of the averments made in the pleadings of the parties and the requirement of Section 9 of the G&W Act. In that case, the respondent therein admitted to a settlement agreement of allowing the minor child to stay back in New Delhi and to study here, and wanted to withdraw from the said settlement only because of his subsequent conduct. In those facts, the Supreme Court held that whether the minor is ordinarily residing at a given place, is primarily a question of intention, which, in turn, is a question of fact, and at best, a mixed question of law and fact. The Court, therefore, held that the question of whether the above settlement had been obtained under duress and coercion, was a fact to be determined at trial. The Court observed as under: -

“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



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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 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.”

47. In the present case, however, there is no dispute on the facts at all. It is not disputed that the parties had visited India only for a short stay and had booked their return tickets for 09.01.2023 for all three of them. If the wife always had an intention of staying back in India on her return, at least, she did not manifest this to the husband before their departure from the USA. The husband, in his turn, immediately on knowing that the wife does not intend to return the minor child to the USA, invoked the remedies before the Court in the USA, and has been diligently following up the same, including the filing of the present Writ Petition expeditiously after the passing of the order by



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the Superior Court at Arizona, USA. Merely because the wife has decided to stay back in India and has got the minor child admitted to a school here, would not, therefore, make the minor child an ordinary resident of Delhi (India). As noted hereinabove, such forceful removal/detention, even by a parent, at a place that is not the natural habitation of the minor child, would not render such other place the ordinary place of residence of the minor child.

48. While it is correct that for purposes of invoking jurisdiction under Section 9 of the G&W Act, it is not necessary for the child to be a permanent resident of the place and even a temporary residence shall suffice, such temporary residence should not be illegal or forceful. The court, on an overall reading of the petition shall have to determine whether the child can be said to be ordinarily residing within its jurisdiction.

49. In the present case, on a bare reading of the petition filed by the wife under the G&W Act, and the surrounding circumstances that are admitted by her, the minor child could not be said to be ordinarily residing within the jurisdiction of the learned Family Court.

50. We have also reproduced herein above the averment made by the wife in the petition for invoking the territorial jurisdiction of the learned Family Court. Her own residence, as noted hereinabove, is not the repository of the jurisdiction in the Family Court.

51. In view of the above, we do not find merit in the appeal filed by the wife. The same is, accordingly, dismissed.

52. As far as the Writ Petition filed by the husband is concerned,



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we pass the following directions:

- i. The wife, if she so desires, shall return to Arizona, USA, along with the minor child, on or before 01.07.2025;
- ii. She shall inform her decision to return to USA to the husband, on or before 15.06.2025;
- iii. In case the wife decides to return back to Arizona, USA, the husband shall make all necessary travel arrangements for the wife and the minor child;
- iv. Upon their return, the husband shall allow the wife and the minor child to stay at their earlier shared residence, and shall remove himself from the same until further orders are passed by the competent Court at Arizona, USA in that regard.
- v. The husband shall also pay to the wife the maintenance, presently assessed at USD 2000 per month for herself and for the minor child. This amount, for the first month, shall be paid in advance by the husband at the time of departure of the wife from India along with the minor child.
- vi. Further directions regarding the custody and the guardianship of the minor child and on the maintenance for the wife shall be obtained by the parties from the competent Court at Arizona, USA.
- vii. In case the wife does not abide by the above directions and decides not to return back to Arizona, USA, she shall hand over the custody of the minor child to the husband on 02.07.2025 before the Registrar General of this Court at 11:00 A.M.



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- viii. In case of failure of the wife to handover the custody of the child to the husband, husband shall be entitled to take assistance of the police to obtain the custody of the child from the wife. The SHO of the concerned Police Station is directed to render all assistance to the husband for the same.
- ix. The husband, upon obtaining the custody of the minor child, shall take back the minor child to Arizona, USA. In such an eventuality as well, further directions regarding the custody and the guardianship of the minor child shall be obtained by the parties from the competent Court in Arizona, USA.
- x. To ensure that the child returns to the USA, in case the wife is in possession of the American passport of the child, she shall handover the same to the husband.
- xi. The wife shall take necessary action to get the child relieved from the present school and the husband shall get him admitted to the school in the USA, without causing much interruption to his studies.
53. With the above directions, the Writ Petition and the appeal along with the pending applications are disposed of.
54. The parties shall bear their own costs.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MAY 28, 2025/rv/DG

[Click here to check corrigendum, if any](#)