

has emphasized over order dated 07.10.2022 passed by Family Division of High Court of United Kingdom wherein by consent both parties settled the issue and same was disposed of as withdrawn.

Being relevant it is reproduced hereunder:-

BEFORE THE HONOURABLE MR JUSTICE PEEL
SITTING IN PRIVATE ADMINISTRATIVELY ON 7
OCTOBER 2022 AT THE ROYAL COURTS OF JUSTICE
OF STRAND, WC2A 2LL

A. Order made by consent on 07 October 2022 amended by virtue of the s19A rule on (not readable) November 2022,

B. These proceedings concern the applicant father's application for the summary return of the parties' daughter, Naimah Fatimah Ahmed, aged 13, to Pakistan.

C. The parties have agreed that it would not be in Naimah's best interests for these proceedings to proceed to a fully contested final hearing, and have reached an agreement that these proceedings should be concluded by consent.

D. The parties have agreed that it would be in Naimah's best interests to live in the jurisdiction of England & Wales with the respondent mother and to have such contact with the applicant father as the parties may agree between themselves.

E. The respondent mother continues to confirm, as recited in the order of Damian Garrido Q.C. dated 7 June 2022 in these proceedings, that she is not opposed to any direct or indirect contact between the applicant father and the child.

F. The applicant father and respondent mother agree to not speak of the other in a derogatory manner to the child.

G. Both parties accept that:

a. Naimah is habitually resident in the jurisdiction of England & Wales; and

b. The courts of England & Wales have substantive jurisdiction to determine matters relating to her welfare.

H. The parties agree that, to the extent that there are any outstanding court proceedings in Pakistan concerning Naimah welfare, those should be concluded by consent at the earliest possible opportunity

I. Both parties accept that each has parental responsibility for Naimah, and that each is entitled to input into all matters relating to her welfare, including decisions concerning health, education, and other such matters.

J. Both parties recognise that each has a moral obligation to keep Naimah safe and protected from any harm.

BY CONSENT, IT IS ORDERED THAT:

1. The applicant father's application for these proceedings to conclude by consent, and for his application for the child's summary return to Pakistan to be withdrawn, is granted.

2. The final hearing in these proceedings, listed in the Family Division on 10-11 October 2022, is vacated.

3. The Location Order in these proceedings dated 4 May 2022 and directed towards the Tipstaff is discharged.

4. IT IS ORDERED THAT. The Tipstaff do upon service of a sealed copy of this order return all passports, identity cards and or travel documents relating to: Naimah Ahmed and Rajia Rehan, currently held by the Tipstaff pursuant to the Location order directed to the Tipstaff and issued on the 04 My 2022, to are to be returned to the Respondent- Raj Rehan or the Respondent's solicitors- Duncan Lewis Solicitors

5. IT IS ORDERED THAT: The port alerts currently in place pursuant to the Location order directed to the Tipstaff and issued on the 04 May 2022 in respect of Naimah Ahmed and Rajia Rehan are hereby discharged

6. No order as to costs”

4. Further learned counsel for petitioner has emphasized over order dated 15.03.2022 while agitating that in contempt proceedings directions were issued to surrender Pakistani and British passports of petitioner and minor within three days. Since Naima at that time was living in the United Kingdom, order was passed by United Kingdom High Court hence petitioner being mother arrived to Pakistan when she was compelled to surrender the passports however passports were not surrendered and that order was

challenged before this court however she is not in a position to travel back to UK because under the direction of the trial court to FIA, her name was placed on ECL. Under these circumstances minor Naima aged about 15 years is living alone without company of mother hence impugned order is harsh and trial court was not competent to pass such order as only remedy with respondent No.1 is to file guardianship application if any as fresh.

5. In contra, learned counsel for respondent No.1 while relying upon 1985 CLC 792 contends that order passed under section 12 of the Guardian and Wards Act cannot be challenged in writ jurisdiction. He has also emphasized over paragraph No.7 of compromise application and order passed by UK High Court with the plea that father cannot be deprived of custody while trial court's order was justified.

6. It is pertinent to mention here that in guardianship application, compromise application was not endorsed by Guardian and Wards Court as a decree and amicably case was disposed of on the plea that parties have settled their dispute ex-curia. Therefore I am in agreement with the learned counsel for petitioner that trial court wasn't competent to initiate contempt proceedings against the petitioner; direction to add name of petitioner in ECL and to surrender the passports within three days before trial court apparently were unwarranted under the law when it is also matter of record that parties approached UK Court and issue was decided there with regard to minor specifying therein the age of minor being 15 years who is living in UK and is studying there and any party (mother or father) cannot be allowed to cause any harassment with regard to

her career and atmosphere wherein she is living peacefully, whether that be mother or father. Father and mother are best judges who may come forward with welfare of the minor and are not supposed to create hurdle or disturbance for her peaceful living. The order for prohibiting a person from proceeding from Pakistan to destination outside of Pakistan is to be based on sound reasons. Such order may be passed in case the father and mother misused the order whereby custody is handed over to one of them or already lying with one of them in order to defeat the very purpose of guardianship application and welfare of minor. The framers of the law relating to Guardians and Wards Act, 1890 legislated it as a special enactment with an intent to secure the interest and welfare of the minors living within the jurisdiction while highlighting the degree of preference to establish guardianship. The sole criterion which depicts the intent of the legislature is nothing except welfare of the minors as ground-norm of the enactment. As a general principle the degree of preference is confined to relationship depending upon the order of preference due to closeness of blood relationship and other aspects which are essential in upbringing of the minors within four corners of law. Any deviation from the general principle, where the blood relationship has to be departed, there should be very strong and compelling reasons to have a contrary view which includes upbringing, education, healthcare, congenial domestic atmosphere, physical and psychological advantages, sect, religion, character and capacity of the claimant to whom if it is assigned to take care of the minors. In short words, while ignoring/ bypassing the general principle there must be very strong and exceptional circumstances which could be brought forth with reference to

the intent of the legislature regarding the sole purpose of “welfare of minor”. In this matter if the name of the petitioner or minor is included in the Exit Control List, it would not only disturb the study of the minor, but also cause unnecessary harassment to the Petitioner and the minor. Accordingly, impugned order is set aside. FIA is directed to remove the name of petitioner from ECL within two days with compliance report.

Petition is allowed.

J U D G E

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