[2026] 10 S.C.R. 505 : 2026 INSC 1130

Vayu Kishore
v.
State of Karnataka & Ors.

(Civil Appeal No. 13785 of 2026)

08 October 2026

[J.B. Pardiwala and K.V. Viswanathan, JJ.]

Issue for Consideration

Two parents (appellant and respondent no.4) contested custody of a child, pursuant to which a foreign court passed an order. The respondent no.4 violated the said order and left for India with the child. Thereafter, in India, appellant filed a writ for *habeas corpus* before the High Court. The High Court dismissed the writ petition and concluded that it would be in the best interest of the child to remain in her mother's custody *i.e.* the respondent no.4. Whether the High Court committed any error in passing the impugned judgment and order.

Headnotes†

Writ – *Habeas Corpus* – On 05.05.2018, the petitioner and respondent no.4 solemnised and registered their marriage in South Brunswick, New Jersey, USA – In the wedlock, a daughter was born – Matrimonial dispute arose between the parties – Respondent no.4 invoked the jurisdiction of the Superior Court of California and preferred a petition seeking dissolution of marriage and custody of the child – The Superior Court of California, after hearing both parties and keeping in mind the best interests of the child, passed an order dated 25.08.2022 granting joint custody and shared parenting to both parents, with an equal 50:50 time share on a 4-3-3-4 schedule – On 08.09.2022, respondent no. 4 left the USA for India with the child, despite the order dated 25.08.2022 – Pursuant thereto, the Superior Court of California, *inter-alia*, directed the respondent no.4 to immediately return child to the appellant's physical custody in California – Appellant filed writ petition (*habeas corpus*) in India, before the High Court – The High Court dismissed the writ petition and concluded that it would be in the best

interest of the child to remain in her mother's custody *i.e.* the respondent no.4 – Correctness:

Held: It is not disputed that the appellant and respondent no.4 solemnised their marriage in the United States and set up their matrimonial home there – In fact, both the divorce and the custody proceedings in the United States were instituted by respondent no.4 herself – A perusal of the custody order dated 25.08.2022 shows that it was passed after hearing both parties and after taking into account the best interests of the child – Yet, barely two weeks after that order was passed, respondent no.4 brought the child to India, in clear breach of the conditions it contained – Nothing on record suggests that her circumstances were so grave or frightening that she was left with no option but to take the child out of the USA – In these circumstances, the comity of courts, and the principle that a party ought not to benefit from their own wrong, tilt the scales in favour of the appellant – However, the decision does not rest on these considerations alone – The welfare of the child has remained the governing consideration – The welfare of the child would be better served in the USA – Therefore, the child must be returned to the United States into the custody of the appellant – Respondent no.4 cannot insist that child should remain with her in India, or deny the appellant, as her father, the joint custody and shared parenting that are his due – Respondent no.4 has agreed to accompany child to the United States – In view of her statement, respondent no.4 is directed to travel to the United States with the child on or before 31.12.2026 – Appellant would provide respondent no.4 monthly financial assistance of USD 3,200, as ordered by the Superior Court of California and would not take any legal steps against respondent no.4 in respect of the alleged violation of the order dated 25.08.2022 – As a matter of abundant caution, the appellant is directed to furnish security in the sum of Rs.1,00,00,000/- (Rupees One Crore only) by way of a fixed deposit receipt initially for a period of 18 months on an auto renewable basis in the name of the Registrar, Supreme Court of India. [Paras 34-37, 39, 41, 43]

Matrimonial dispute – Child custody – Welfare of child – Order of a Foreign Court:

Held: The welfare of the child is the paramount consideration in every such case, whatever orders the courts of another country may have made – Put differently, a court in this country, when exercising its jurisdiction, cannot blindly follow the order of a foreign

court and act merely as an executing court – This position rests on two foundations – The first is that once the court is seized of the matter, it exercises its *parens patriae* jurisdiction – That jurisdiction obliges it to consider and assess the matter for itself, through the lens of the child's welfare – The second is that the decision in such cases turns not on the legal rights of the parties but on the welfare of the child – The same emphasis on welfare over legal entitlement runs through our statutes on custody and guardianship – They make clear that a person otherwise entitled to custody or guardianship need not be granted it if that would not be for the welfare of the child – There is thus no ambiguity in the fact that an order of a foreign court must yield to the welfare of the child. [Paras 15, 16]

Matrimonial dispute – Child custody – Order of a Foreign Court – Disobedience by a parent:

Held: The necessary consequence of the paramountcy of the child's welfare, and of a foreign order yielding to it, is simple – A parent's disobedience of a foreign order does not, by itself, require the court to give automatic effect to that order – Nor can the remedy of *habeas corpus* be invoked merely to enforce the directions of a foreign court. [Para 17]

Matrimonial dispute – Child custody – Order of a Foreign Court – When weight to be given:

Held: The paramountcy of the child's welfare does not mean that the order of a foreign court is to be disregarded – The weight to be given to the order of a foreign court may turn on a few factors, such as: (i) the nature of the order, including whether the foreign court examined the best interests of the child on the merits, whether both parties were heard, and who instituted the proceedings before it; (ii) the time that has elapsed since the order was passed; and (iii) whether circumstances have changed in the interim – No single factor is decisive – It is the combination of these factors that must be considered – Proper weight, therefore, is not a matter of mathematical precision – It is a matter of the court's considered assessment of how far the foreign order reflects the welfare of the child. [Paras 18, 19]

Matrimonial dispute – Child custody – Order of a Foreign Court – Nature of inquiry the court must undertake:

Held: The court must independently consider the welfare of the child, and in considering it must assign proper weight to the order of the foreign court – But before the court undertakes that exercise, it must first decide whether the case calls for a summary inquiry or an elaborate one – In a summary inquiry, the court proceeds on the footing that the welfare of the child is best served by following the order of the foreign court – The child is therefore returned to the country from which the child was removed, unless it is clearly shown that such return would be harmful to the child – In an elaborate inquiry, the court does not stop at the foreign order – It takes the order into account, but goes on to examine for itself where the welfare of the child truly lies. [Para 20]

Case Law Cited

Dhanwanti Joshi v. Madhav Unde **[1997] Supp. 5 SCR 30 : (1998) 1 SCC 112;** *Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu and Others* **[2022] 5 SCR 232 : (2023) 12 SCC 472;** *Lahari Sakhamuri v. Sobhan Kodali* **[2019] 5 SCR 240 : (2019) 7 SCC 311 – relied on.**

Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari **[2019] 7 SCR 335 : (2019) 7 SCC 42;** *Nithya Anand Raghavan v. State (NCT of Delhi)* **[2017] 7 SCR 281 : (2017) 8 SCC 454;** *Vasudha Sethi v. Kiran V. Bhaskar,* **2022 SCC OnLine SC 43;** *Yashita Sahu v. State of Rajasthan and Others* **[2020] 1 SCR 417 : (2020) 3 SCC 67;** *Ravi Chandran v. Union of India & Ors.* **[2009] 15 SCR 960 : (2010) 1 SCC 174;** *Elizabeth Dinshaw v. Arvand M. Dinshaw* **[1987] 1 SCR 175 : (1987) 1 SCC 42;** *Sarita Sharma v. Sushil* **[2000] 1 SCR 915 : (2000) 3 SCC 14 – referred to.**

List of Acts

Hindu Minority and Guardianship Act, 1956; Guardians and Wards Act, 1890.

List of Keywords

Matrimonial dispute; *Habeas corpus*; Child custody; Welfare of child; Foreign Court order; Superior Court of California; Comity; *Parens Patriae*; Summary inquiry; Elaborate inquiry; Joint custody; Comity of Courts.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13785 of 2026

From the Judgment and Order dated 20.12.2023 of the High Court of Karnataka at Bengaluru in WPHC No. 43 of 2023

With

Special Leave Petition (Civil) No. 37143 of 2026

Appearances for Parties

Advs. for the Appellant(s):
Mukul Rohatgi, Mrs. Meenakshi Arora, Sr.Advs., Ms. Malavika Rajkotia, V. Hari Pillai, Ms. Susha Unni, Samar Vijay Singh, Ms. Nandita Krishna,mMs. Mahek Jani, Ms. Sabarni Som, Aman Dev Sharma, Gaj Singh Jaswal, Kunal Verma, Prabhjit Jauhar, Mrs. Yugandhara Pawar Jha, Ms. Ranjeeta Rohatgi, Waheb Hussaini, Ms. Dibsha Nanda, Ms. Swati Mishra, Ms. Tanya Mittal, Ms. Satvika Sharma, Bhanu Thakur, Tanay Chaube.

Advs. for the Respondent(s):
Avishkar Singhvi, A.A.G., Kunal Verma, Sanchit Garga, Kunal Rana, Shashwat Jaiswal, Bhanu Pratap Singh, Ms. Diksha Arora, Ms. Oorja Goel, Naved Ahmed, Prem Malhotra.

Judgment / Order of the Supreme Court

Order

CIVIL APPEAL NO. 13785 OF 2026
(@SPECIAL LEAVE PETITION (C) NO. 4163 OF 2024)

1. Leave granted.

2. *"Marriage is a wonderful institution, but who wants to live in an institution?"*

(Groucho Marx)

3. This appeal arises from the judgment and order passed by the High Court of Karnataka dated 20.12.2023 in W.P.H.C No. 43 of 2023, by which the Writ Petition preferred by the Appellant before us, seeking a writ of Habeas Corpus, came to be dismissed.

I. FACTS AND THE IMPUGNED JUDGEMENT

4. The facts in brief giving rise to this appeal are as under:-

a. The Appellant is a US citizen, whereas Respondent No.4 had relocated to the USA on a Fiancé Visa, sponsored by the Appellant. On 05.05.2018, the Petitioner and Respondent No. 4 solemnised and registered their marriage in South Brunswick, New Jersey, USA. No wedding ceremony took place in India, and the parties never resided together as husband and wife within the territory of India. The parties set up the Matrimonial Home in Mountain View, California, USA.

b. Respondent No.4 is a doctor by profession and, on her relocation to the USA, cleared the US medical licensing examination, with the intent to practice medicine there. She also acquired a 10-year permanent residency (Green Card) of the USA.

c. In the wedlock between the Appellant and Respondent No. 4, a daughter was born on 19.05.2019 in the USA. She is also a citizen of the USA.

d. After the birth of the child, it appears that the matrimonial relations between the parties went sour. The Appellant and Respondent No.4 separated, and Respondent No.4 and the child moved out of the house and started living in a separate house in California.

e. While the parties were in the US, the Respondent No. 4 invoked the jurisdiction of the Superior Court of California, County of Contra Costa, USA ("**Superior Court of California**") and preferred a petition seeking dissolution of marriage on the ground of "irretrievable breakdown of marriage". To put it in other words, "irreconcilable differences".

f. The proceedings instituted by the Respondent No. 4 led to the issuance of summons by the Superior Court of California, which contained the Automatic Temporary Restraining Orders, restraining both the parties, i.e., the husband and the wife, from removing the minor daughter from the jurisdiction of California or applying for a new or replacement passport without prior written consent of the other party or an order of the Court.

g. It also appears that sometime in 2022, the Respondent No.4 again invoked the jurisdiction of the Superior Court of California by preferring a custody petition. She prayed for sole and legal custody of the minor daughter along with child support and spousal support. She further prayed that the Appellant, as father, should only have visitation rights.

h. The Superior Court of California, after hearing both parties and keeping in mind the best interests of the child, passed an order dated 25.08.2022 granting joint custody and shared parenting to both parents, with an equal 50:50 time share on a 4-3-3-4 schedule. The Court observed that nothing on record indicated that the time share should be anything other than 50:50. The order further stipulated that the child could not be taken out of the State of California without the written consent of the other parent or an order of the court. Having regard to the incomes and needs of the parties and the child, the Court also directed the Petitioner to pay child support of USD 1,095 per month and temporary spousal support of USD 2,116 per month to Respondent No. 4, thereby safeguarding the welfare of both the minor child and Respondent No. 4. A review hearing on these directions was listed for 02.12.2022.

i. It is not in dispute that both parties complied with the order of the Superior Court of California for about two weeks. On 08.09.2022, however, Respondent No. 4 left the USA for India with the child. Despite the specific directions in the order dated 25.08.2022, Respondent No. 4 is alleged to have surreptitiously removed the minor daughter from the State of California, in violation of that order.

j. It is the case of the Respondent No.4 that after reaching India, she sent an e-mail on 10.09.2022 to the Appellant informing that she left the USA along with the child and had travelled to India. The aforesaid developments led the Appellant to file a police complaint on 20.09.2022 in the USA against his wife, i.e., the Respondent No. 4, for removal of the child.

k. On 02.12.2022, the Superior Court of California, at the review hearing that was already scheduled, recorded a violation of the order dated 25.08.2022 referred to above and directed the Respondent No. 4 to immediately return the child to the

Appellant's physical custody in California. The Court also ordered that the Appellant would have sole custody for the purposes of obtaining and maintaining a passport for the minor child, and all future child custody/visitation between the minor child and Respondent No. 4 shall be professionally supervised until further orders. All financial support, including the spousal support and child support granted, was suspended until the Respondent No.4 came into compliance with the Court's orders.

I. The Appellant, thereafter, was left with no other option but to prefer a writ petition in the High Court of Karnataka and prayed for the following reliefs:-

> *"a. Issue an appropriate writ, order or direction in the nature of Habeas Corpus to Respondent Nos. 1, 4 and 5 to immediately trace and produce the minor child, Miss Vindhya Kishore before this Hon'ble Court and deliver her custody to the Petitioner-father so as to repatriate her to USA in compliance with the order dated 02.12.2022 passed by the Foreign Court;*
>
> *b. Issue an appropriate writ, order or direction in the nature of Habeas Corpus to Respondent No. 3 to trace Respondent No. 6 and through her produce Miss Vindhya Kishore before this Hon'ble Court, in view of the illegal detention of Miss Vindhya by Respondent No. 6 and violation of Custody Order dated 25.08.2022 passed by the Foreign Court;*
>
> *c. Issue appropriate directions to Respondent No. 6 to restore and handover legal and physical custody of Miss Vindhya Kishore to the Petitioner;*
>
> *d. Issue appropriate directions to Respondent No. 6 to facilitate Miss Vindhya 's safe return to USA in compliance with the order dated 02.12. 2022 passed by the Foreign Court;*
>
> *e. Issue appropriate directions to Respondent No. 6 to handover the requisite documents such as passport and other travel documents of the minor child, Miss Vindhya Kishore, which are in*

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

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

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

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

m. The High Court, after considering the various issues involved, dismissed the writ petition.

n. In such circumstances, as referred to above, the appellant is here before us with the present appeal.

5. The High Court, after taking into account the necessary facts and submissions, framed the following two issues for its consideration: (a) Whether the child's custody with Respondent No.4 is illegal; and (b) Whether the Appellant is entitled to the child's custody and her return to the USA?

6. The reasoning of the High Court in dismissing the Writ Petition may be summarised as follows:

a. Relying on the decision of this Court in ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari***, reported in **(2019) 7 SCC 42**, the High Court held that, in child custody matters, a writ of habeas corpus is maintainable only where it is shown that the detention of a minor child by a parent or others is illegal and without any authority of law.

b. Placing reliance on ***Nithya Anand Raghavan v. State (NCT of Delhi)***, reported in **(2017) 8 SCC 454**, the High Court observed that the mere existence of a foreign court order directing the mother to produce the child before it does not, by itself, render the child's custody with the mother unlawful. In such situations, the High Court must examine whether returning the child to the country from which he or she was removed would serve the child's interests or would harm them. That

assessment has to be made on the totality of the facts and circumstances, and the order of the foreign court must yield to the welfare of the child.

c. Applying these principles, the High Court held that the child's custody with Respondent No. 4 was not illegal. It reasoned that Section 6 of the Hindu Minority and Guardianship Act, 1956 makes the custody of a female child below the age of five years with her mother lawful, and that the order of the US court did not, by itself, alter this position.

d. Having so held, the High Court turned to the best interests of the child. It concluded that it would be in the best interest of the child, a four-year-old girl, to remain in her mother's custody. The following factors appear to have weighed with the High Court in reaching this conclusion:

i. During the interaction in chambers, the child's demeanour "firmly disclosed" that she was comfortable only with her mother;

ii. The Appellant did not act immediately and filed the Writ Petition nearly eight months after the child was brought to India, by which time she had begun attending school in Jamshedpur. In matters involving emotional attachment and bonding, the High Court regarded eight months as a fairly long period;

iii. No evidence had been brought on record to show that Respondent No. 4 had caused the child any harm.

e. Lastly, relying on ***Vasudha Sethi v. Kiran V. Bhaskar***, reported in **2022 SCC OnLine SC 43**, the High Court observed that a writ court dealing with a petition for habeas corpus cannot direct a parent to leave India and go abroad with the child, since such a direction, if issued against the parent's wishes, would offend her or his right to privacy. Given the bitter hostility between the parties, the High Court therefore held that it would not be appropriate to compel Respondent No. 4 to move to the USA. It left it open to the parties to work out their rights to custody and visitation separately.

7. Before proceeding further, we may note that when this matter first came up for hearing, we thought it fit to explore an amicable

resolution of the disputes before proceeding to hear the matter on merits. We took up the matter in the Committee Room on not less than ten occasions and passed several orders over a period of time. We tried our best to persuade all concerned to bury their differences, keeping only the interest of the child in mind. On two occasions, the Appellant travelled to India and appeared before us in the Committee Room, where we interacted with him. Unfortunately, since the parties could not reach any consensus, we are left with no option but to decide the matter on its merits.

II. SUBMISSIONS ON BEHALF OF THE PARTIES

8. Mr. Mukul Rohatgi and Ms. Meenakshi Arora, learned Senior Counsel, along with Mr. Prabhjit Jauhar, learned counsel appearing for the Appellant, made the following submissions:

a. The High Court committed an egregious error in dismissing the Writ Petition and, thereby, declining to issue the writ as prayed for.

b. Respondent No. 4, having invoked the jurisdiction of the Superior Court of California by preferring a custody petition with respect to the minor child and having obtained an order of joint custody and shared parenting, could not have surreptitiously left for India in violation of that very order.

c. Having married the Appellant, settled in the USA and chosen to raise a family there, Respondent No. 4 was not expected, over trivial differences, to take the extreme step of leaving for India one fine day without the Appellant's knowledge. This was all the more so because her own parents were then residing in the USA. While her parents are now in India, the Appellant's parents, who are also US citizens, continue to reside in the USA, presently in New Jersey.

d. The child, being a citizen of the USA, should not be deprived of her upbringing there, more particularly her education.

e. Reliance was placed on two decisions of this Court: (i) ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu and Others***, reported in **(2023) 12 SCC 472**; and ***Yashita Sahu v. State of Rajasthan and Others***, reported in **(2020) 3 SCC 67**.

f. To demonstrate his *bona fides*, the Appellant offered the following undertakings: (i) he would arrange a separate accommodation for Respondent No. 4 near his residence in the USA and bear all expenses for it, including rent; (ii) he would assist Respondent No. 4 in having her Green Card, which has since lapsed, restored; (iii) he would provide Respondent No. 4 monthly financial assistance of USD 3,200 per month as ordered by the Superior Court of California, and bear all her travel and other miscellaneous expenses; (iv) he would not take any legal steps against Respondent No. 4 in respect of the alleged violation of the order dated 25.08.2022, and would cooperate in any other proceedings initiated against her in the USA, so as to restore family life.

g. In short, the Appellant is more than willing to save the marriage and revive the marital ties in the larger interest of the child.

h. In such circumstances, it was prayed that the appeal be allowed and appropriate directions be issued in the larger interest of all concerned, more particularly the child.

9. Ms. Malavika Rajkotia, learned counsel appearing for Respondent No. 4, vehemently opposed the appeal and made the following submissions:

a. The High Court committed no error, much less an error of law, in passing the impugned judgment and order. It addressed itself to the two vital questions that arose for its consideration, keeping in mind the hard facts of the case, more particularly the reality on the ground.

b. Respondent No. 4 has been in India with the child for almost four years. Although the child may be in touch with the Appellant through video calls, the Appellant has not, as a father, shown any inclination to revive the marital ties with Respondent No. 4 in the larger interest of the child.

c. On the aspects of comity of courts and the welfare of the minor child, it needs to be noted that India is not a signatory to the Hague Convention. It is important to appreciate the plight of an Indian woman who marries, moves abroad thousands of miles away from her parents, and thereafter finds herself in difficulty in a foreign country.

d. Respondent No. 4 does not wish to deprive the Appellant of a role in the child's upbringing. She is more than willing for the child to begin visiting her father in the USA over a period of time. According to the learned counsel, the Appellant is also most welcome to visit India and spend time with his daughter.

e. In such circumstances, the learned counsel prayed that the appeal, being devoid of merit, be dismissed.

III. ISSUE FOR CONSIDERATION

10. Having heard the learned counsel appearing for the parties and having perused the material on record, the only question that falls for our consideration is whether the High Court committed any error in passing the impugned judgment and order.

IV. APPROACH TO BE ADOPTED

11. Cases such as these, where two parents each seek custody of their child, and a court of a foreign country has already dealt with this aspect in some manner, have been coming before this Court time and again. Yet, the decision in such cases does not become any easier. This is because they involve deeply emotional and sensitive issues, the answer to which cannot be straitjacketed into a legal formula. No such formula can exist, for in such matters precision is either absent or cannot be sought. However, before we turn to which way the answer in the present case should go, it is still important to broadly understand the factors that this Court has held must be borne in mind when dealing with such cases.[1]

12. At the outset, it is too late in the day to urge that a writ of habeas corpus is not maintainable merely because the child is in the custody of the other parent. No such contention has been advanced by learned counsel on either side. However, when a petition for habeas corpus is brought in the context of child custody, and the contest is between two parents, we believe the focus of the inquiry must shift from what the writ ordinarily stands for. Generally, the writ asks

1 *See*, ***Ravi Chandran v. Union of India & Ors*** (2010) 1 SCC 174; ***Yashita Sahu v. State of Rajasthan*** (2020) 3 SCC 67; ***Elizabeth Dinshaw v. Arvand M. Dinshaw*** (1987) 1 SCC 42; ***Dhanwanti v. Madhav Unde*** (1998) 1 SCC 112; ***Sarita Sharma v. Sushil*** (2000) 3 SCC 14; ***Nithya Anand Raghavan v. State (NCT of Delhi)*** (2017) 8 SCC 454; ***Lahari Sakhamuri v. Sobhan Kodali*** (2019) 7 SCC 311; and ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu*** (2023) 12 SCC 472.

a simple question: is the detention legal or illegal? That question serves well in most situations. But in a dispute between two parents, a debate on legality takes us nowhere. Each parent may well have an equal and lawful claim to the child's custody. In fact, the purpose of the petition in such cases is not to test the legality but to give the court a means by which it may determine what is best for the welfare of the child. This is also why this Court has recognised time and again that the decision in such petitions rests not on the legal rights of the parties, but on the welfare of the child.

13. It follows that where two parents are involved, the threshold condition for entertaining a petition for habeas corpus need not be illegal detention as such. It may instead be the wrongful deprivation of one parent's right to custody brought about by the actions of the other.[2] This threshold condition, however, serves only to get a foot in the door. Once it is crossed, the matter is no longer decided based on the rights of the parents.

14. The question then is: once the threshold condition is met, on what basis is such a petition for habeas corpus to be decided? We are primarily concerned with answering this question in cases with facts such as the one before us, i.e., the contest is between two parents, a court of a foreign country (where the parties had set up their matrimonial home) has already passed an order on custody, and the child has been brought to India, or kept in India, seemingly in violation of that order. This Court has, on several occasions, dealt with petitions for habeas corpus arising in precisely these circumstances. We do not wish to burden this order by discussing each of those decisions at length. Instead, we think it fit to cull out the broad principles that can be readily gathered from a reading of those judgments.[3]

15. *First* and foremost, the welfare of the child is the paramount consideration in every such case, whatever orders the courts of another country may have made. Put differently, a court in this country, when exercising its jurisdiction, cannot blindly follow the order of a foreign court and act merely as an executing court

2 ***Tejaswini Gaud v. Shekhar Jagdish Prasad Tewari*** (2019) 7 SCC 42.

3 *Supra* note 1.

16. This position rests on two foundations. The first is that once the court is seized of the matter, it exercises its *parens patriae* jurisdiction. That jurisdiction obliges it to consider and assess the matter for itself, through the lens of the child's welfare. The second, as noted above, is that the decision in such cases turns not on the legal rights of the parties but on the welfare of the child. The same emphasis on welfare over legal entitlement runs through our statutes on custody and guardianship.[4] They make clear that a person otherwise entitled to custody or guardianship need not be granted it if that would not be for the welfare of the child. There is thus no ambiguity in the fact that an order of a foreign court must yield to the welfare of the child.

17. The necessary consequence of the paramountcy of the child's welfare, and of a foreign order yielding to it, is simple. A parent's disobedience of a foreign order does not, by itself, require the court to give automatic effect to that order. Nor can the remedy of habeas corpus be invoked merely to enforce the directions of a foreign court.

18. *Secondly*, the paramountcy of the child's welfare does not mean that the order of a foreign court is to be disregarded. In deciding what the welfare of the child requires, the court must form its own independent judgment. In doing so, however, it must give proper weight to the order of the foreign court. Comity of courts may not require that such an order be enforced, but it does require that the order be given grave consideration.

19. What constitutes proper weight will depend on the circumstances of each case. The weight to be given to the order of a foreign court may turn on a few factors, such as: (i) the nature of the order, including whether the foreign court examined the best interests of the child on the merits, whether both parties were heard, and who instituted the proceedings before it; (ii) the time that has elapsed since the order was passed; and (iii) whether circumstances have changed in the interim. No single factor is decisive. It is the combination of these factors that must be considered. Proper weight, therefore, is not a matter of mathematical precision. It is a matter of the court's considered assessment of how far the foreign order reflects the welfare of the child.

4 See ***Rajeswari Chandrasekar Ganesh v. State of Tamil Nadu*** (2023) 12 SCC 472.

20. *Thirdly*, and closely connected to the first two principles, is the question of the nature of the inquiry the court must undertake. The court must independently consider the welfare of the child, and in considering it must assign proper weight to the order of the foreign court. But before the court undertakes that exercise, it must first decide whether the case calls for a summary inquiry or an elaborate one. In a summary inquiry, the court proceeds on the footing that the welfare of the child is best served by following the order of the foreign court. The child is therefore returned to the country from which the child was removed, unless it is clearly shown that such return would be harmful to the child. In an elaborate inquiry, the court does not stop at the foreign order. It takes the order into account, but goes on to examine for itself where the welfare of the child truly lies. The distinction was explained by this Court in ***Dhanwanti Joshi v. Madhav Unde*****,** reported in (**1998) 1 SCC 112**, in the following terms:

> ***29.*** *[...] In the case of (a) a summary inquiry, the court would return custody to the country from which the child was removed unless such return could be shown to be harmful to the child. In the case of (b) an elaborate inquiry, the court could go into the merits as to where the permanent welfare lay and ignore the order of the foreign court or treat the fact of removal of the child from another country as only one of the circumstances. The crucial question as to whether the Court (in the country to which the child is removed) would exercise the summary or elaborate procedure is to be determined according to the child's welfare. The summary jurisdiction to return the child is invoked, for example, if the child had been removed from its native land and removed to another country where, maybe, his native language is not spoken, or the child gets divorced from the social customs and contacts to which he has been accustomed, or if its education in his native land is interrupted and the child is being subjected to a foreign system of education, — for these are all acts which could psychologically disturb the child. Again the summary jurisdiction is exercised only if the court to which the child has been removed is moved promptly and quickly, for in that event, the Judge may*

> *well be persuaded that it would be better for the child that those merits should be investigated in a court in his native country on the expectation that an early decision in the native country could be in the interests of the child before the child could develop roots in the country to which he had been removed. Alternatively, the said court might think of conducting an elaborate inquiry on merits and have regard to the other facts of the case and the time that has lapsed after the removal of the child and consider if it would be in the interests of the child not to have it returned to the country from which it had been removed. In that event, the unauthorised removal of the child from the native country would not come in the way of the court in the country to which the child has been removed, to ignore the removal and independently consider whether the sending back of the child to its native country would be in the paramount interests of the child. [...]*
>
> [Emphasis Supplied]

21. The following two aspects emerge from the above extract: *First*, the two inquiries do not differ in their central aim. Both are directed at determining the course of action that best promotes the welfare of the child. Where they differ is in how closely the court examines welfare. *Second*, the promptness with which the court is approached, and the extent to which the child has since developed roots in the country to which the child was removed, weigh heavily in that choice.

22. However, the term "elaborate inquiry", when used in the context of a petition for habeas corpus, only indicates that the court's inquiry will be more exhaustive than a summary inquiry. It does not mean that the court may travel beyond the limits that ordinarily govern it in such petitions. The court cannot lose sight of the fact that the only question to be decided in such a petition is whether or not the writ ought to issue. The question is not to decide fully and finally with whom custody of the child must lie. The scope and nature of proceedings in a petition for habeas corpus simply do not permit that. It follows that any observations made in such proceedings must be confined to that limited question. They should not influence the court that later considers the question of custody in substantive proceedings, where all aspects must be examined on their own merits.

23. *Fourthly*, the expressions "welfare of the child" and "best interests of the child" must be understood in their widest sense. Welfare is not to be measured by money or physical comfort alone. In this regard, it is instructive to refer to the observations of Hardy Boys, J. in *Walker v. Walker & Harrison*, as extracted and relied upon by this Court in ***Dhanwanti Joshi*** (*supra*):

> *"Welfare is an all-encompassing word. It includes material welfare, both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of an adequacy of care to ensure that good health and due personal pride are maintained. However, while material considerations have their place they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships, that are essential for the full development of the child's own character, personality and talents."*

24. In ***Rajeswari Chandrasekar Ganesh*** (*supra*), wherein one of us, J.B. Pardiwala, J., was a part of the Bench, adopted the same approach and observed as follows:

> *"127. We would therefore hold that in the case at Bar, the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the court, when resolving disputes between the rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he or she will be equipped to face the problems of life as a mature adult."*
>
> [Emphasis Supplied]

25. Apart from the requirement that welfare be understood in its widest sense, there are no hard and fast rules in assessing the welfare of the child. Everything depends on the facts and circumstances of the case, and it is the totality of those facts and circumstances that must be taken into consideration. No fixed formula can be laid down. This Court, in ***Lahari Sakhamuri v. Sobhan Kodali***, reported in **(2019) 7 SCC 311**, set out the following factors that may be considered in assessing the welfare of the child with respect to each parent:

> *"49. The crucial factors which have to be kept in mind by the courts for gauging the welfare of the children equally for the parent's can be inter alia, delineated, such as (1) maturity and judgment; (2) mental stability; (3) ability to provide access to schools; (4) moral character; (5) ability to provide continuing involvement in the community; (6) financial sufficiency and last but not the least the factors involving relationship with the child, as opposed to characteristics of the parent as an individual."*
>
> [Emphasis Supplied]

26. *Lastly*, while the welfare of the child is the governing consideration, it is equally important not to lose sight of the principle that a wrongdoer ought not to gain an advantage from their own wrong. Comity of courts is a healthy doctrine, and the orders of a competent foreign court deserve respect. A parent who removes a child, or retains a child, in disregard of such an order should not ordinarily be permitted to benefit from having done so.

27. We must be careful, however, in stating how this principle operates. It is not to be balanced against the welfare of the child, for that would take away the primacy that welfare must always enjoy. In many cases, the welfare of the child will clearly point to one course. There, the inquiry ends, and the wrongdoing is not a factor in consideration at all. But at times, the prevailing circumstances may be so puzzling that it becomes difficult to weigh the conflicting considerations and decide which way the scales tip. The welfare of the child may be met more or less equally whichever way the court decides. It is in such cases, and only after the welfare of the child has been fully considered, that the court may legitimately have regard to the fact that one parent has acted in disregard of the order of a competent court. Welfare is not displaced in such cases. This approach has

been followed by this Court in a plethora of instances, where, while retaining the primacy given to welfare considerations, this Court also took into account this aspect to determine which way to tilt.

V. APPLICATION TO THE FACTS AT HAND

28. With this approach in mind, we may now turn to the matter before us. The High Court held that the custody of the child with the Respondent No.4 was lawful. Whether custody retained in breach of an order of a court in the USA can, strictly speaking, be called lawful is not a question on which we consider it necessary to spend much time. As explained above, in cases such as the present, the threshold condition does not depend on establishing that the detention is illegal. It is equally satisfied where one parent has been wrongfully deprived of their right to custody by the actions of the other. This is because the primary focus in such cases is not on a strict assessment of legality, but on the welfare of the child. The High Court was, therefore, right to examine the matter on the touchstone of what is in the best interests of the child, notwithstanding its view that the custody of the mother was lawful.

29. The High Court did not expressly state whether it was undertaking a summary or an elaborate inquiry. It is evident from its judgment, however, that it undertook an elaborate inquiry. We are also of the view that the present case does not lend itself to being decided based on a summary inquiry. The Appellant approached the High Court within eight months of the child being retained in India. The matter has since travelled to this Court, where time was also spent in attempts to resolve the dispute amicably. As a result, the child has now been residing in India for nearly four years. In such circumstances, a decision based on a summary inquiry would not be warranted.

30. In assessing the best interests of the child, the High Court, as noted above, relied on the delay of eight months, the absence of any material showing harm to the child in the custody of the mother, and the child's demeanour, which "firmly disclosed" that she was comfortable only with her mother. We do not think these considerations are sufficient to hold that the welfare of the child could be served only by her remaining with her mother, and not with her father.

31. The child has lived only with her mother for the past four years. It is only natural, then, that her demeanour would reflect a wish to remain

with her mother. Given her tender age, it is unfortunately not possible to ascertain her own wishes in any meaningful sense, much less to solely rely upon them. Similarly, the High Court may have been correct in observing that no harm was shown to have been caused to the child in the custody of Respondent No. 4. But on a perusal of the record, especially the custody proceedings initiated by Respondent No.4 in the USA, it appears to us that there is nothing substantial to show that the child would suffer harm if placed in the custody of her father. In these circumstances, neither consideration can reasonably be said to tilt the scales in favour of Respondent No. 4.

32. Nor do we think that a period of eight months was sufficient for the child's roots in India to become so firmly established that her welfare lay only in remaining here with her mother. This is all the more so because she was only about three years of age when Respondent No. 4 brought her to India. It is true that she has now spent nearly four years here, and that her early formative years have been spent in this country. Even so, we do not think this clearly establishes that her welfare can be served only by remaining in India with her mother. On the other hand, the child is a citizen of the United States and is entitled to all the benefits that such citizenship carries. That, in our view, makes a strong case for her to continue her life in the United States, particularly when nothing on record suggests that an upbringing there would hamper her progress or would not be in her interests. We believe that the child, being a USA citizen, should grow up in the USA and receive an education in the USA.

33. While we are of the view that the welfare of the child lies in continuing her life in the United States, we are conscious that this is not a case in which the considerations point overwhelmingly in one direction. The child has, after all, spent her early formative years in India with her mother. It is in these circumstances that the manner in which the child came to be in India assumes relevance, and lends further support to the view we have taken.

34. It is not disputed that the Appellant and Respondent No. 4 solemnised their marriage in the United States and set up their matrimonial home there. In fact, both the divorce and the custody proceedings in the United States were instituted by Respondent No. 4 herself. A perusal of the custody order dated 25.08.2022 shows that it was passed after hearing both parties and after taking into account the best interests of the child. Yet, barely two weeks after that order

was passed, Respondent No. 4 brought the child to India, in clear breach of the conditions it contained. Nothing on record suggests that her circumstances were so grave or frightening that she was left with no option but to take the child out of the USA.

35. In these circumstances, the comity of courts, and the principle that a party ought not to benefit from their own wrong, tilt the scales in favour of the Appellant. We must, however, clarify once again that our decision does not rest on these considerations alone. The welfare of the child has remained the governing consideration throughout. We have had regard to these principles only to further substantiate and support our conclusion that the welfare of the child would be better served in the USA.

36. The appeal, therefore, deserves to be allowed, and the child must be returned to the United States into the custody of the Appellant, subject to the directions that follow.

VI. DIRECTIONS

37. We cannot and do not wish to compel Respondent No. 4 to move to the United States, or to continue with the marriage. These are choices that rest entirely with her. However, in exercising those choices, she cannot insist that the child must also remain in India, or deny the Appellant, as her father, the joint custody and shared parenting that are his due.

38. At this stage, Ms. Malavika Rajkotia, learned counsel appearing for Respondent No. 4, on instructions, submitted that her client would accompany Vindhya to the United States.

39. In view of the above statement made on behalf of Respondent No. 4, which we accept and record, we direct that Respondent No. 4 shall travel to the United States with the child on or before 31.12.2026. Respondent No. 4 shall take all necessary steps, including obtaining the requisite visa and travel documents, at the earliest. Should any cooperation be required from the Appellant for this purpose, he shall extend it promptly to facilitate the smooth travel of Respondent No. 4 and the child to the USA.

40. It has been brought to our notice that the child's US passport has expired. The passport will have to be renewed, or a new passport will have to be issued. In this regard, the cooperation of the Appellant, as her father, is required. The Appellant shall take all steps necessary

to have Vindhya's passport renewed or a new passport issued. Respondent No. 4 shall hand over Vindhya's expired US passport to Mr. Prabhjit Jauhar, learned counsel appearing for the Appellant, within a period of one week from today. Once Mr. Prabhjit Jauhar receives the passport, he shall do the needful in accordance with the procedure.

41. The Appellant, Vayu Kishore, participated in today's proceedings online from the United States. He heard us dictate the operative parts of this order. He also heard us discuss the undertakings given by him through his learned senior counsel, which we have recorded above. To reiterate, these are: (i) he would arrange separate accommodation for Respondent No. 4 near his residence in the United States and bear all expenses for it, including rent; (ii) he would assist Respondent No. 4 in having her Green Card, which has since lapsed, restored; (iii) he would provide Respondent No. 4 monthly financial assistance of USD 3,200, as ordered by the Superior Court of California, and bear all her travel and other miscellaneous expenses; and (iv) he would not take any legal steps against Respondent No. 4 in respect of the alleged violation of the order dated 25.08.2022, and would cooperate in any other proceedings initiated against her in the United States, so as to restore family life.

42. Mr. Vayu Kishore undertakes to move the U.S. Court, in the pending proceeding seeking certain orders similar to the present order made by us.

43. We direct that the undertakings recorded above be given by the Appellant by way of an affidavit, which shall form part of the record of the case. Since Respondent No. 4 has agreed to move, we insist that the Appellant adhere to the undertakings given here and leave no stone unturned to ensure that the best care is taken of both his daughter and his wife. As a matter of abundant caution, we direct the Appellant to furnish security in the sum of Rs. 1,00,00,000/- (Rupees One Crore only) by way of a fixed deposit receipt initially for a period of 18 months on an auto renewable basis in the name of the Registrar, Supreme Court of India. Let this security be furnished within a period of two weeks from today.

44. Lastly, we clarify, by way of abundant caution, that none of the observations made in this order shall have any bearing on the custody or divorce proceedings currently pending between the parties in the USA, which shall be proceeded and decided on their own merits.

45. List on January 05, 2027. On January 05, 2027, the learned counsel appearing for the parties shall apprise us of the further developments in the matter.

46. For all the foregoing reasons, the appeal succeeds and is hereby allowed.

47. Pending applications, if any, shall stand disposed of.

SPECIAL LEAVE PETITION (C) NO. 37143 OF 2026
(@SPECIAL LEAVE PETITION (C) D. NO. 13855 OF 2026)

48. Delay condoned.

49. The Special Leave Petition has been filed by the Petitioner-Wife against the judgment and order dated 02.12.2025 passed by the High Court of Jharkhand at Ranchi in First Appeal (DB) No. 78 of 2024. By the said judgment, the High Court affirmed the order dated 16.02.2024 passed by the Principal Judge, Family Court, Jamshedpur in Original Suit No. 408 of 2023, whereby the application filed by the Respondent herein under Order VII Rule 11 of the CPC was allowed and the petition filed by the Petitioner-Wife under the Guardians and Wards Act, 1890 seeking custody and guardianship of the child was rejected.

50. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we find no good ground to interfere with the impugned order passed by the High Court.

51. The Special Leave Petition is, accordingly, dismissed.

52. Pending applications, if any, also stand disposed of.

Result of the case: Civil Appeal No. 13785 of 2026 is allowed, Special Leave Petition (C) No. 37143 of 2026 is dismissed.

†*Headnotes prepared by:* Ankit Gyan