



2026 INSC 1043

REPORTABLE
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 12774 OF 2026
(Arising out of SLP (Civil) No(s). 4306 of 2026)

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....APPELLANT(S)

VERSUS

████████████████████
██████████

....RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 12775 OF 2026
(Arising out of SLP (Civil) No(s). 1714 of 2026)

O R D E R

Mehta, J.

1. Heard.
2. The two minor children of the parties, namely, SSB, aged about 13 years and DW, aged about 7 years, are facing the disastrous consequences of parental alienation owing to bitter strife between

their parents, who are before us by way of the instant appeals.

3. Through this order, we shall deal with the challenge laid by the appellant-mother to the judgment dated 23rd January, 2026 rendered by the High Court of Delhi in MAT. APP. (F.C.) No. 279 of 2024, whereby the appeal preferred by the appellant-mother was dismissed and the judgment dated 1st July, 2024 passed by the Family Court, Patiala House Courts, New Delhi¹ in Guardianship Petition No. 22 of 2021 instituted by the respondent-father under Section 7 read with Section 25 of the Guardianship and Wards Act, 1890 was affirmed.

4. By the judgment dated 1st July, 2024, the learned Family Court had declared the father to be the sole custodian of the minor children, with visitation/interim custody rights to the mother. The appellant-mother was further restrained from taking the children out of the territorial jurisdiction of the Family Court, Bengaluru except for taking them to the residence of the respondent-father and bringing

¹ Hereinafter, referred to as “Family Court”.

them within the jurisdiction of the Family Court at Delhi.

5. By the impugned judgment, the High Court of Delhi affirmed the judgment of the Family Court and further rejected the application filed by the appellant-mother seeking relocation of the children to United Kingdom where the appellant-mother is presently working. The High Court gave the following directions to govern the custody and the visitation rights of the parties: -

“77. In light of the foregoing analysis, we proceed to conclude the *lis* as under:

I. We hold that the *Tender Years Doctrine* cannot be applied as a determinative principle in the present case, and that the issue of custody must necessarily be governed by the paramount consideration of the best interests of the children.

II. The application seeking relocation is rejected, and it is directed that the children shall not be removed from the territorial jurisdiction of the Indian courts.

III. Guided solely by the paramount consideration of the welfare and best interests of the children, and bearing in mind the need to preserve sibling unity, emotional continuity, and balanced parental presence, we direct that the custody of both minor children shall vest with the Respondent-father.

IV. We are satisfied that separating the siblings would be detrimental to their holistic growth and emotional well-being. Their joint upbringing under the care of the Respondent-father would best subserve their long-term psychological, moral, and

emotional development, while also arresting the adverse effects of prolonged parental alienation.

V. We clarify that the present adjudication is confined solely to the issue of custody. If either party seeks formulation, modification, or enforcement of visitation or access arrangements, it shall be open to the concerned party to approach the learned Family Court, which shall consider such request independently in accordance with law, keeping the welfare and best interests of the children as the paramount consideration.

VI. The conferment of custody upon the Respondent-father shall not be construed as diminishing the role or responsibility of the Appellant-mother. Consistent with her stated financial capacity, she is expected to continue to contribute meaningfully towards the children's education, healthcare, and overall development. Such contribution is an integral facet of responsible coparenting and operates independently of physical custody.

VII. To ensure the gradual restoration and strengthening of parental bonds, particularly between the father and the son, we direct that the children shall continue to undergo counselling under the supervision of qualified professionals at an institution of repute, as may be identified by the Respondent-father in consultation with the Appellant-mother.

VIII. We emphasise that both parents shall scrupulously ensure that the children are insulated from hostility, denigration, or emotional coercion against the other parent. The success of the custodial arrangement lies not merely in legal directions, but in the maturity and cooperation with which the parents discharge their continuing obligations towards their children."

Being aggrieved, the appellant-mother is before
us.

Brief Facts

6. A chronology of the preceding facts and events is necessary for adjudication of the issues and hence, we proceed to narrate the same: -

7. The appellant and the respondent were married on 26th September, 2011. The son 'Master SSB' was born from the wedlock on 29th April, 2013. The appellant-mother is an Academician by profession, her specialisation being research in Computer Science and Engineering, and she holds a Ph.D. in Engineering from Jadavpur University, Kolkata.

8. The relations between the spouses deteriorated in the year 2018, when the appellant was carrying a pregnancy of four months. She claims to have been physically assaulted by the respondent, compelling her to leave the matrimonial home in difficult circumstances, and thus, the son was left with the respondent-father. On 9th September, 2018, the appellant-mother claims to have retrieved the custody of the minor son and since then, Master SSB has continued to reside with appellant-mother/her parents as the situation demands.

9. No sooner the appellant-mother had left the matrimonial home, the respondent-father issued a

letter dated 11th September, 2018 seeking mutual divorce. He also initiated a Guardianship petition² in a Court at Darjeeling which was later transferred to Barasat.

10. The appellant-mother gave birth to the second child, *i.e.*, the daughter 'Ms. DW' on 24th January, 2019, some five months after she had left the matrimonial home. Since then, the appellant-mother continues to hold custody of the daughter, whereas the son has remained in her continued custody from 9th September, 2018.

11. The respondent-father moved the High Court of Calcutta by way of a Habeas Corpus Petition being W.P. No. 20418 (W) of 2019, seeking restoration of custody of the son, which was dismissed by the High Court *vide* judgment dated 11th November, 2019.

12. Pursuant to the birth of the daughter, the appellant-mother faced severe economic and social pressures and made fervent efforts to secure employment as and when the opportunities arose. She initially secured a position at IIT, Jodhpur, and relocated to Jodhpur with both the children. The

² Guardianship Petition No. 22/2021.

appellant-mother has set up a case that the respondent-father tried to sabotage her career through spurious RTI requests and complaints to her employer thereby escalating her hardships. Being faced with the adverse consequences of the multiple RTI applications, the appellant-mother thought it prudent to relocate, and hence, between the years 2019 and 2021, she had to frequently change her employment, first to the VIT University, Vijayawada and then to Bengaluru. As per the appellant-mother, these moves were necessitated by the need to provide a suitable and secure environment for the children.

13. Numerous proceedings registered *inter se* between the parties were consolidated in compliance with the order dated 25th June, 2021, passed by this Court in transfer petitions³ filed by the appellant-mother. Consequently, all custody and associated disputes between the parties were transferred from West Bengal to the Family Court, Patiala House Courts, New Delhi.

14. The appellant-mother sought permission of the Family Court to obtain passports for the children.

³ T.P. (C) No. 161-162 of 2020.

However, the said application was rejected *vide* order dated 1st February, 2023, on an apprehension that the children may be relocated abroad.

15. The appellant-mother thereupon challenged the order of the Family Court before the High Court of Delhi⁴. The High Court, *vide* interim order dated 17th March, 2023 and subsequent order dated 9th May, 2023, permitted the appellant-mother to apply for passports and thereafter visas, for the children, while making it clear that this would not create any special equity in her favour, nor would it entitle her to relocate the children abroad without the specific permission of the Court. The said order was challenged by the respondent-father before this Court by way of a Special Leave Petition.⁵ This Court *vide* order dated 12th June, 2023 modified the High Court's order to the extent that the appellant-mother would be entitled to relocate abroad with the children only after obtaining leave of the High Court, though she remained free to travel alone.

16. The High Court thereafter disposed of the petition *vide* order dated 10th July, 2023, leaving it

⁴ C.M. (M) No. 301 of 2023.

⁵ SLP (Civil) No. 11436 of 2023.

open to the appellant-mother to move the Family Court for permission to relocate the children to the United Kingdom, with a further direction for expeditious disposal.

17. The appellant-mother thereafter having secured a well-paid employment as a lecturer at the University of Hull, United Kingdom, drawing a salary of approximately Rs. 3 Lakhs per month, moved the Family Court seeking permission to relocate the children to United Kingdom. Ample material was placed before the Courts below to show that the financial status of the appellant-mother was significantly better than that of the respondent-father, who admittedly draws a salary of only Rs. 17,000/- per month, working as a part-time Lecturer at a University in West Bengal. However, the said application was rejected by the Family Court *vide* order dated 17th July, 2023, on various grounds, *inter alia*, the contractual nature of mother's U.K. employment, purported concerns about currency disparities, and a perceived risk of the children's alienation from the father.

18. The appellant-mother, being aggrieved by the denial of permission to relocate the children, filed an

appeal⁶ before the High Court of Delhi. In the meantime, owing to the continued strife between the parties and the repeated litigations, the son started exhibiting signs of aggression and hence, he was taken to the National Institute of Mental Health And Neuro Sciences⁷, Bangalore in the later part of the year (October 2023 to be specific), where he made disclosure of incidents indicating sexual abuse by the father in the past. Acting on the psychologist's recommendations, the appellant-mother advised her father to lodge a police complaint resulting in registration of FIR No. 452/2023 dated 5th November, 2023 at P.S. Rajarajeshwari Nagar, Bangaluru under the provisions of the Protection of Children from Sexual Offences Act, 2012⁸. The respondent-father is nominated as an accused in the said FIR.

19. During the course of submissions, Mr. Zoheb Hossain, learned senior counsel representing the appellant-mother, has placed for our perusal a copy of the chargesheet and also the communication dated 1st December, 2023, issued by the Associate

⁶ C.M. Main Petition No. 1147 of 2023.

⁷ For short, "NIMHANS".

⁸ For short, "POCSO Act".

Professor, Department of Child and Adolescent Psychiatry, NIMHANS, Bengaluru, addressed to the Police Inspector, Rajarajeshwari Nagar, Bengaluru, in response to the latter's request dated 7th November, 2023.

20. It may be stated here that the proceedings arising from the POCSO FIR registered against the respondent-father are subjected to challenge before the High Court of Calcutta by way of a quashing petition being C.R.R. No. 4000 of 2024, and the said petition is still pending adjudication.

21. The Family Court, *vide* judgment dated 1st July, 2024, allowed the Guardianship Petition filed by the respondent-father, and declared him to be the sole custodian of the minor children. Aggrieved thereby, the appellant-mother preferred an appeal before the High Court of Delhi which came to be dismissed by the impugned judgment dated 23rd January, 2026.

22. The Courts below were persuaded to grant sole custody to the respondent-father on the perceived nomadic lifestyle of the mother as she had frequently changed jobs and moved on to different locations during the period between 2021 to 2023.

23. Being aggrieved, the appellant-mother is before us by way of these appeals with special leave.

Proceedings before this Court

24. The appeals were initially taken up by this Court on 13th February, 2026, on which date, we directed learned counsel representing the appellant-mother to keep the parents, as well as the children present before us for interaction in Chambers. Extensive interaction took place on 18th February, 2026 and after interacting with the parties and having regard to the sentiments expressed by the children, this Court *vide* order dated 23rd February, 2026, stayed the effect and operation of the impugned judgment of the High Court and the Family Court. It is noteworthy that the son, 'Master SSB' was very emphatic in his stance that he was least inclined to be in the father's company. The body language of the child exhibited a morbid sense of fear even on the thought of being with the father.

25. Thereafter, on a request made on behalf of the respondent-father for visitation rights during the summer vacations and in order to ensure that the father is not totally alienated from the children's company, this Court *vide* order dated 19th May, 2026,

made the following arrangements granting visitation rights of the minor children to the respondent-father:-

“6. In view of the submissions noted above, we hereby make the following arrangements granting visitation rights of the minor children to the respondent-father.

I. The custody of both the minor children of the parties, *i.e.*, son Master S and daughter Ms. D, shall be handed over to the respondent-father in the premises of the Family Court, Bengaluru, on each day commencing from 21st May, 2026, till 1st June, 2026, while the children are enjoying their summer vacations in the school.

II. The father shall be entitled to retain interim custody of the children for a period of 6 hours beginning from 10:00 AM.

III. An experienced counsellor duly identified by the Family Court, Bengaluru, shall be assigned to keep oversight during the period when the father has interim custody of the children by virtue of this order.

IV. The counsellor shall observe and determine the comfort level of the children before the father is permitted to take the children out of the premises of the Family Court.

V. In case the counsellor observes any hesitation/apprehension in either of the children, he/she shall try to make the children comfortable for the period of interim custody with the father.

VI. However, in case, despite all efforts being made, the children are not amenable to proceed with the father, the visitation rights shall be restricted to the Family Court premises itself.

VII. In case the children become comfortable in the company of the father, they shall be permitted to

leave the campus of the Family Court and spend quality time with the father at any location/facility, such as a mall, garden or similar facility.

VIII. The aforesaid arrangements for visitation shall also be available to the respondent-father, if he so desires, during the weekends of the month of June.

IX. Neither the maternal grandparents nor the paternal grandparents shall remain present during the visitation periods allocated to the father.”

26. Pursuant to the aforesaid order, the Family Court, Bengaluru, was directed to procure and forward to this Court, in a sealed envelope, a report from the concerned counsellor(s) regarding the observations made during the visitation sessions between the respondent-father and the two minor children.

27. Summary of the counsellor’s report(s) is relevant and hence, the same is extracted hereinbelow: -

**“I. First Report - Counsellor’s Day-wise Findings
(21st May, 2026 to 30th May, 2026)**

Day 1 (21st May, 2026): The children initially appeared settled but remained largely silent despite the father’s attempts to engage them. The son repeatedly rested his head on the table and covered his face. He expressed that he did not want to sit with the father; the daughter indicated that she would leave if his brother did. The daughter interacted more freely with the counsellor and

spoke about playing with her brother and going out with her parents. The father attempted interaction through conversation, photographs and games, but the children remained largely disengaged.

Day 2 (22nd May, 2026): The son became agitated and violent, shouting and banging chairs/tables, and was difficult to calm. He attempted to leave the room and expressed anger towards his mother, stating that he could control his anger only in her presence. The grandfather informed the counsellor that he was difficult to manage and was undergoing medical treatment. The daughter remained comparatively calm but expressed preference for being with her mother. The son showed limited willingness to interact with the father and later refused to apologise to him.

Day 3 (23rd May, 2026): The children appeared more settled and engaged in drawing and reading. The father attempted interaction through games, conversation and photographs, but direct interaction remained limited. During lunch also, the father attempted to engage with the children but was met with limited response from them.

Day 4 (24th May, 2026): The father brought board games and played a children's movie, attempting to engage the children. The session was recorded as normal and routine, with the children primarily reading and engaging in activities. During lunch, the children interacted with the father regarding food and possible outings.

Day 5 (25th May, 2026): The father raised an objection regarding the presence of the grandfather and advocate. The counsellor explained her limited role as facilitator. The children accepted craft material brought by the father and engaged in drawing/craft activities. The father played Tom & Jerry and attempted interaction. The session was otherwise recorded as normal and routine.

Day 6 (26th May, 2026): The father again raised the issue of the grandfather and advocate's presence. The children engaged happily in craft work, drawing and reading. The son occasionally troubled his sister but stopped when asked by the father. The father continued attempts to engage them through rhymes and other activities; the session remained routine.

Day 7 (27th May, 2026): The children remained engaged primarily in craft, drawing and reading. The son occasionally troubled his sister but stopped when asked. The father participated in activities, played Hindi film songs and engaged in drawing. The session was recorded as normal and routine.

Day 8 (28th May, 2026): The father explained the significance of Eid and engaged the children through craft, drawing and reading. He also read a storybook and arranged lunch for them. The children informed the counsellor, in the father's presence, that their school would reopen on 1st June and expressed reluctance to attend visitation after reopening.

Day 9 (29th May, 2026): The children continued engaging in craft, drawing and reading and appeared settled. The father interacted through songs and photographs and continued attempting to engage them. The son sustained a minor injury after a fall. Although the father attempted to assist, the son did not accept his assistance.

Day 10 (30th May, 2026): The children remained engaged in craft, drawing and reading. The father intervened when the son troubled his sister and continued participating in their activities. He arranged lunch according to the children's preferences. The session remained routine.

II. Second Report – Weekend meeting on 6th and 7th June, 2026

The second report concerns a six-hour visitation session in the 1st weekend of June, 2026 pursuant to the Family Cour's arrangement. The session was attended by Dr. Shivani Gusain, Senior Resident and Psychiatric Social Worker, and Ms. Abhirami G. Menon, Psychiatric Social Work Department, NIMHANS, who were deputed to facilitate the children's interaction with their father.

The counsellors first introduced themselves and explained that the session was intended to provide a comfortable environment for the children. The children were initially reluctant to enter/interact in the counselling setting. The son expressed a strong aversion towards interaction with the father and indicated that such interaction caused discomfort or distress. The daughter repeatedly requested to leave the session and return home.

At about 10:30 a.m., the son requested to leave the premises. The daughter became fearful and repeatedly asked to be taken home, stating that she felt frightened. The children were subsequently provided reassurance and support. The son initially engaged in solitary reading, while the daughter engaged in a physical activity involving a fictional book. With supportive engagement, the children gradually began participating in the activities. When the father entered carrying books and offered them to the children, they continued to remain reluctant to interact directly with him. Attempts by the counsellors to facilitate communication between the father and children were described as having limited effectiveness, although the children appeared comfortable with the counsellors.

After lunch, the children participated in play-based activities. They spoke about their experiences of spending Saturdays and Sundays attending court-related proceedings and meeting their father, describing these experiences as physically and emotionally exhausting. They also spoke about their mother and expressed that her presence was significant to them.

At approximately 3:00 p.m., the father attempted to initiate conversation with the daughter. Both children remained reluctant and explicitly indicated that they did not want the father to come back into the room. The father subsequently exited the room. The children later continued participating in structured games and supportive activities with the counsellors.

Observations recorded by the Counsellors:

- I. Both children demonstrated strong reluctance to interact with their father, consistently avoiding engagement. They exhibited avoidance behaviour, including attempts to leave the room and requests to return home when the father was present.
- II. The daughter displayed fear and emotional distress, including crying, verbal expressions of fear and requests to return home.
- III. The children frequently sought comfort and reassurance from each other, particularly from the elder sibling.
- IV. The children spoke about their frequent Court visits and meetings with their father as physically and emotionally exhausting.
- V. The father's attempts to establish communication through conversation, books, toys and refreshments were not reciprocated by either child.
- VI. The children showed greater comfort and participation when engaged in supportive,

structured and non-threatening activities facilitated by the counsellors.

- VII. The children expressed a preference to remain with their mother and indicated reluctance to interact with their father.”

28. Apparently, thus, during the course of interaction by this Court, as well as during the visitation periods wherein the respondent-father was allowed access to the children in compliance of the order dated 19th May, 2026, one indisputable fact which has emerged is that the son has shown extreme reluctance to be in the company of the father. The daughter who was born after the appellant-mother left the matrimonial home, has hardly interacted with the respondent-father except during the temporary visitation period, pursuant to the order dated 19th May, 2026.

Submissions on behalf of the appellant-mother

29. Mr. Zoheb Hossain, learned senior counsel appearing for the appellant-mother submitted that the appellant-mother had been the primary caregiver of both minor children for several years. The son had remained in her custody ever since September, 2018, while the daughter had been under her care and protection since her birth in January, 2019. The

children had consequently developed a strong emotional bond with the mother, and their established living arrangement ought not to be disturbed. It was further submitted that the appellant-mother had left the matrimonial home in 2018 under compelling circumstances which she had duly explained before the Courts below, and had thereafter made sustained strenuous efforts to secure employment and provide a stable and secure environment for the children. He urged that branding these efforts of the mother to be exhibiting nomadic lifestyle was absolutely unjustified.

30. Mr. Hossain further submitted that the appellant-mother's repeated changes in employment were not voluntary, but were necessitated by circumstances attributable to the conduct of the respondent-father. In particular, it was contended that the numerous RTI applications filed by the respondent against her during her tenure at IIT, Jodhpur ultimately resulted in the appellant leaving her job at IIT Jodhpur and, compelling her to seek employment elsewhere in order to sustain herself and provide for the children.

31. It was submitted that, notwithstanding that the appellant-mother had not been granted permission to relocate, she had continued to make considerable efforts, as a working mother employed in the United Kingdom, to balance her professional commitments with her desire to be with the children and spend time with them as and when possible. It was urged that the denial of permission to relocate had, in effect, deprived the children of the regular custody and companionship of their primary caregiver i.e., the appellant mother.

32. Mr. Hossain contended that the children's own wishes as noticed during Court interactions and the observations made by the counsellors during the visitation period with the father are the most relevant considerations in determining their welfare and future custody arrangements. In particular, when the High Court interacted with the children in Chambers on 9th May, 2023, it noticed that they exhibited a clear reluctance to be with the father and preferred to remain under the care of the appellant-mother. The subsequent counsellors' reports prepared during the visitation arrangements provided by this Court also indicate the son's extreme reluctance to be in the

company of the father. It was therefore urged that the wishes and emotional comfort of the children be given due weight while determining their custody. An experiment to grant custody to the father on the premise of parental alienation may cause irretrievable damage to the mental equilibrium of the son who has already undergone counselling sessions to calm down his aggressive behaviour.

33. Mr. Hossain placed before the Court the grade-sheets of the children for their current academic session, submitting that the children are excelling in their present school and remain focused and academically sound. It was urged that their academic performance indicates that in the present custody arrangement prevailing under the stay granted by this Court, both the children are fully settled in their existing educational environment and that their studies have continued satisfactorily despite the ongoing litigation and emotional strain.

34. Learned senior counsel further submitted that the allegations of sexual abuse disclosed by the son during his examination at NIMHANS could not be brushed aside or characterised as motivated or fabricated at the stage of deciding custody rights. The

spontaneous disclosure made by the child before the psychiatrist at NIMHANS led to the registration of the POCSO FIR, and a chargesheet had thereafter been filed against the respondent-father upon investigation. It was submitted that the criminal proceedings were pending adjudication and that the observations made by the High Court casting doubt upon the veracity of the allegations were premature and capable of prejudicing the pending proceedings even without considering the stance of the minor son. In these circumstances, entrusting custody of the children to a person facing prosecution for such grave charges would not be conducive to the welfare and best interest of the children.

35. Lastly, on the question of relocation, Mr. Hossain submitted that the appellant-mother had secured employment as a Lecturer at the University of Hull, United Kingdom, with substantially better financial prospects, and has made arrangements for the children's education and upbringing there. He submitted that the proposed relocation would provide the children with greater financial stability, security, better educational opportunities and a stable environment under the protective umbrella of the

mother and would be more conducive to their overall development. It was thus urged that the proposed relocation deserves to be favourably considered from the standpoint of the children's overall welfare, educational opportunities, and financial security, rather than being discarded merely because the children would be residing outside India thereby causing alienation for the father.

Submissions on behalf of the respondent-father

36. Shri Shyam Divan, learned senior counsel representing the respondent-father, during the course of arguments, presented before us the financial status of the parents of the respondent-father, who are both pensioners receiving collective pension to the tune of Rs. 1 lakh, and submitted that the father of the respondent owns a house with sufficient accommodation.

37. Referring to these facts, Shri Divan urged that the financial disparity between the parents cannot be the sole consideration for deciding the custody of the children. It was urged that the respondent-father is a highly qualified professional and was earlier working with a prominent multinational company, drawing a handsome salary; however, owing to the frivolous

complaints filed by the appellant-mother, he lost his job, and the appellant-mother, being responsible for his financial distress, cannot take advantage of her own wrongs so as to deprive the respondent-father of custody of the children.

38. Shri Divan further urged that this is a clear case of parental alienation, in that the appellant-mother has taken calculated measures to alienate the children from the company of the respondent-father, so much so that the son's mind has been poisoned to such an extent that he does not even desire to see the face of his own father, with whom he was happily residing till the year 2018. It was further urged that if the children are permitted to relocate outside India, they will lose the cultural ethos and values of a Bengali family, in addition to the risk of them permanently settling abroad and hence there is no justification for permitting relocation of the children to the United Kingdom.

39. Shri Divan also emphasised upon the observations of the High Court of Delhi expressing its reservations regarding the POCSO FIR, and referred to certain dates and events in an attempt to persuade the Court that the FIR is nothing but a bundle of lies,

lodged with the intent to wreak vengeance upon the respondent-father aimed at depriving him of custody of the children. He further submitted that the quashing petition filed by the respondent-father is under consideration before the High Court of Calcutta, wherein an order directing no coercive steps had been passed. Thus, it was contended that mere filing of the chargesheet cannot adversely affect the father's right to seek custody of his minor children.

40. Shri Divan further urged that past record of the mother's employment is clearly indicative of her indecisive disposition. The mother had frequently changed jobs and kept on hopping from one place to another in India. The children were accordingly dragged along to the various stations where the mother shifted base on the premise of getting jobs. He contended that the finding of the Courts below that the mother led a nomadic life thereby, creating a situation where the children were not allowed to settle and pursue a stable academic career is absolutely justified. As per Shri Divan this nomadic conduct of the mother by itself disentitles her to claim sole custody of the children.

41. On these submissions, Shri Divan sought dismissal of the appeal and affirmation of the orders passed by the Courts below granting sole custody of the children to the respondent-father.

Analysis

42. We have heard and considered the submissions advanced by learned senior counsel for the parties and have also gone through the impugned judgment and the material placed on record.

43. We have also carefully perused communication dated 1st December, 2023, issued by NIMHANS, Bengaluru, the report of the counsellors during the interim visitation periods, and the chargesheet filed against the respondent-father.

44. Suffice it to say that the appellant-mother left the matrimonial home while carrying a pregnancy of four months. If everything was going well in the matrimonial relationship, as contended by the respondent, there could have been no reason for the appellant-mother to take the abrupt decision of leaving her five-year-old son behind and moving out of the matrimonial home. It is quite obvious that the appellant-mother was not desirous of washing dirty linen in public and exposing the family acrimony in

public domain, hence, she quietly left the matrimonial home without raising much fuss about the events that triggered such drastic decision. The fact remains that, after leaving the matrimonial home, the appellant-mother has been trying to cement her position in the academic world and has pursued jobs in different institutions. This attempt of the appellant-mother has been branded as a “nomadic life” by the Courts below, which, in our opinion, is absolutely unjustified and far removed from reality.

45. Having taken the conscious decision to leave the matrimonial home, the appellant-mother was rightly concerned for the wellbeing of her son and the subsequently born daughter, and was thus bound to make efforts to secure a respectable, well-paying job compatible with her educational qualifications so as to ensure a good future for herself and her children. The respondent-father, on the other hand, appears to have channeled his energies into litigation and into hounding the appellant-mother through numerous RTI applications. It was argued by Mr. Hossain that more than 100 such applications were filed by the respondent-father when the appellant-mother was

working at IIT, Jodhpur. These hindrances forced the appellant to leave the job of IIT, Jodhpur and she had to relocate. We feel that this conduct of the respondent-father clearly exposes his vindictive nature. It is pertinent to note that, even though the respondent-father draws a meagre salary of Rs. 17,000/- per month, he has nonetheless been held entitled to exclusive custody of both the children, without any consideration being given to the consequences of his weak economic standing. The pension being drawn by the respondent's parents could not have been treated as filling this apparent gap when the mother has shown a better financial standing achieved through her own efforts.

46. Having appreciated the submissions advanced and the material available on record, the following undisputed facts emerge:-

- (i) The financial standing of the appellant-mother which she has achieved through her own efforts is manifold than that of the respondent-father who draws a mere Rs. 17,000/- per month as salary whilst the appellant-mother, despite facing the spate of litigation and RTI applications, has simultaneously pursued her

career and secured better prospects for the children, the respondent-father seems to be channelising his entire energy and efforts into the litigation rather than securing better career for himself so that he can meet the financial demands of the children's future education.

- (ii) The disclosure made by the son before the Psychiatrist, NIMHANS led to the lodging of the FIR, pursuant to which a chargesheet has been filed after investigation. The observations made by the High Court on the veracity of the allegations made in the FIR were absolutely uncalled for, inasmuch as the FIR was registered following disclosure by the child. The maternal grandfather of the child merely conveyed the factum of this disclosure in his complaint to the police and hence any comment on the veracity of the FIR tantamounts to an unwarranted observation upon the veracity of the complaint lodged consequent to the disclosure made by the child to the counsellor/psychiatrist.

47. Much stress was laid by Shri Divan on the observations recorded in the counsellor's report on

the last date of visitation time granted to the respondent-father. Shri Divan argued that over a period of time, the hostility between the father and the children receded, and the father was able to share a meal with the children in the same room.

48. However, the said submission need not detain us for a moment. Such conduct on the part of the children is not conclusive of any genuine improvement in their relationship with the father. It is quite possible that owing to the consistent and persistent efforts of the respondent-father and considering the fact that the visitation period granted by this Court was coming to an end, the children may have relented a little bit. This one-off incident is, in no way, conclusive of improvement in the relationship between the father and the children.

49. The fervent effort made by Shri Divan to project that the respondent-father and the paternal grandparents of the children have a combined financial status which would be sufficient to take care of the education and other needs of the children, is also unconvincing. The pension being received by the parents of the respondent-father cannot, in any manner, be considered as having bearing on the

financial needs of the children in their educational pursuits. Meeting these requirements is the primary duty of the parents themselves and the income of the paternal grandparents and that too the pensionary receipts cannot be treated as supplementing the father's obligations.

50. As has been noted above, the respondent-father has not made any endeavour to improve his financial standing by looking out for better prospects and has instead, continued to pursue litigation. This is a very important factor of the case which we cannot lose sight of. The efforts made by the appellant-mother even while contesting the multi-pronged litigation to pursue different jobs and thereby ensuring financial security for herself and for the children is indeed appreciable and weighs heavily in her favour for claiming custody of the children. The mother's efforts exhibit her resolve and committed approach for securing the children's future prospects.

51. The contention raised by Shri Divan that if the children are relocated to United Kingdom, they would risk losing their cultural ethos and values of a Bengali family, is also unacceptable for the simple reason that there cannot be any presumption that by

mere relocation to another country, the children would lose their cultural values. The appellant-mother, who herself hails from a Bengali family, may reasonably be expected to nurture her children in a manner which would ensure that the children continue to value their roots and cultural ethos of a Bengali tradition.

52. Further, the High Court of Delhi, while deciding the guardianship appeal has made certain reflections and observations on the merits of the prosecution emanating from the POCSO FIR, which, in our opinion, are absolutely unjustified. At paragraph 53 of the impugned judgment, the High Court held that the allegations of sexual abuse levelled by the appellant-mother against the respondent-father appear to be clearly motivated and in the nature of a counterblast to the proceedings initiated by the respondent-father. We are unable to countenance this observation. The FIR was lodged pursuant to a spontaneous disclosure made by the boy to the psychiatrist at NIMHANS, who was engaged to examine and pacify the aggressive tendencies exhibited by the boy. Few discrepancies in dates and sequence of events which were sought to be

highlighted by Shri Divan during the course of hearing are insignificant for the present controversy.

53. We are of the firm opinion that the observations made by the High Court in the impugned judgment on the veracity of the POCSO FIR were out of place, uncalled for and premature. The FIR itself being subjected to challenge before the High Court of Calcutta, the High Court of Delhi ought to have refrained from making comments on the veracity thereof. Such findings would cause grave prejudice to the prosecution initiated on the basis of the statement made by the child victim, and hence, the observations made by the High Court of Delhi in the impugned judgment in this regard deserve to be, and are hereby expunged and shall not be taken into consideration in the course of proceedings emanating from the said FIR.

54. Once the police has filed a chargesheet after investigation in respect of allegations constituting an offence under the POCSO Act against the respondent-father, granting custody of the child to the respondent-father would be totally unwarranted and unjustified. Needless to say, the primary

consideration while deciding the issue of custody has to be the best interest of the children.

55. In this regard, we may gainfully refer to Section 3(iii), (iv), (vi) and (ix) of the Juvenile Justice (Care and Protection of Children) Act, 2015⁹, which lay down the general principles of care and protection of children as under: -

“3. General principles to be followed in administration of the Act.— The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely: —

...

(iii) *Principle of participation:* Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) *Principle of best interest:* All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

...

(vi) *Principle of safety:* All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

...

⁹ For short, “Juvenile Justice Act”.

(ix) *Principle of non-waiver of rights:* No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.”

56. These principles, read together, make it clear that the son’s disclosure and his safety cannot be subordinated to the father’s claim for custody particulars when the criminal case is still pending. Under no circumstances, the respondent-father, as long as he is facing prosecution, can be considered to be a person entitled to custody of the children. Such a course of action, apart from being contrary to the solemn object of the Juvenile Justice Act, may also lead to the prosecution being frustrated, inasmuch as, were the custody of the son to be handed to the respondent-father, the possibility of the son giving a free and fair deposition in those proceedings would virtually be negligible.

57. We are of the considered view that, even assuming the respondent-father succeeds in the quashing petition pending before the High Court of Calcutta and the criminal proceedings arising out of the POCSO FIR are quashed, the Courts would have

to remain circumspect in assessing the circumstances and background in which the allegations came to be levelled by the son against the respondent-father. The subsequent outcome of the criminal proceedings, by itself, cannot efface the circumstances in which the disclosure was made or render the child's apprehensions wholly irrelevant for the purposes of determining his welfare and custody.

58. Mr. Zoheb Hossain, learned senior counsel representing the appellant-mother pointed out that in absence of the mother who has to travel to United Kingdom for her job, the daughter keeps on drawing the sketches of her mother and expresses prayers to God that she should be joined in the protective umbrella of the mother.

59. We can quite visualise the plight of the children who have been deprived of the custody of both the parents because of the ongoing litigation continuing for more than 7 years.

60. The appellant-mother having secured a reasonably well-paying respectable teaching job in the United Kingdom and the respondent-father having been disentitled to receive custody of the children in view of his facing prosecution and having

regard to his financial status, we feel that negating the prayer of the appellant-mother to relocate the children to United Kingdom, would further aggravate the complete parental alienation of the children who are in their formative years.

61. The appellant-mother, who was present in the Court during the course of hearing, submitted that she has already received an assurance for admission of the children in a good school in the United Kingdom, and that she will be personally responsible for the upkeep and upbringing of the children while they are in her custody. She has also undertaken that she shall bring back the children to India as and when required

Directions

62. In this background, we pass the following directions:-

- (i) The stay on the effect and operation of the impugned judgment granted by this Court *vide* order dated 23rd February, 2026 is made absolute and shall continue to operate till the disposal of the appeals.
- (ii) The prayer made by the appellant-mother during the course to hearing to be allowed to

take the children to United Kingdom and to get them admitted to school there, is considered justified in the facts and circumstances noted above.

(iii) The appellant-mother is accordingly, for the present, permitted to take the children to United Kingdom and get them admitted to a good school. The details of the children's schooling in United Kingdom shall be placed on record with an affidavit of the appellant-mother within six weeks from today.

(iv) The appellant-mother shall furnish an undertaking that, as and when directed by this Court or any other Court, she shall produce the children before such Court.

(v) The quashing petition filed by the respondent-father, pending before the High Court of Calcutta, shall be decided independently and on its own merits without being influenced by the observations made in the impugned judgment passed by the High Court of Delhi and/or by any observations made in this order.

63. The appeals shall be listed for hearing in January, 2027.

.....**J.**
(VIKRAM NATH)

.....**J.**
(SANDEEP MEHTA)

NEW DELHI;
SEPTEMBER 23, 2026.