



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 221 of 2023

Dr. Dinesh Kumar Agarwal and othersAppellant(s)

Versus

State of U.P. through Principal SecretaryRespondent(s)
(Home) Govt. of U.P., Lucknow and others

Counsel for Appellant(s) : Prashant Chandra (Sr. Adv.) with
Miss Meha Rashmi, Ashok Kumar
Singh, Anilesh Tewari, Siddhartha
Sinha

Counsel for Respondent(s) : C.S.C., H.G.S. Parihar (Sr. Adv.)
with Meenakshi Singh Parihar,
Divyarth Singh Chauhan, Govind
Narayan Shukla, Sushil Kumar
Singh

Along with :

1. Special Appeal No.225 of 2023:

Master Devansh Agarwal (Detenue), through his mother Smt. Deepti
Goel and another

Versus

State of U.P. through Principal Secretary (Home), Government of U.P.,
Civil Secretariat, Lucknow and others

A.F.R.

Judgment Reserved : 15.12.2025

Judgment Delivered : 21/01/2026

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

(Per : Jaspreet Singh, J.)

1. Two warring spouses have filed the instant two intra-court appeals assailing the order dated 07.04.2023, passed by the learned Single Judge, whereby three applications filed, were disposed of by the said order, in a Habeas Corpus Petition No.9307 of 2020.

2. The two spouses have been at loggerheads and have filed multiple petitions which have had a chequered history and in order to appreciate the controversy, it will be appropriate to take a glance at the facts which have given rise to the instant intra-court appeals.

3. Intra-court Appeal No.221 of 2023 has been filed by the father and the grandparents of the detenue whereas Intra-court Appeal No.225 of 2023 has been filed by the mother of the detenue. For the sake of convenience, the Court shall be referring to the appellants of Intra-court Appeal No.221 of 2023 as 'father', 'grandparents' as the case may be, the respondent No.2 i.e. the detenue shall be referred as the 'son' and the respondent No.3, who is also the appellant of the connected Intra-court Appeal No.225 of 2023, shall be referred to as the 'mother'.

4. The facts have been taken from the Intra-court Appeal No.221 of 2023, however, wherever required, the relevant facts of the connected Intra-court Appeal No.225 of 2023 shall also be noticed.

5. Since, the issue involved in both the intra-court appeals is the same including the parties, hence, both the intra-court appeals are being decided by this common judgment.

6. Dr. Dinesh Kumar Agarwal and Smt. Deepti Goel were married on 30.06.2017. They were blessed with a son on 03.07.2018. Both the aforesaid spouses could not stay together for long as their married life was ensconced with bitterness and acrimonious legal proceedings. The son has been caught in the cross fire and is a victim of battle between the spouses.

7. Both the appellants are well educated and are professional degree holders in their own rights. The father is a Doctor by profession whereas the mother is an Assistant Professor. On account of matrimonial disputes, the mother left her matrimonial home at Dhanbad in the State of Jharkhand alongwith her minor son and started living in Lucknow with her parents. In the month of July, 2020, the father came down to Lucknow to meet with his son and he stayed at the residence of his in-laws at Lucknow. During his stay at Lucknow, it is alleged that the father on the pretext of taking his son for a short drive, instead, took his son out of the care and custody of his mother and drove down to Dhanbad and that too without informing or intimating the mother.

8. In the aforesaid backdrop, the mother lodged an FIR and also instituted a Habeas Corpus Petition before a learned Single Judge of this Court, registered as **Writ Petition No.9307 of 2020 (HC) [Master Devansh Agarwal Detenue through Mother and next friend Deepti Goel and another v. State of U.P. and others]**.

9. The record further reflects that the learned Single Judge seized with the Habeas Corpus Petition had passed an order of production of the detenue, however, the order could not be communicated to the father. In the meantime, the father instituted two petitions at Dhanbad, one under Section 9 of the Hindu Marriage Act, 1955 (in short, 'the Act of 1955') which was registered as Case No.333 of 2020 and another petition under the Guardians and Wards Act, 1890, which was registered as Case No.385 of 2020.

10. The mother approached the Apex Court, at this stage, by filing a transfer petition seeking transfer of the two suits filed by the father at Dhanbad, to Lucknow. The mother also filed a suit under Section 13 of the Act of 1955 at Lucknow and also an FIR under Section 498-A, 336, 506 IPC and Section 3/4 Dowry Prohibition Act, 1961.

11. The learned Single Judge seized with Habeas Corpus Petition found that the order of production of the detenue was not being complied with, hence, it directed the police concerned to ensure the production of the detenue before the Court fixing 05.01.2022. On the said date, before the learned Single Judge, the Government Counsel informed that the detenue and the father were at New Delhi in connection with a petition filed by the father, before the Apex Court, challenging the order passed by the learned Single Judge on 14.12.2021. However, the said Special Leave Petition of the father was dismissed on 05.01.2022 and the Apex Court had directed them to appear in the Habeas Corpus Petition at Lucknow. On the basis of the said information, the learned Single Judge fixed the matter on the next day i.e. 06.01.2022.

12. On the said date, the father along with the detenue appeared before the learned Single Judge, who after taking note of the earlier orders including the order passed by the Apex Court dated 05.01.2022 directed the custody and corpus of the detenue i.e. son, be handed over to the mother and thereafter it considered the plea of the father regarding visitation rights and passed a detailed order, which reads as under:-

"Called on.

Today on 06.01.2022, Sub Inspector Sri Durga Prasad Yadav, PNO 930440020 and lady Constable Ms. Antima Singh PNO 112304472, Police Station, District Lucknow appeared before the Court to produce the child Master Devansh Agarwal with his father Dr. Dinesh Agarwal in Court in compliance of judgment and order dated 14.12.2021 and subsequent order dated 21.12.2021.

In accordance with the order dated 05.01.2022 passed in Special Leave to Appeal (Crl.) No. 10080 of 2021 (Dr. Dinesh Agarwal Vs. State of U.P. and others) by Hon'ble Apex Court with direction to hand over the child to mother at 2:00 p.m., the child is handed over today to the mother Smt. Deepti Goel.

The father Dr. Dinesh Agarwal, private opposite party no. 3 and mother, next friend of the child Master Devansh Agarwal, Smt. Deepti Goel both have signed the ordersheet with regard to delivery of child to the mother and receiving by the mother, the petitioner's next friend.

In the order dated 14.12.2021, order as to visitation right to father was kept contingent upon the handing over the child by opposite party no.3, Dr. Dinesh Agarwal to the petitioner's next friend Smt. Deepti Goel, therefore this is the occasion to pass the order with regard to right of visitation of the child to the father.

(i) On conversation with opposite party no. 3, Dr. Dinesh Agarwal, father of the child Master Devansh Agarwal, as per his request, on every weekend (Sunday) shall visit the child at the residence of petitioner's next friend Smt. Deepti Goel i.e. B-47, Sector-H, Aliganj, District Lucknow where the petitioner's next friend the mother Smt. Deepti Goel use to reside with the child.

(ii) In case, for any reason if opposite party no. 3 Dr. Dinesh Agarwal fails to visit the child on Sunday, after informing the next immediate day after Sunday within one or two days to the petitioner's next friend Smt. Deepti Goel, may visit the child on that altered day.

(iii) Reciprocally, the petitioner's next friend, mother of the child Master Devansh shall ensure to remain present at the House No. B-47, Sector-H, Aliganj, District Lucknow for the purpose of complying with the direction as to the visitation right given to the father or on any other date as stipulated herein-above. The mother shall not leave or change the house of her abode with child without seeking prior permission of the Court and informing to the father of the child, opposite party no. 3. She will not leave with child Master Devansh the jurisdiction of the Court without prior permission as directed herein-above.

(iv) The father, opposite party no. 3 will have the right to visit the child Master Devansh within 10 a.m. to 5 p.m. in day time in the presence of petitioner's mother or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

(v) The father of Master Devansh, opposite party no. 3, will have a right to contact with the child Master Devansh his son, telephonically

either audio or video mode. For this purpose the mother will facilitate such telephonic connection with father of the child. It may be appropriate for both of them (father and mother of the child Master Devansh) to fix a particular time for the purpose of telephonic conversation with child.

(vi) The father if wants to give any gift in love and affection with child, brings anything for his use or do something necessary for well being of child, the mother, petitioner's next friend or any of the family members of her parental house will not make any forbiddance or obstruction in such acts. However, father shall keep in mind that such things would be safe in use and occupationed by the child.

(vii) Since the child is of so young age that still is under scheduled vaccination prescribed by the health department, the record of vaccination and as to the further vaccination shall be handed over by the father Dr. Dinesh Agarwal to the mother Smt. Deepti Goel as soon as possible within 15 days from the date of order so that further vaccination, if any, may be given timely without failure on her part.

(viii) It would be the duty of the father, whenever he visits the child to maintain the safe distance, put mask and keep the hand sanitized and to follow the protocol of the Covid-19 guidelines.

(ix) It is expected that the father till now has been twice vaccinated. If it is not so, he will ensure to be vaccinated twice as soon as possible. Mother shall also keep herself vaccinated twice.

(x) In case, the father is twice vaccinated with Covid-19 Vaccine, the rider of the safe distance and putting mask need not to be followed during visitation.

Looking into the pendency of matrimonial petition in competent court of law, the request of opposite party no. 3 with regard to overnight stay during visit to the child in the home of the petitioner's next friend, the mother of the child, is not permitted. However, this would be subject to the result of possible mediation held between them in such legal proceeding"

13. The father visited Lucknow on several occasions in furtherance of visitation order dated 06.01.2022, however, it is his grievance that the mother did not cooperate to allow the father to meet his son and despite detailed directions having been given by the learned Single Judge in its order, yet efforts were made to frustrate the spirit and intent of the visitation order.

14. The father being aggrieved from the attitude of the mother in not facilitating the visitation order rather she was alleged of creating obstructions, hence, the father filed a fresh Habeas Corpus Petition bearing No.353 of 2022.

15. Another learned Single Judge of this Court by means of the judgment and order dated 20.10.2022 passed in the above-mentioned Habeas Corpus Petition No.353 of 2022 dismissed the petition filed by the father. The order dated 20.10.2022 reads as under:-

"Heard Shri Prashant Chandra, learned Senior Counsel assisted by Ms. Meha Rashmi, learned counsel for the petitioner, Shri S.K. Singh appearing for respondent no.3 as well as learned AGA for the respondents no.1 and 2 and perused the record.

The instant petition has been filed under Article 226 of the Constitution of India requesting for issuance of a writ in the nature of habeas corpus with the following prayers:-

"a) issue a writ of habeas corpus or a writ, order or direction in the nature of habeas corpus, directing the respondents to produce the petitioner in person in this Hon'ble Court to be set at liberty forthwith and be freed from the custody of the respondents no. 3 to 7.

b) direct the respondents no. 3 to 7 to forthwith cease making video recording of the meeting between the petitioner and his father and surrender original copies of all the recordings made by her of previous meetings before this Hon'ble Court and file an affidavit of compliance in this regard;

c) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and necessary in the circumstances of the case may also be passed."

Shri Prashant Chandra, learned Senior Counsel appearing for the petitioner (next friend/ father) Dr. Dinesh Agrawal, submits that the detainee is the son of the petitioner and he has been illegally confined/ restrained by the respondents no.3 to 7 and the custody of the petitioner is not safe with the respondent no.3 (mother) as she is not paying required care and attention to the petitioner who is aged about 4 years and 3 months and is not capable of looking after himself and is suffering from abuse and neglect at the hands of the respondents no. 3 to 7.

It is further submitted that so far as the custody of a minor children is concerned the paramount consideration is the welfare of the minor. In

this connection learned Senior Counsel has relied on paragraph no.34 of the report Gaurav Nagpal Vs. Sumedha Nagpal (2009) 1 Supreme Court Cases 42, in order to canvass that primary purpose of said proceeding is to secure the welfare of the child and in order to do so the legal rights of all, including the parents could be ignored.

While referring to the various photographs and whats app messages exchanged between the parties, it is submitted that the respondents no.3 to 7 are not complying the order of this Court dated 6.1.2022 passed in Writ Petition No. 9307 (H/C) of 2020 so far as visiting rights provided to the father Dr. Dinesh Agarwal is concerned, in letter and spirit.

It is further submitted that though the custody of the detainee has been provided to the respondent no.3 under the orders of this Court but due to the change of circumstances the order dated 14.12.2021 could be interfered in order to secure the welfare of the detainee – child.

It is further submitted that since upbringing of the detainee is not good under the hands of the respondent no.3, as an interim measure the detainee be directed to be produced before this Court and be given in the custody of next friend/ father. To buttress his submissions learned Senior Counsel had relied on paragraph 18 of the report (1973) 1 SCC 840 Rosy Jacob Vs. Jacob A. Chakramakkal.

Shri Sushil Kumar Singh appearing for respondent no.3 on the other hand submits that in Writ Petition No. 9307 (H/C) of 2020, vide order dated 14.12.2021 the father/ next friend was directed to produce the child in the Court for the purpose of handing over the custody of the child to the respondent no.3 (mother) and against this order the father/ next friend had approached the Hon'ble Supreme Court of India by filing an Special Leave to Appeal (Crl.) No. 10080 of 2021, however, vide order dated 5.1.2022 the Special Leave Petition was dismissed and the next friend / father was directed to handover the child to the mother and it was in compliance of the order of the Hon'ble Supreme Court the custody of the child was given to the mother/ respondent no.3. Thus the order dated 14.12.2021 of this Court, whereby the custody of the child/ detainee was directed to be given to the mother/ respondent no.3 was affirmed by the Hon'ble Supreme Court and so far as the issue of custody of the child is concerned the same has been set at rest by the Hon'ble Supreme Court and the same could not be interfered by initiating the proceeding by filing writ of habeas corpus again.

He further submits that vide order dated 25.1.2021 passed in Special Lave to Appeal No. 586/2021 the Supreme Court has referred the matter for mediation also.

It is also submitted that an application for recall of the order dated 14.11.2021 was also filed by the petitioner.

It is also submitted that the aforesaid writ petition wherein the custody of the detainee was provided to the mother/ respondent no.3 is still pending and the same has been listed today also before an appropriate Court and there was neither any requirement nor any occasion for the petitioner to have filed the instant petition.

Having heard learned counsel for the parties having perused the record, it is evident that Writ Petition No. 9307 (H/C) of 2020 was initially filed on behalf of the detnue by her mother, namely, Smt. Deepti Goel and a Coordinate Bench of this Court vide order dated 14.12.2021 after considering the rival submissions of the parties by writing a detailed judgment had directed that the mother/ respondent no.3 deserves the custody of the child and the custody of the child which was till that time was with the father (petitioner) was directed to be given to the mother/ respondent no.3 and for this purpose the child was directed to be produced in the Court on 20.12.2021 at 2.00 P.M. This order was challenged by the petitioner of the instant petition before the Hon'ble Apex Court by filing an S.L.P. and while rejecting the S.L.P. (Crl.) No. 10080 of 2021 the Apex Court vide order dated 5.1.2022 declined to interfere in the judgement passed by the High Court and dismissed the S.L.P. with a direction to handover the child to the mother on 6.1.2022 at 2.00 P.M. and it is in compliance of this order of the Hon'ble Apex Court the custody of the child was shifted and given to the mother/ respondent no.3. Thus, so far as the dispute pertaining to the custody of the child is concerned, the same was finally set at rest by the order dated 5.1.2022 by the Hon'ble Apex Court passed in S.L.P. (Crl.) No. 10080/2021 and in the considered opinion of this Court could not be reopened by filing a writ of habeas corpus again.

Now coming to the next submission of learned Senior Counsel appearing for the petitioner that the order of this Court dated 6.1.2022 pertaining to the visiting rights given to the petitioner is not being complied in letter and spirit and in this regard learned Senior Counsel has drawn the attention of this Court towards various photographs and whats app messages exchanged between the parties. It is evident that Writ Petition No. 9307 (H/C) of 2020 wherein the order for transferring of the custody of the child detenue was passed and the vising rights were also given to the instant petitioner vide order dated 6.1.2022 is still pending before this Court and in this regard an order of date 30.8.2022 has been placed before this Court by Shri S.K. Singh, learned counsel for the respondent no.3, which shows that petition has also been heard in part by a Coordinate Bench.

It is also admitted to the parties that a contempt petition has also been filed by the instant petitioner against respondent no.3.

Thus, in the considered opinion of this Court if there is any grievance to any party pertaining to the non compliance of the order dated 6.1.2022 passed in Writ Petition No. 9307 (H/C) of 2020, which is still pending, the same could only be agitated in the same writ petition and could not be raised by filing another writ petition, more so in the life of Writ Petition No. 9307 (H/C) of 2020.

Thus, in the considered opinion of this Court for the reasons aforesaid and keeping in view the order of the Hon'ble Supreme Court as well as of a Coordinate Bench of this Court passed in Writ Petition No. 9307 (H/C) of 2020, which is still alive, the instant writ petition, so far as the prayers sought by the petitiioenr is concerned, is not maintainable and is dismissed as such.

However, the dismissal of the instant writ petition shall not preclude the petitioner from approaching this Court by filing any application in Writ Petition No. 9307 (H/C) of 2020, which is still pending, for the purpose of compliance of order dated 06.01.2022 or for modification of that or any other forum for the purpose of establishing his right to the custody of detainee, as provided in para No. 85 of the Judgment dated 14.12.2021 passed in Habeas Corpus No. 9307 of 2020."

16. The father thereafter filed a Contempt Application (Civil) No.1214 of 2022 alleging violation and deliberate disobedience of the order dated 06.01.2022 passed in Habeas Corpus Petition No.9307 of 2020 filed by the mother. The said contempt application was entertained by the Contempt Court and the record further reflects that the mother and the son, were also called before the Contempt Court, however, nothing significant transpired in the contempt proceedings except that the assurances were extended by the mother before the Contempt Court, that she would facilitate a cordial meeting of the father and the son in terms of the visitation order dated 06.01.2022.

17. Be that as it may, despite efforts made by the Contempt Court to facilitate the implementation of the visitation order but the chasm between the warring spouses could not be bridged. Ultimately, the Contempt Court by its detailed order dated 27.08.2025 dismissed the contempt application and the relevant portion of the said order is being reproduced hereinafter:-

"6. Learned counsel for the applicant has submitted that the applicant, who runs his own hospital at Dhanbad, is a renowned spine surgeon and the child is entitled for getting privileges from his father for his better development and for getting comfort of the material of the world. The respondent, on the other hand, is unemployed and a dependent lady.

Learned Senior Counsel also proposed that in the event, the respondent is violating the directions of the writ Court, the Court, under the parens patriae jurisdiction, may pass order to send the child to a Boarding

School, where he would be properly taken care of, groomed and would have an occasion to mix around with the children of his own age.

It has been added by learned counsel for the applicant that being a Court of record, inherent powers can be exercised under Article 215 of Constitution of India and the minor child may be sent to Boarding School with such arrangements, as may be deemed just and necessary, to divide the period of vacation of the child in the company of his parents equally.

While giving the list of Boarding Schools, it has been submitted by Sri Chandra that the applicant is ready to bear all the expenses of the Boarding School.

7. The list of the top Boarding Schools produced before this Court is as under:-

| Sr. No. | School | Address | Board | Grade | Gender |
|---------|--|---|-------|-------------------------------------|--------|
| 1. | Doon International School (Riverside Campus) | University Nanda Ki Chowki, 4 kms from Petroleum Pondha, Dehradun, Uttarakhand 248007 | CBSE | 1 st to 12 th | Co-ed |
| 2. | Ganga International School | Rohtak Road, Hiran Kudna, New Delhi, Delhi, 110041 | CBSE | 1 st to 12 th | Co-ed |
| 3. | Roots Country School | Trimount View, P.O. Baghi, Teh, Kotkhai, Himachal Pradesh, 171225 | CBSE | 1 st to 12 th | Co-ed |
| 4. | GD Goenka International School, Rohtak | 8th Mile Stone, Sonapat Road, Rohtak, 124001, Haryana | CBSE | 1 st to 12 th | Co-ed |
| 5. | Pinegrove School | Kasauli Road, Dharampur, Himachal Pradesh- 173209 | CBSE | 1 st to 12 th | Co-ed |
| 6. | New Era Public School | Chesson Road, Panchgini Satara District, Maharashtra- 412805 | CBSE | 1 st to 12 th | Co-ed |
| 7. | Birla Public School, Pilani | Vdya Niketan Birla Public School, Pilani Rajasthan, 333031 | CBSE | 1 st to 12 th | Co-ed |
| 8. | Emerald Heights International School | A.B. Road, Rau, opposite Akashwani, Indore, M.P., 453331 | CBSE | 1 st to 12 th | Co-ed |
| 9. | The Asian School | Asian Acres, Vasant Vihar, Indra Nagar Colony, Dehradun, Uttarakhand, 248006 | CBSE | 1 st to 12 th | Co-ed |
| 10. | Vidyasagar International School | Jafarpur Majra, Gharora, Greater, Manjhawali Road, Tigaon, Haryana, 121101 | CBSE | 1 st to 12 th | Co-ed |

15. Having perused the record, it is also evident that the order dated 14.12.2021 was challenged by the applicant before Hon'ble Supreme Court in Special Leave to Appeal No. 10080 of 2021, which was dismissed on 05.01.2022 directing the father to hand over the child to the mother on 06.01.2022 at 2:00 pm. The order dated 05.01.2022 passed in Special Leave to Appeal No. 10080 of 2021 is as under:-

"We are not inclined to interfere with the judgment passed by the High Court. The Special Leave Petition is, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.

However, the petitioner is directed to hand over the child to Respondent No.4 tomorrow i.e. 06.01.2022 at 2.00 p.m."

16. Evidently, the child was produced before this Court on 06.01.2022 and he was handed over to the mother by giving visitation rights to the father. Thereafter, the orders passed in the habeas corpus writ petition were challenged by the applicant as well as the respondent in Special Appeal No. 221 of 2023 (Dr. Dinesh Kumar Agrawal and Ors. Vs. State of U.P. and Ors.) and Special Appeal No. 225 of 2023 (Master Devansh Agarwal (Detenue), thru. his mother Smt. Deepti Goel and Anr. Vs. State of U.P. and Ors.). It is undisputed that these special appeals are pending before the Division Bench.

The order dated 27.03.2025 passed by the Division Bench with the consent of the parties in Special Appeal No. 221 of 2023 and Special Appeal No. 225 of 2023 reads as under:-

"1. Both the parties are present and they are represented by their respective counsel.

2. The operative part of the order passed by this Court on 6.7.2023 operating between the parties reads as under :-

"The matter shall now be listed on 27.07.2023.

On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.

In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.

However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.

We also provide that visitation period will be five hours.

We request the mother of the child that she shall try her level best to be present during the period the father visits the child.

We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours".

3. Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O' clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.

4. This order has been passed as mutually agreed between the parties.

5. List/put up on 29.4.2025."

17. Considering the aforesaid facts and discussions coupled with the fact that the dispute is being adjudicated by the Division Bench and the interim order dated 27.03.2025 (supra) was passed with mutual consent of the parties in the pending special appeals, i.e., Special Appeal No. 221 of 2023 (Dr. Dinesh Kumar Agrawal and Ors. Vs. State of U.P. and Ors.) and Special Appeal No. 225 of 2023 (Master Devansh Agarwal (Detenue), thru. his mother Smt. Deepti Goel and Anr. Vs. Stae of U.P. and Ors.), this Court is of the view that judgments relied by learned counsel for the applicant are not applicable in the present case, hence, no contempt is made out. Accordingly, the contempt application, being misconceived, stands dismissed."

18. The father again assailed the order dated 27.08.2025 passed in contempt proceedings before the Apex Court. It will also be relevant to point out that while the aforesaid proceedings were being agitated in different forums, the father had also moved an application bearing **IA No.14 of 2022** on 07.03.2022 seeking recall of the order dated

14.12.2021 and 06.01.2022 passed in Habeas Corpus Petition No.9307 of 2020. Significantly, the mother also moved an application seeking modification of the order dated 06.01.2022 in Habeas Corpus Petition No.9307 of 2020 which was bearing **Application IA No.15 of 2022**.

19. While the two applications were pending in the Habeas Corpus Petition No.9307 of 2020, thereafter the father made another application in the Habeas Corpus Petition No.9307 of 2020 on 02.12.2022 bearing **Application IA No.25 of 2022**, wherein it sought the modification of the orders dated 14.12.2021 and 06.01.2022.

20. It is these three applications (two filed by the father i.e. **Application IA No.14 of 2022** and **Application IA No.25 of 2022** and one filed by the mother bearing **Application IA No.15 of 2022**) which came to be considered by the learned Single Judge, who by means of its order dated 07.04.2023 decided the said three applications. As a consequence, the earlier detailed visitation order dated 06.01.2022 came to be modified with certain observations, which are reproduced hereinafter:-

"24. In the present case the detenue is living with his mother as directed by a co-ordinate Bench of this Court vide order dated 06.01.2022. The custody of minor son Master Devansh Agarwal shall remain with the mother but the parties will be at liberty to get their exclusive rights for custody of the minor son Master Devansh Agarwal as guardian by filing appropriate application under the Guardians and Wards Act or before any other forum in accordance with law.

Further, in the interest of justice and considering the arguments advanced by learned counsel for the parties, the orders dated 14.12.2021 and 06.01.2022 are modified to the following extent:

1. During Summer Season (April to September): Dr. Dinesh Agarwal, father of the detenue-Master Devansh Agarwal as agreed will have right to visit the child Master Devansh at the residence of detenue's mother Smt. Deepti Goyal at House No. B-47, Sector-H, Aliganj,

District Lucknow, where she used to reside with the child between 10.00 a.m. to 01.00 p.m. on every Sunday of each month w.e.f. 09.04.2023 and onwards in the presence of mother of the detainee, namely, Smt Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

Further on the same day, Dr. Dinesh Agarwal, father of the detainee-Master Devansh Agarwal, shall have visitation rights to meet Master Devansh Agarwal in the neighbourhood park i.e. Science Centre, Aliganj, Lucknow between 5.00 p.m. to 7.30 p.m. in the presence of detainee's mother/ her next friend Smt Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father and before 8.00 p.m. the minor child should be safely given in the custody of detainee's mother/ her next friend Smt Deepti Goyal at her residence address, as noted above by the father-respondent No.3 Dr. Dinesh Agarwal.

2. During Winter Season (October to March): Dr. Dinesh Agarwal, father of the detainee-Master Devansh Agarwal, shall have visitation rights to meet Master Devansh Agarwal in the neighbourhood park i.e. Science Centre, Aliganj, Lucknow between 10.00 a.m. to 1.00 p.m. on every Sunday of each month in the presence of mother of the detainee/ her next friend, namely Smt. Deepti Goyal or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father and before 1.30 p.m. the minor child should be safely given in the custody of detainee's mother/ her next friend Smt Deepti Goyal at her residence address, as noted above.

Further on the same day Dr. Dinesh Agarwal, father of the detainee-Master Devansh Agarwal will have to right to visit the child Master Devansh at the residence of Smt. Deepti Goyal at House No. B-47, Sector-H, Aliganj, District Lucknow, where she used to reside with the child between 05.00 p.m. to 07.30 p.m. on every Sunday of each month in the presence of detainee's mother/ her next friend or any other family members of her parental house, in their supervision and control, however they are not permitted to make any obstruction in such visiting of the child by the father.

3. The grandfather and grandmother of the detainee-Master Devansh Agarwal are also permitted to meet the detainee along with Dr. Dinesh Agarwal, father of the corpus on fourth Sunday of each month (January to December) at any standard Hotel/Shopping Mall/Restaurant within the 5 Km radius of house of petitioner's next friend/mother-Smt Deepti Goyal for refreshment and outing and to build the social and mental ability of the child in the morning between 10.00 a.m. to 1.00 p.m. for the first meeting and in the evening between 5.00 p.m to 7.30 p.m. for the second meeting. The minor child should be safely given in the custody of petitioner's next friend / mother-Smt Deepti Goyal at her residence address i.e. House No. B-47, Sector-H, Aliganj, District Lucknow before 1.30 p.m in the afternoon after first meeting and before 8.00 pm in the night after second meeting . The petitioner-Smt Deepti

Goyal and her one relative may also accompany the detainee, if they so desired during that period.

4. In case, for any reason if respondent No. 3-Dr. Dinesh Agarwal fails to visit the child on Sunday, after informing the next immediate day after Sunday within one or two days to the petitioner's next friend/mother Smt. Deepti Goel, may visit the child on that altered day.

5. Dr. Dinesh Agarwal, father of the detainee- Master Devansh Agarwal, has right to contact with his son telephonically either audio or video mode. For the purpose of telephonic conversation, Smt Deepti Goyal, the mother will facilitate the child with telephone/mobile phone. It may be appropriate for both of them i.e. father and mother of the detainee-Master Devansh to fix a time for telephonic conversations between the children and his father not less than ten minutes.

6. If the father of the child wants to give any gift on account of love and affection of his child or do anything for well- being of child at house/shopping mall/park then mother of child or any family members of Smt. Deepti Goyal will not make any objection. However, father shall keep in mind that such thing will be given, which are for use and safety of the children.

7. Reciprocally, the petitioner's next friend, mother of the child Master Devansh shall ensure to remain present at the House No. B-47, Sector-H, Aliganj, District Lucknow for the purpose of complying with the direction as to the visitation right given to the father or on any other date as stipulated herein-above. The mother shall not leave or change the house of her abode with child without seeking prior permission of the Court and informing to the father of the child, respondent no. 3. She will not leave with child Master Devansh the jurisdiction of the Court without prior permission as directed herein-above.

25. With these observations/directions C.M. Application No. 1A/14/2022, C.M. Application No. 25/2022 and C.M. Application No.15/2022 are finally disposed off."

21. It is this order which has been challenged by the father in Intra-court Appeal No.221 of 2023 and also by the mother in Intra-court Appeal No.225 of 2023.

22. Both the intra-court appeals were entertained by a Coordinate Bench of this Court and as the record would reflect that serious efforts were made by the Court to resolve the issue between the parties in an amicable manner. The spouses were directed to appear before the Court along with the son. Meaningful efforts were made by the Court to

counsel the parties including by taking professional help of Dr. Amit Arya, Professor of Psychiatric Department of King George's Medical University, Lucknow.

23. At this stage, it will be relevant to notice the order passed by a Coordinate Bench of this Court dated 06.07.2023, which reads as under:-

"In deference to our order dated 10.05.2023, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal are present alongwith their child Master Devansh Agarwal.

In our request, the Vice-Chancellor, King George's Medical College (KGMC) has nominated Dr. Amit Arya, a Professor in the Psychiatric Department of the University who is also present.

We have deliberated with the appellant No.1 and respondent No.3 with the assistance of Dr. Arya. We also deliberate a bit with the child.

Dr. Amit Arya is of the opinion that both the husband and wife need to be psychologically evaluated. He is also of the opinion that even the child also needs to be psychologically evaluated so as to evolve some arrangement which can be evolved to ensure that the child is able to develop himself and grow in a more conducive environment. The appellant No.1 and respondent No.3 have consented for their psychological evaluation.

Accordingly, we request Dr. Amit Arya to psychologically evaluate both these individuals as also the child in the Psychiatry Department of the KGMC. While making the psychological evaluation, Dr. Amit Arya will be free to take assistance of other doctors/nurses/employees and also a Child Psychiatrist/Psychologist in his department. He shall furnish his report by the next date of listing through Sri Shubham Tripathi, learned counsel representing KGMC.

The matter shall now be listed on 27.07.2023.

On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.

In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.

However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.

We also provide that visitation period will be five hours.

We request the mother of the child that she shall try her level best to be present during the period the father visits the child.

We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours."

24. Another Coordinate Bench of this Court also explored possibility of bridging the gap between the competing spouses and in its effort to do so it enhanced the visitation hours as shall be seen from the order dated 27.03.2025, which reads as under:-

"1. Both the parties are present and they are represented by their respective counsel.

2. The operative part of the order passed by this Court on 6.7.2023 operating between the parties reads as under :-

"The matter shall now be listed on 27.07.2023.

On the next date of listing, the appellant No.1/Dr. Dinesh Kumar Agarwal and respondent No.3/Smt. Deepti Agarwal shall be present before the Court.

In the meantime, the visitation arrangement in terms of the order dated 06.01.2022 passed in Habeas Corpus Petition No. 9303 of 2020 shall continue till the next date of listing.

However, we provide that while the father visits the child at his in-laws' place, he shall be free to bring with him gifts or any food items or fruits, whereas the mother of the child will also be free to provide necessary foods.

We also provide that visitation period will be five hours.

We request the mother of the child that she shall try her level best to be present during the period the father visits the child.

We request the parents of the child to try to maintain a congenial atmosphere during the visitation hours".

3. Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O' clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The

father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.

4. This order has been passed as mutually agreed between the parties.

5. List/put up on 29.4.2025."

25. In the same vein, another detailed order was passed by a Coordinate Bench of this Court on 09.05.2025, which reads as under:-

"1. Both the parties are present in person alongwith their counsel in the Chamber proceedings. The minor child has also been produced.

2. The period of visitation was extended up to ten hours by our order passed on 27.3.2025. The relevant part of the said order is reproduced hereinbelow:

“.....Having heard learned counsel for both the parties who are also present in person, we modify the operative part of the order dated 6.7.2023 to the extent that the visitation period restricted up to five hours is enhanced to ten hours. This period would begin at 10 O' clock in the morning and last up to 8.00 p.m. on the date of visit. During this period, the wife namely Deepti Agarwal shall treat her husband well by providing him humble treatment and hospitality. The father shall be left at liberty to meet the child without interference of any relatives. The father shall maintain dignified standard of behaviour towards the child and family members. No obstruction shall be caused by any family member during the visitation period and hassle-free atmosphere shall be maintained at the time of ingress and egress for the father. Other conditions stipulated in the order dated 6.7.2023 shall remain intact until further orders of this Court.

This order has been passed as mutually agreed between the parties.”

3. It is evident that the extended period of time is none other than building of trust and faith between the parents. This alone would streamline the overall development of the child, both educational and social.

4. We spoke to the child in the proceedings and we find it desirable that both the parents spend time with him indoors and outdoors on the date of meeting. Looking to the convenience of the child, both the parents shall manage an outdoor visit for a period of two hours approximately so that the child gets exposure of an open environment in the city and his personality is developed in a manner compatible to the surrounding atmosphere.

5. It is expected of both the parties to maintain a cordial relationship both in conversation as well as in terms of the attitude towards each other keeping in mind the wellness and comfort of the child. On resuming the company at home after outdoor visit, we make it clear, that the visit shall be monitored under the CCTV with audio facility so that the Court may have a view of the behaviour of both the parents coupled with the gestures of the child.

6. We also expect both the parents to shall maintain a decency of language so that the meeting of the child with the parents brings out an optimum good for building a bond of respect and fearlessness in his upbringing. Both the parents shall ensure to have a pleasing interaction with the child and they may also offer the child anything which goes by his liking and is safe and healthy.

7. We also make it clear that the freedom of the child to participate in the deliberations of the parents during the meeting shall not be overpowered by disorienting his attention through digital mediums, rather playful things be kept around so that an enjoyable atmosphere is built to consume time in a manner which inculcates a sense of enjoyment and interest in the child for having physical activities and verbal interaction with the parents. Since the Court cannot carve out the behavioural conditions in strict terms, it is nevertheless expected of both the parents who are well educated, to evolve a pleasing and playful environment so that the minor child feels at ease during the course of meeting.

8. The meeting shall be confined to the parents and the child alone and there shall be interference of none-else.

9. List this matter on 23rd of May, 2025."

Despite the aforesaid efforts made by the Court, no substantial progress could be made on account of recalcitrance of the spouses.

26. In the aforesaid backdrop, once again the father moved another application in the instant intra-court appeal bearing IA No.2 of 2025 on 24.04.2025 seeking modification/clarification of the order dated 07.03.2025. In response, the mother filed her objections bearing IA No.3 of 2025. Apart from filing her objections, the mother too filed her separate application bearing IA No.4 of 2025 whereby she sought the modification of the orders dated 06.07.2023, 27.03.2025 and 09.05.2025.

This was responded by the father, by filing his objections which was followed by a rejoinder affidavit filed by the mother.

27. Another important fact as reflected from the record is that the Special Leave Petition No.32470 of 2025 preferred by the father before the Apex Court assailing the order dated 27.08.2025 passed by the Contempt Court dismissing the contempt petition was disposed of by the Apex Court by means of its order dated 17.11.2025 which reads as under:-

"1. We have heard learned senior counsel for the petitioner.

2. We find that the Contempt Petition was filed by the petitioner with regard to interim order(s) passed by the High Court out of which this Special Leave Petition arises.

3. We dispose of this Special Leave Petition by reserving liberty to the petitioner herein to press the application seeking modification of the interim order regarding visitation rights of the petitioner herein passed by the High Court. Further learned senior counsel submitted that the interim orders were not passed by mutual consent and therefore another application has been filed in that regard. The petitioner is also at liberty to press that application.

4. In the above circumstances, we also reserve liberty to press for a final disposal of Special Appeal No.221/2023 (Dr. Dinesh Kumar Agrawal and Others vs. State of Uttar Pradesh and Others) and Special Appeal No.225/2023 (Master Devansh Agarwal (Detenue) thr. his Mother Smt. Deepti Goel and Anr. vs. State of U.P. and Others) which are connected to each other.

5. It is needless to observe that if the petitioner makes the aforesaid requests to the High Court, the same shall be considered expeditiously and the High Court shall either modify the interim order or dispose of the case as early as possible in accordance with law and preferably within a period of three months from today.

6. Pending application(s), if any, shall stand disposed of."

28. In the aforesaid factual backdrop and especially noticing the decision of the Apex Court as quoted above, it would reveal that liberty was granted to the father to press his applications for modification and this Court was also requested to decide the appeals expeditiously. Hence,

this Court heard the learned counsel for the parties, both on, the pending applications filed by the respective parties and also on merits of the appeals.

29. Shri Prashant Chandra, learned Senior Counsel ably assisted by Ms Meha Rashmi, learned counsel for the father has vehemently urged that a life of a young child is being jeopardised by a recalcitrant mother.

30. It has been urged that the son was with the father from 07.07.2020 till 06.01.2022 and the custody of the child was handed over to the mother. The father was granted visitation right with a fond hope that the child would get the love and affection of both his mother and father, which is essential for a secured upbringing of any child. It is with the aforesaid intent that the learned Single Judge had passed a detailed visitation order dated 06.01.2022 by keeping the best interest of the child in mind.

31. The father being a doctor by profession could very well understand the trauma which a child may face having to shift from one place to another, hence, to provide stability, the father agreed to the visitation order despite the fact that the father is based out of Dhanbad, which is about 800 kilometers from Lucknow

32. The father travelled every weekend from Dhanbad to Lucknow to spend time with his son. However, this was not appreciated by the mother, who left no stone unturned to thwart the meeting of the father with his son. Frivolous objections were raised sometime citing the ill

health of the son or that he was not upto it to meet his father or to go out for an outing with his father, during the visitation period.

33. It was urged that the mother does not enjoy a sound financial status. However, to overcome the aforesaid obstacle and to ensure that the son does not suffer on this count, the father voluntarily deposited Rs.25,000/- every month in the account of the mother, for the well being. All that the father wanted was a congenial relationship with son and to strengthen his emotional bond with his son.

34. It was further urged that a child in his formative years not only requires the love and affection of his mother, but it is equally important that he is nourished with the support, love, affection and security of his father and even the grandparents have a right to meet their grandson. Despite, the long distance between Dhanbad and Lucknow, yet the father took an extra-step of taking a rented accommodation near the house of his in-laws at Lucknow so that the grandparents could also meet their grandson in a homely and congenial atmosphere. All efforts made by the father to smoothen the visitation hours were frustrated by the mother, least realizing that any animosity between the warring couple, would adversely impact their son.

35. It was also submitted that this Court noticing the welfare of the child invoked 'parens patriae' jurisdiction and enhanced the visiting time to 10 hours a day with a fond hope that the child gets the love and affection of both parents and reap the benefits of shared parenting. The father did not shirk from his responsibility, whether it be emotional,

financial or otherwise. On quite a few occasions, when the meeting did take place, but, it was not held in a neutral environment, as the mother did not accompany the son rather the unmarried sister of the mother accompanied the child and she used to behave in an obnoxious manner. She used to speak in a loud voice, in a public place and she recorded the meeting between the father and son which was undesirable and embarrassing for a young child.

36. Moreover, when the father went to meet the child at his in-laws residence, the mother would not permit the father to carry his mobile phone or laptop inside the house rather he was directed to leave the same with the guards posted at the gate. Even while the visitation was to be monitored through CCTV Cameras as provided in the order passed by the learned Single Judge dated 06.01.2022, but the fact remained that the atmosphere in the house was negatively charged with a particular narrative, which rendered the visitation to be a futile exercise.

37. Learned Senior Counsel also submitted that over the period of years and during the legal proceedings, attempt has always been made by the father to ensure that the impact of the litigation may not adversely affect the son. On the contrary, the mother has always put spokes in the smooth implementation of the visitation order. As a consequence, the child appears to have developed emotional insecurity, which, in years to come would impact the son, adversely. Constant negative brainwashing of the child against the father, by the mother, is not at all good for the welfare of the child.

38. It is in the aforesaid circumstances and keeping the best interest of the child in mind, it was prayed by the learned Senior Counsel for the father that the custody of the child be handed over to the father, who is not only economically sound to take care of his son and his education, but also has a stable and affectionate household where the child can receive love and affection of his grandparents and even his cousins i.e. a family as a whole.

39. It was alternatively urged that if agreed, the father is ready to pay exclusively for the education of the child, by putting him in a good and reputed residential school so that the child is kept away from the manipulative conditioning which is being done at the behest of the mother. Education in a boarding school would be helpful for a holistic development of the child and it would also facilitate both the parents to meet the child in an unbiased and neutral surroundings while the vacations can be shared between the two parents as per any appropriate arrangement to be made by the Court.

40. Learned Senior Counsel further urged that the orders passed by the Court in matters relating to custody are never final and they can be modified so as to achieve the well being and best interest of the child, which is of prime importance. Thus, any orders which may have been passed earlier, either in the habeas corpus petition or in the instant intra-court appeals, yet they cannot act as a legal bar for this Court to pass appropriate orders.

41. Shri Chandra, learned Senior Counsel in order to buttress his submissions has relied upon the following decisions of the Apex Court

(i) Thrity Hoshie Dolikuka v. Hoshiam Shavaksha Dolikuka : (1982) 2 SCC 544; (ii) Sheoli Hati v. Somnath Das : (2019) 7 SCC 490; (iii) Yashita Sahu v. State of Rajasthan and others : (2020) 3 SCC 67; (iv) Amyru Dwivedi v. Abhinav Dwivedi and others : (2021) 4 SCC 698 (iv) Col. Ramneesh Pal Singh v. Sugandhi Aggarwal : [2024] 6 SCR 259.

42. **Per contra**, Shri H.G.S. Parihar, learned Senior Counsel assisted by Ms. Meenakshi Singh Parihar has vehemently urged that the mother knows the best interest of her child and deliberate endeavour have been made to vilify the mother. It was submitted that the mother had given birth to her son at Lucknow on 03.07.2018 and her son has never left the sight of his mother.

43. Matrimonial disputes arose between the mother and Dr. Agarwal and she was turned out from her matrimonial home, on account of dowry demands. The mother and the child have been staying together at Lucknow. The father with a devious plan in mind visited the mother and the child at Lucknow in the month of July 2020, during COVID-19 Pandemic. During his stay at his in-law's residence, the father on the pretext of taking his son for a short drive rather abducted the child and without information removed the child from the care and custody of the mother. When the child did not reach home, then frantic efforts were made and then it revealed that the father had forcibly taken the child away from the mother.

44. It was urged, that in this backdrop, an FIR was lodged against the father and also a habeas corpus petition was filed before this Court bearing Writ Petition No.9307 of 2020 wherein several orders were passed but the father did not produce the child, keeping the mother in the dark. Instead the father filed a suit under Section 9 of Act of 1955 at Dhanbad and also filed a petition under the Guardian and Ward Act at Dhanbad.

45. Upon receiving the aforesaid information, the mother filed a transfer petition before the Apex Court. All along, the habeas corpus petition was pending before this Court, but the father did not put in appearance. Only when the order dated 14.12.2021 was passed in the habeas corpus petition that the father assailed the same before the Apex Court by means of Special Leave Petition No.10080 of 2021 which was dismissed on 05.01.2022. It is only under the orders of the Court that the child was handed over to the mother. As a matter of fact, the order of production of the child passed by the Court seized with the habeas corpus petition was known to the father, yet it was not complied and only with the intervention of the Apex Court through its order dated 05.01.2022 that the physical custody of the child was handed over to the mother on 06.01.2022.

46. In this backdrop, a person who is so irresponsible that when the entire country was raging under the COVID-19 Pandemic and in such grave times, the son was taken away from his mother and was made to travel from Lucknow to Dhanbad, jeopardizing his health and life. Prior to 07.07.2020 the son always remained with his mother, and he was

compelled to stay with his father due to his forcible removal from the custody of the mother during the period 07.07.2020 to 06.01.2022. Since thereafter the son has been in the custody of his mother who is taking full care of the child. He is studying in one of the better school of Lucknow and performing well academically and even otherwise.

47. Shri Prihar, learned Senior Counsel further urged that as far as the development of the child is concerned, there is no difficulty on that front as the son is being raised in a congenial atmosphere in a stable household. The mother is professionally qualified and has adequate finances so as to take care of her child and it is not as if the mother and her family are financially in doldrums.

48. It has further been urged that the child is not a commodity or a machine who is to be brought up and raised as per some prescribed formula. It was pointed out that the Court while passing the detailed visitation order dated 06.01.2022 had permitted the father to meet the son every weekend between 10.00 A.M. to 5.00 P.M. The father was also permitted to talk to his son telephonically either through audio or video mode, however, the said arrangement was not working out well for the child.

49. It was pointed out that permitting the father to meet the son, who was 6 to 7 years of age (at the time when the order dated 06.01.2022 passed) was not practical. The growing child has his own needs and frame of mind, which changes quickly and frequently and to direct a child to be with his father for 7 hours between 10.00 A.M. to 5.00 P.M.,

is unworkable especially when the son is unwillingly required to stay in the company of his father (under compulsion of the Court order) makes the child insecure and he shows reluctance. Moreover, the child had started going to school and a weekend is the time for relaxed routine and compelling a child to follow something against his will is not conducive, but it made the child more irritable.

50. It has also been urged that these issues were cropping up which prompted the mother to file an application for modification of the order dated 06.01.2022. In the meantime, the father had also moved two applications for modification and all the three applications came to be decided by the order impugned dated 07.04.2023 whereby the earlier order dated 06.01.2022 was modified.

51. It was urged that a deliberate attempt was made by the father to some how use the son as a bait to get over the fact that the mother had received the custody of the child through the Court, hence several applications and efforts were made including filing a contempt petition which was dismissed. The father also preferred a separate habeas corpus petition which too came to be dismissed. The order of dismissal of the contempt proceedings was assailed before the Apex Court but unsuccessfully and then the intra-court appeal has been filed attempting to seek an order in appeal which the father was unable to secure from the substantive proceedings filed by him.

52. Shri Parihar has further urged that as far as the issue of custody is concerned, the same was handed over to the mother not by choice but

only on intervention of the Court. Once the custody of the child was given to the mother and it has been held to be legal, and on the same premise, the separate habeas corpus petition filed by the father bearing No.353 of 2022 was dismissed on 20.10.2022 and the said order attained finality. Now, the issue of custody cannot be questioned nor it can be raised afresh in the instant intra-court appeal.

53. Shri Parihar has further urged that the submission advanced by the counsel for the father relating to putting the child in a boarding house was also raised by the father during the contempt proceedings and even the Contempt Court did not find favour with it. The order passed by the contempt court was challenged before the Apex Court in Special Leave Petition No.32470 of 2025 and the said SLP was also dismissed. Hence, the said issue too, cannot be raised in the instant intra-court appeal. It is, thus, urged that all attempts of the father to get the custody have failed and now the submissions are made to put the child in a boarding school, which would be a novel method to get the child removed from the custody of the mother and this attempt is being cloaked under the appellations of 'welfare of the child'.

54. It was further urged that though the father had been contesting the proceedings before the High Court with vehemence but the substantive proceedings for guardianship are pending before family court at Lucknow, which is not being pursued diligently. Hence, the habeas corpus petition cannot be a substitute to contest the guardianship issue. In the instant case, custody of the child has been found to be legal with the mother, hence the issue of any illegality does not arise. The issue of

visitation rights, has already been considered by the Court and there has been no conscious efforts on behalf of the mother to violate the same. However, it is to be kept in mind that despite the best efforts, the child can behave differently and this cannot be construed as an act of the mother to violate the order of the court. Moreover, the regular guardianship proceedings are pending and subject to evidence to be led in the said proceedings, the father can get his rights adjudicated.

55. It was also urged that the child was receiving good care and attention from his mother and her family and is performing well and in such circumstances, it will not be in the interest of the child to send him to a boarding school at 7 years of age. It was submitted that the order dated 07.04.2023 passed by the learned Single Judge upon the modification application is also not feasible and it goes beyond the scope of the petition itself especially noticing the fact that any visitation order made in a habeas corpus petition is only a temporary measure, till the substantive proceedings are finally decided in the appropriate forum. However, in the instant case, the habeas corpus petition is being treated as the regular proceedings and orders are being passed whereas the regular proceedings are still held up. It is, thus, for all the aforesaid reasons, the intra-court appeal filed by the father deserves to be dismissed and the order dated 07.04.2023 deserves to be set aside after allowing the connected intra-court appeal of the mother.

56. The Court has heard the learned Senior Counsel for the contesting parties at length and also perused the material on record.

57. At the outset, it may be noticed that howsoever noble an act, its implementation will squarely depend on the intent of the person who is required to abide with it. This Court finds that from time to time several orders were passed and a Co-ordinate Bench of this Court also took pains to resolve the deadlock between the spouses so that the child may not be deprived of his right of good parenting, love and affection of both his parents and grandparents. Unfortunately, the efforts did not bear any fruit.

58. The warring couple has made allegations and counter allegations against each other, which are basically, factual in nature and can be best appreciated after the parties are permitted to lead evidence. However, the dilemma before this Court is how to secure the best interest of the child amidst the marital conflict.

59. It is no doubt true that this Court exercises its *parens patriae* jurisdiction where the welfare of a child is involved. It is equally true that while exercising such powers the Court is not handicapped with any technicalities rather in order to achieve the best interest of the child a Court is empowered to pass any such orders as the Court may deem fit to secure the best interest of the child, regardless the rigorous of codified law, which are subservient and will not undermine the power of this Court.

60. In the light of the material brought on record, certain undisputed facts, which emerge are:-

(i) The parties are already contesting the substantive proceedings before the family court at Lucknow. The mother has filed a suit for divorce whereas the father of the child has filed a petition under section 9 of the Hindu Marriage Act and a separate application under the Guardians and Wards Act, 1890.

(ii) The proceedings before the High Court commenced only after the father had taken the son away from the custody of the mother as alleged, on 07.07.2020 and it was only with the intervention of the Court and orders passed in the Habeas Corpus No.9307 of 2020 that the custody of the child was restored to the mother on 06.01.2022.

(iii) While handing over the custody to the mother, the learned Single Judge passed a detailed order regarding visitation rights of the father, at the time when the child was 4 years of age.

(iv) The said directions made in the order dated 06.01.2022 for visitation were not followed. Nevertheless, this Court in these proceedings cannot really decide who was responsible for the violation of the said order especially when the father had already filed a contempt petition alleging deliberate disobedience of the order passed by the High Court on 06.01.2022 and the said contempt petition came to be dismissed on 27.08.2025 and though the said order was assailed before the Apex Court but unsuccessfully as the said

SLP was dismissed by the Apex Court vide its order dated 17.11.2025.

(v) Significantly, the initial detailed order dated 14.12.2021 passed in Habeas Corpus Petition No.9307 of 2020 was also assailed by the father before the Apex Court and the said S.L.P. No.10080 of 2021 was dismissed by the Apex Court on 05.01.2022.

(vi) The father had filed his separate writ petition praying for a writ of habeas corpus, by means of Writ Petition No.353 of 2022 which was dismissed by the Court on 20.10.2022 and the said order was never challenged by the father before any Court.

61. In view of the aforesaid undisputed facts, the two issues before this Court are : (i) The plea of the father to get the custody of the child and (ii) Alternatively, to put the child in a boarding school.

62. It may be true that the orders passed in proceedings relating to the custody and the visitation rights are not final in the sense that with change in circumstances, they can be moulded and modified to meet the contingencies and for the ends of justice, keeping the welfare of the child in mind. However, at the same time it is to be remembered that the orders passed, continue to bind the parties unless there is a change in the circumstance, and the changed circumstances are such that it impacts the feasibility or the work-ability of the orders or the circumstances have undergone such a major change in complexion that fresh orders are necessitated.

63. From a careful perusal of the material on record, this Court finds that the recalcitrance of the spouses resulted in rendering the orders and the efforts made by the Co-ordinate Bench, unworkable and it is the cause of heart burn between parties. Nevertheless, it is the child which is being made the scapegoat.

64. As far as the issue of shared parenting is concerned, it is no doubt a better way of bringing up the child. However, in the instant case, the parents are embroiled in a legal battle. They are both, well educated and qualified yet for their own personal reasons, they have not been able to bridge their differences. The Court had made several efforts as noticed in the narrative of facts and even referred the parties to the Mediation Centre, but it did not yield any positive results.

65. At this stage, it will be worthwhile to refer to the decisions of the Apex Court cited by the learned Senior Counsel for the father, wherein the issues relating to child custody, visitation rights issued in the best interest of the child and the parens patriae jurisdiction has been considered.

66. The Apex Court in **Thirty Hoshie Dolikuka** (supra) has held as under:-

“17. The principles of law in relation to the custody of a minor appear to be well-established. It is well-settled that any matter concerning a minor, has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by the only consideration of the welfare of the minor.

18. In Halsbury's Laws of England, 3rd Edn., Vol. 21, the law is succinctly stated in para 428 at pp. 193-94 in the following terms:

“428. Infant's welfare paramount.—In any proceedings before any court, concerning the custody or upbringing of an infant or the administration of any property belonging to or held on trust for an infant or the application of the income thereof, the court must regard the welfare of the infant as the first and paramount consideration, and must not take into consideration, whether from any other point of view, the claim of the father, or any right at common law possessed by the father in respect of such custody, upbringing, administration or application is superior to that of the mother, or the claim of the mother is superior to that of the father. This provision applies whether both parents are living or either or both is or are dead.

Even where the infant is a foreign national, the court, while giving weight to the views of the foreign court, is bound to treat the welfare of the infant as being of the first and paramount consideration whatever orders may have been made by the courts of any other country.”

19. In the case of Rosy Jacob v. Jacob A. Chakramakkal [(1973) 1 SCC 840 : AIR 1973 SC 2090 : (1973) 3 SCR 918] this Court has observed at SCR pp. 934-35: (SCC pp. 354-55, paras 15-17)

“... Where, however, family dissolution due to some unavoidable circumstances becomes necessary the Court has to come to a judicial decision on the question of the welfare of the children on a full consideration of all the relevant circumstances. Merely because the father loves his children and is not shown to be otherwise undesirable cannot necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him as against the wife who may also be equally affectionate towards her children and otherwise equally free from blemish, and who, in addition, because of her profession and financial resources, may be in a position to guarantee better health, education and maintenance for them. The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them. The approach of the learned Single Judge, in our view, was correct and we agree with him. The Letters Patent Bench on appeal seems to us to have erred in reversing him on grounds, which we are unable to appreciate.

At the Bar reference was made to a number of decided cases on the question of the right of father to be appointed or declared as guardian and to be granted custody of his minor children under Section 25 read with Section 19 of the Guardians and Wards Act.

Those decisions were mostly decided on their own peculiar facts. We have, therefore, not considered it necessary to deal with them. To the extent, however, they go against the view we have taken of Section 25 of the Guardians and Wards Act, they must be held to be wrongly decided.

The respondents contention that the Court under the Divorce Act had granted custody of the two younger children to the wife on the ground of their being of tender age, no longer holds good and that, therefore, their custody must be handed over to him appears to us to be misconceived. The age of the daughter at present is such that she must need the constant company of a grown-up female in the house genuinely interested in her welfare. Her mother is in the circumstances the best company for her. The daughter would need her mother's advice and guidance on several matters of importance....”

paramount consideration of the welfare of the child, we are of the opinion that the child's interest and welfare will be best served by removing her from the influence of home life and by directing that she should continue to remain in the Boarding School. It is not in dispute that Kimmins Boarding School at Panchgani to which the child has been admitted is a good institution.

* * *

36. The question of custody of the child must necessarily be considered from the only viewpoint of the welfare of the child. In view of our finding that in the instant case the best interest of the child shall be served by keeping her in a Boarding School away from the unhealthy atmosphere of strain and tension which she had been undergoing at home, the question of custody has to be judged in this background. In that view of the matter it does not really become necessary for us to go into the question of the merits of the respective competence of either of the parents. The person to whom the custody of the child has to be entrusted will necessarily be answerable to the school for payment of all charges and expenses of the child and also in relation to any matter concerning the child in her school life. It is clear that the father is not inclined to allow the child to remain in a Boarding Institution. If the custody be left to him, the father in view of the disinclination to allow the child to remain in the Boarding Institution, may be in a position to create difficulties for the child for her remaining in the institution by non-payment of fees or otherwise. As we have earlier noticed, the father is obsessed with the idea of obtaining exclusive control of the daughter and keeping the daughter with him in his house. It is not in dispute and it cannot be disputed that the mother has a great deal of affection for her daughter and the daughter is also very fond of the mother. The mother has the welfare of the daughter in her heart and to serve the best interest of the daughter the mother is prepared to make any necessary sacrifice. For the welfare of the daughter the mother at considerable expense had put her in Kimmins Boarding School, Panchgani which is recognised to be a good institution. She has been paying for all the expenses of the daughter at the school. She has a steady income out of which she is in a position to meet all the expenses of her daughter at the school. The mother also does not suffer from any obsession regarding possession of the girl and she wants her daughter

to lead a healthy normal life essential for her proper growth and development. The mother is very anxious that the child should continue to remain in the Boarding School. The girl now aged about 11 years, is reaching an age when she will need the guidance of her mother. We are, therefore, of the opinion that the custody of the girl should be given to the mother. The argument of Mr Desai that the Bombay High Court went wrong in refusing the custody of the daughter to the mother mainly on the ground that the mother is a working girl, is not without force. It also appears that the High Court failed to properly appreciate that home influence in the present case had been doing very great damage to the healthy growth of the child and had brought about a near nervous breakdown of the girl. The argument of Mr Bhandare that the girl needs in any event the company of her brother to whom she is deeply attached, has not impressed us. The girl had been staying with her father at home and had been enjoying the company of her brother. It does not, however, appear that the home influence including influence of the brother, has done her any good. The influence at home, as we have earlier noticed, has more or less made her a nervous wreck. The further fact also remains that the brother is now grown up and he may not be there at the house to give her company. At the time of hearing of the appeal we were given to understand that the brother was away at Ceylon as a Sea Cadet and was likely to return soon. We may also add that by the directions already given by this Court, all necessary and proper opportunities have been given to the brother to meet the minor.”

67. The Apex Court in **Sheoli Hati** (supra) held as under:-

“15. Before we close, few observations on the issues which have arisen before us need to be made. The present is a case, where limited issue has arisen regarding giving education to the child in boarding school or to permit the status quo regarding education of the child as was on the date when the Family Court passed order dated 31-3-2016. When the child has to go in the environment, where there is marital discord between her parents affecting the peace of mind of all including the parents and children, child suffers physical and mental distress. The ill consequences of the discord between mother and father affect the child in her normal upbringing and is a negative factor on child's personality and upbringing. This Court in *Vivek Singh v. Romani Singh* [*Vivek Singh v. Romani Singh*, (2017) 3 SCC 231 : (2017) 2 SCC (Civ) 1] , has discussed the term “Parental Alienation Syndrome”. In para 18 of the judgment, following was observed: (SCC p. 245)

“18. ... Psychologists term it as “The Parental Alienation Syndrome”. It has at least two psychological destructive effects:

- (i) First, it puts the child squarely in the middle of a contest of loyalty, a contest which cannot possibly be won. The child is asked to choose who is the preferred parent. No matter whatever is the choice, the child is very likely to end up feeling painfully guilty and confused. This is because in the overwhelming majority of cases, what the child wants and needs is to continue a relationship with each parent, as independent as possible from their own conflicts.

(ii) Second, the child is required to make a shift in assessing reality. One parent is presented as being totally to blame for all problems, and as someone who is devoid of any positive characteristics. Both of these assertions represent one parent's distortions of reality.”

16. In the above case also there was bitter fight between father and mother. The Family Court has allowed the custody of the minor girl child to the father by dismissing the petition of the respondent mother for custody. The High Court on appeal decided [Romani Singh v. Vivek Singh, 2013 SCC OnLine Del 1264 : (2013) 136 DRJ 675] the entitlement of the custody of the child to the mother. Aggrieved by the order of the High Court, the father had filed the appeal in which backgrounds the above observations were made by this Court. The ill-effect on child, due to discord between the parents with negative feeling against each other has natural effect, which hinders the child's normal development.

17. It is well settled that while taking a decision regarding custody or other issues pertaining to a child, welfare of the child is of paramount consideration. This Court in Gaurav Nagpal v. Sumedha Nagpal [Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42 : (2009) 1 SCC (Civ) 1] , had the occasion to consider the parameters while determining the issues of child custody and visitation rights, entire law on the subject was reviewed. This Court referred to English Law, American Law, the statutory provisions of the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956, this Court laid down following in paras 43, 44, 45, 46 and 51: (SCC pp. 55-57)

“43. The principles in relation to the custody of a minor child are well settled. In determining the question as to who should be given custody of a minor child, the paramount consideration is the “welfare of the child” and not rights of the parents under a statute for the time being in force.

44. The aforesaid statutory provisions came up for consideration before courts in India in several cases. Let us deal with few decisions wherein the courts have applied the principles relating to grant of custody of minor children by taking into account their interest and well-being as paramount consideration.

45. In Saraswatibai Shripad Vad v. Shripad Vasanji Vad [Saraswatibai Shripad Vad v. Shripad Vasanji Vad, 1940 SCC OnLine Bom 77 : ILR 1941 Bom 455 : AIR 1941 Bom 103] the High Court of Bombay stated: (SCC OnLine Bom)

‘... It is not the welfare of the father, nor the welfare of the mother, that is the paramount consideration for the court. It is the welfare of the minor and of the minor alone which is the paramount consideration ...’

46. In *Rosy Jacob v. Jacob A. Chakramakkal* [*Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840] , this Court held that object and purpose of the 1890 Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The power and duty of the court under the Act is the welfare of minor. In considering the question of welfare of minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship.

* * *

51. The word “welfare” used in Section 13 of the Act has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh with the court as well as its physical well-being. Though the provisions of the special statutes which govern the rights of the parents or guardians may be taken into consideration, there is nothing which can stand in the way of the court exercising its *parens patriae* jurisdiction arising in such cases.”

(emphasis in original)

* * *

20. In the above case, the child was allowed to continue in the boarding school. We notice one more decision of this Court in *Nutan Gautam v. Prakash Gautam* [*Nutan Gautam v. Prakash Gautam*, (2019) 4 SCC 734 : (2019) 2 SCC (Civ) 642] , which was a case where an appeal was filed by the mother of a child against the order [*Nutan Gautam v. Prakash Gautam*, 2018 SCC OnLine All 4517] , [*Nutan Gautam v. Prakash Gautam*, 2018 SCC OnLine All 4518] of the High Court passed in first appeal. While decreeing the divorce petition of the husband *ex parte* the trial court had directed the son, the minor boy, to be admitted in a boarding school at New Delhi. *Ex parte* order passed by the trial court was challenged by the mother in the High Court, which matter was pending before the High Court. The High Court by interim order had permitted the father to take the boy to boarding school. The said interim order was challenged in this Court. This Court interacted with the boy and took the view that in the facts of the case, the child should not be compelled to go to boarding school. This Court allowed the child to continue his studies at Global International School, Shahjahanpur, where he was earlier studying in the interest of the child. Every case where issue pertaining to custody of child and education is decided depends upon the facts of each case. No hard and fixed formula can be found out which can be applied to each and every case. Each case has to be examined in its own facts. ...

21. We, thus, are of the view that what is in the interest of the child depends on the facts and circumstances of each case and has to be decided on its own merits without adhering to any fixed formula or rule. The appeals being pending before the High Court, we are of the view that while deciding the appeals finally, High Court should also take into consideration subsequent materials which may be brought before it by the parties including the progress report of the child from Good Shepherd International School, Ooty. The learned counsel has

also raised certain medical issues pertaining to the child. It is also open for the High Court to take decision on the said issues and if necessary to obtain medical reports as may be required. Insofar as interacting with the child, the High Court during hearing of the appeals had already interacted with the child on many occasions and it is for the High Court to take a decision with regard to interacting with the child.”

68. The Apex Court in **Yashita Sahu** (supra) held as under:-

“Welfare of the child — the paramount consideration

20. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

23. The concept of visitation rights is not fully developed in India. Most courts while granting custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

24. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks and holidays. In cases like the present one, where the parents are in two different continents, effort should be made to give maximum visitation rights to the parent who is denied custody.

25. In addition to “visitation rights”, “contact rights” are also important for development of the child specially in cases where both parents live in different States or countries. The concept of contact rights in the modern age would be contact by telephone, e-mail or in fact, we feel the best system of contact, if available between the parties should be video calling. With the increasing availability of internet, video calling is now very common and courts dealing with the issue of custody of children must ensure that the parent who is denied custody of the child should be able to talk to her/his child as often as possible. Unless there are special circumstances to take a different view, the parent who is denied custody of the child should have the right to talk to his/her child for 5-10 minutes every day. This will help in maintaining and improving the bond between the child and the parent who is denied custody. If that bond is maintained, the child will have no difficulty in moving from one home to another during vacations or holidays. The purpose of this is, if we cannot provide one happy home with two parents to the child then let the child have the benefit of two happy homes with one parent each.”

69. Again in **Amyru Dwivedi** (supra) the Apex Court has held as under:-

“2. We are not at all happy with the manner in which the visitation rights have been granted in the present case. The High Court has directed that the mother can meet the child for two hours once a month, that too, in the office of Secretary, District Legal Services Authority, Lucknow or at a place, mutually agreed to by the parties and in case of disagreement, before the District Legal Services Authority, Lucknow. However, it has been ordered that the meeting would be held in a secured atmosphere and it will be the duty of the Secretary to provide cordial atmosphere and security to the parties.

3. In *Yashita Sahu v. State of Rajasthan* [*Yashita Sahu v. State of Rajasthan*, (2020) 3 SCC 67 : (2020) 2 SCC (Civ) 39], this Court held that the welfare of the child is of paramount consideration in matters relating to custody of children. In this context, we may refer to para 22 of the judgment, which reads as follows : (SCC p. 80)

“22. A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only

the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.”

4. When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation right, can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority. That atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable.”

70. In **Col. Ramneesh Pal Singh** (supra), the Apex Court has held as under:-

“8. It is well settled that the principal consideration of the Court whilst deciding an application for guardianship under the Act in exercise of its *parens patriae* jurisdiction would be the ‘welfare’ of the minor children.

* * *

10. In this context, it would be appropriate to refer to a decision of this Court in *Nil Ratan Kundu* (Supra) wherein parameters of ‘welfare’ and principles to be considered by courts whilst deciding questions involving the custody of minor children came to be enunciated. The relevant paragraph(s) are reproduced as under:

“52. In our judgment, the law relating to custody of a child is fairly well settled and it is this : in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing therefrom. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the

paramount consideration should be the welfare and wellbeing of the child. In selecting a guardian, the court is exercising *parens patriae* jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor.

* * *

55. We are unable to appreciate the approach of the courts below. This Court in a catena of decisions has held that the controlling consideration governing the custody of children is the welfare of children and not the right of their parents.

56. In *Rosy Jacob* [(1973) 1 SCC 840] this Court stated:(SCC p. 854, para 15)

“15. ... The contention that if the husband [father] is not unfit to be the guardian of his minor children, then, the question of their welfare does not at all arise is to state the proposition a bit too broadly and may at times be somewhat misleading.”

It was also observed that the father's fitness has to be considered, determined and weighed predominantly in terms of the welfare of his minor children in the context of all the relevant circumstances. The father's fitness cannot override considerations of the welfare of the minor children.

57. In our opinion, in such cases, it is not the “negative test” that the father is not “unfit” or disqualified to have custody of his son/daughter that is relevant, but the “positive test” that such custody would be in the welfare of the minor which is material and it is on that basis that the court should exercise the power to grant or refuse custody of a minor in favour of the father, the mother or any other guardian.”

11. Furthermore, this Court in *Gaurav Nagpal* (Supra) undertook a comprehensive and comparative analysis of laws relating to custody in the American, English, and Indian jurisdiction(s) and observed that the Court must construe the term ‘welfare’ in its widest sense i.e., the consideration by the Court would not only extend to moral and ethical welfare but also include the physical well-being of the minor children.

12. Accordingly, in view of the aforesaid, not only must we proceed to decide the present lis on the basis of a holistic and all-encompassing approach including inter alia (i) the socioeconomic and educational opportunities which may be made available to the Minor Children; (ii) healthcare and overall-wellbeing of the children; (iii) the ability to provide physical surroundings conducive to growing adolescents but also take into consideration the preference of the Minor Children as

mandated under Section 17(3) of the Act.³ Furthermore, we are equally conscious that the stability of surrounding(s) of the Minor Children is also a consideration to be weighed appropriately.

* * *

21. The role of a Court vis-à-vis allegation(s) of PAS came to be considered recently by an English Court i.e., the High Court of Justice Family Division in *Re C* ('parental alienation'; instruction of expert), [2023] EWHC 345 (Fam). Pertinently, the Court reflected on the changing narrative in relation to PAS - placed before the Court therein, by an expert body i.e., the Association of Clinical Psychologists - UK ("ACP") and thereafter observed as under:

"103. Before leaving this part of the appeal, one particular paragraph in the ACP skeleton argument deserves to be widely understood and, I would strongly urge, accepted:

'Much like an allegation of domestic abuse; the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. For these purposes, the ACP-UK wishes to emphasise that "parental alienation" is not a syndrome capable of being diagnosed, but a process of manipulation of children perpetrated by one parent against the other through, what are termed as, "alienating behaviours". It is, fundamentally, a question of fact.'

It is not the purpose of this judgment to go further into the topic of alienation. Most Family judges have, for some time, regarded the label of 'parental alienation', and the suggestion that there may be a diagnosable syndrome of that name, as being unhelpful. What is important, as with domestic abuse, is the particular behaviour that is found to have taken place within the individual family before the court, and the impact that that behaviour may have had on the relationship of a child with either or both of his/her parents. In this regard, the identification of 'alienating behaviour' should be the court's focus, rather than any quest to determine whether the label 'parental alienation' can be applied."

22. We find ourselves in agreement with the aforesaid position. Courts ought not to prematurely and without identification of individual instances of 'alienating behaviour', label any parent as propagator and/or potential promoter of such behaviour. The aforesaid label has far-reaching implications which must not be imputed or attributed to an individual parent routinely.

23. Accordingly, it is our considered opinion that Courts must endeavour to identify individual instances of 'alienating behaviour' in order to invoke the principle of parental alienation so as to overcome the preference indicated by the minor children.⁵

24. In the instant appeal, the Family Court has categorically recorded that there was nothing on record to suggest that the interests and welfare of the Minor Children were in any manner affected during their

stay with the Appellant. Additionally, the Learned Single Judge of the High Court interacted with the Minor Children on 24.02.2020 i.e., a period of close to 4.5 (four and a half) years after the alleged incident on 08.08.2015, and categorically recorded that the Minor Children expressed no overt preference amongst their parents - the aforesaid observation by the Learned Single Judge, is crucial as it underscores that while the relationship between the parties may have been strained; the Minor Children could not be said to have exhibited any indication of 'parental alienation' i.e., there was no overt preference expressed by the Minor Children between the parents and thus, the foundation for any claim of parental alienation was clearly absent. The aforesaid position is also supported by materials on record to suggest that (i) the Minor Children are cognisant and aware of the blame game being played inter se the parties; and (ii) that the Minor Children did not foster unbridled and prejudiced emotions towards the Respondent. Accordingly, we find that the Appellant could not have been said to have engaged or propagated 'alienating behaviour' as alleged by the Respondent."

71. Having considered the aforesaid decisions and applying the underlying principles for the purposes of testing the veracity of the submissions, the questions would be, that even if at all, the order of visitation rights is being flouted by one of the party then in such circumstances whether it will be appropriate to handover the custody from the mother to the father or alternatively to put the child in a boarding school.

72. Considering the welfare of the child which is of prime importance and in the given facts and circumstances of the instant case, it is clear that since birth the child has been with the mother except for the period when he was taken away from the custody of the mother on 07.07.2020 and till 06.01.2022, when the custody of the child was restored to his mother.

73. For almost last 4 years, the son is with his mother and he has started going to school. From the material on record, it appears that the

child is taking education in one of the better institutions in the city. As per the progress card brought on record, the child appears to be fairing well academically as also in co-curricular activities. The child is accustomed to his mother and there is no material on record to prima-facie indicate that the household atmosphere and surroundings of the household of the mother and the son is such that it may have an adverse impact on the child or his upbringing. There is no material on record, which reflects that the child is showing signs of stress and discomfort while residing with his mother.

74. Had it been a case where both the spouses were living together and there was in fighting between them because of which the home environment may have become toxic and distressful for the child then perhaps it could have been ascertained whether it is appropriate to change/modify the order of the Court, regarding the custody or putting the child in a boarding school.

75. As far as, the issue regarding financial status of the spouses is concerned, even though the father may be comparatively more economically sound than the mother, as is suggested by the learned Senior Counsel appearing for the father, but nevertheless, it cannot be said that the mother or her family is financially incapable to take care and raise the child in a respectable and in a decent manner. The child is taking education in a good institution and fairing well and there is no cogent material to indicate that the child is deprived of any essential amenities or benefits either in relation to his education or his health and

upbringing which may be attributable to sheer lack of finances available with the mother.

76. The child is about 7 years of age at present and at this stage where there are no accentuating circumstances on record, which can indicate that the child is living in a toxic household with his mother, in such circumstances, uprooting the child from his mother and permitting the custody of the child to the father may not be in the fitness of things especially when the child is accustomed to a life style, is going to school and has friends and is cocooned in his own ecosystem, which is comfortable for him.

77. Thus, as far as the issue of change in custody is concerned, this Court taking note of the facts and circumstances including that the custody has been held to be legal with the mother. This aspect has already been noticed by the Apex Court and it was also considered by a learned Single Judge of this Court in a separate writ petition seeking a relief of Habeas Corpus, filed by the father bearing Habeas Corpus Petition No.353 of 2022 which was dismissed by the High Court on 20.10.2022 and that order was also not challenged and over the time the said order is final. Moreover, it is also not disputed that the father has already filed a petition under the Guardians and Wards Act, 1890 which is engaging the attention of the trial Court concerned. In the aforesaid circumstances, this Court does not find, at this stage, that there are any emergent or such eminent circumstances which may warrant any immediate attention for removing the child from the care and custody of the mother and be provided to the father.

78. Having said so, it is clarified that merely because this Court in this intra-Court appeal has not found it appropriate to pass an order for change of custody of the child, it may not be considered as an expression of opinion on merits of the controversy as it will be open for the parties to raise all the pleas which may be available to them in law before the concerned Family Court which shall take note of it strictly in light of the evidence produced and pass appropriate orders regarding the custody, in accordance with law.

79. Now considering the other issue regarding putting the child in boarding school. This is a tricky issue, which primarily depends on facts and there cannot be any straightforward answer. In the instant case, the child has been with his mother and even though the child was with the father for some limited time for the reasons and circumstances noticed above and it was with the intervention of the Court that the custody has been handed over to the mother. Apparently, the child is comfortable in the school which he is attending and there is no material to suggest that the child is mentally prepared or emotionally strong enough to stay in a boarding school i.e. in a far away place and without his mother,

80. The Court has to ensure that in a legal battle between the conflicting couple, the child is not used as a weapon nor is he victimized. Sending a child to a boarding school cannot be an answer in black and white. It is necessary to psychologically evaluate the child to assess as to whether it is necessary to remove the child from the custody of his mother and put him in a boarding school. How the child will react is an important aspect to be considered before taking such a decision.

Unfortunately, there is nothing on record to shed light on this aspect of the matter and in absence of any expert's report, this Court will not take a decision merely on the asking of the father or only to smoothen the implementation of the visitation order which has already been passed in favour of the father. In absence of any professional evaluation or expert report or specific circumstances, this Court observes that it cannot order to send the son to the boarding school.

81. As noticed above, the substantive petition is already pending before the Family Court, Lucknow, accordingly, it will be open for the parties to place such expert report or material to indicate whether it would be feasible and in the best interest of the child to send him to the boarding school or not. Hence, this Court is not giving any definitive finding in this regard and once again reiterating that even though this Court has declined to pass an order permitting the child to be sent to a boarding school, will not mean that the Family Court concerned would not consider it in light of the evidence and in accordance with law. It shall also be open for the Family Court concerned to examine as to whether it would be feasible and in the best interest of the child to share his vacations with both his parents so that each of the parent gets a chances to spend time with the child and to strengthen the emotional bond.

82. In this regard, a direction is issued to the Family Court where the substantive proceedings are pending to consider the matter between the parties expediently and priority be accorded to the Case No.385 of 2020, under the Guardians and Wards Act. The parties are further directed to

cooperate in early hearing and in case if any party chooses to misuse the liberty, it will be open for the Family Court to pass appropriate orders in accordance with law.

83. In light of the aforesaid discussions and having taken note of the order passed by the learned Single Judge dated 06.01.2022 and the other order dated 07.04.2023 which modified the earlier visitation order, this Court finds that there is hardly much difference in the two and to take a Bird’s Eye View the differences in the two orders is being noticed hereinafter in the shape of a chart:-

| First Order dated 06.01.2022 | | Second Order dated 07.04.2023 |
|---------------------------------|--|--|
| (a) | Weekly Sunday visitation | Season wise, time segmented |
| (b) | Location- Home only | Location-Home and Outing included to neighborhood part (Regional Science Centre, Aliganj) |
| (c) | Time – 10:00 AM to 05:00 PM | Summer -Morning 10:00 AM to 01:00 PM (home visitation) Evening – 05:00 to 07:30 PM outside visit (home before : 07:30 PM) Winter -Morning 10:00 AM to 01:00 PM (home before : 01:30 PM), outside visit Evening 05:00 PM to 07:30 PM (home visitation) |
| (d) | Visitation of Grandparents not included | Grandparents could visit every 4 th Sunday- Outside within 5 km radius |
| (e) | No time limit specified for phone/Video call | Minimum 10 minutes mandated |

84. Having considered the aforesaid two orders and noticing the modification made, this Court finds that where the original order dated 06.01.2022 which otherwise is a robust order, but it could not be implemented, in such circumstances, there was actually no reason to modify the said order especially when the earlier order itself was not being appropriately adhered. By making cosmetic changes and including

the right of grandparents to visit the child in itself was not required when the initial order itself did not prohibit the grandparents.

85. In the given circumstances, this Court finds that the order dated 06.01.2022 was good enough to protect the visitation rights of the father. Hence, this Court does not deem it fit to change the order dated 06.01.2022 insofar as the visitation rights of the father is concerned. The same shall be adhered by the parties and this Court expresses a hope that the warring parties, for the sake of welfare and best interest of their son, may not adopt a recalcitrant attitude rather the child be permitted to have the love and affection of both his parents.

86. In the aforesaid facts and circumstances and in light of the aforesaid directions, all pending applications are disposed of and both the intra-Court appeals are also disposed of in light of the observations and directions made hereinabove. The parties shall bear their own costs.

(Jaspreet Singh, J.)

(Arun Bhansali, CJ.)

January 21, 2026

Rakesh/ank