

Delhi High Court

Dr Neeta Misra vs Philip David Dexter on 2 April, 2013

Author: Pradeep Nandrajog

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved on: March 19, 2013
Judgment Pronounced on: April 02, 2013

+ W.P.(CRL.) 1562/2012

PHILIP DAVID DEXTER

Represented by:

..... Petitioner

Mr.Anil Malhotra, Advocate with
Mr.Rajat Bhalla, Advocate

versus

STATE NCT OF DELHI & ANR

Represented by: Ms.Malavika Rajkotia, Advocate
with Ms.Arпита Rai, Advocate for
R-2

..... Respondent

AND

FAO 29/2013

DR NEETA MISRA

Represented by:

..... Appellant

Ms.Malavika Rajkotia, Advocate
with Ms.Arпита Rai, Advocate

versus

PHILIP DAVID DEXTER

Represented by:

..... Respondent

Mr.Anil Malhotra, Advocate with
Mr.Rajat Bhalla, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

CM No. 1107/2013 in FAO No.29/2013

1. Since learned counsel for the parties had argued on the merits of their respective stands, we dispose of CM No.1107/2013 condoning the delay in filing FAO No.29/2013.

FAO No.29/2013 and WP(Crl.) No.1562/2012

1. Dr.Neeta Misra, the appellant in FAO No.29/2012, challenges the order dated April 03, 2012 passed by Shri K.S.Mohi, Family Court Judge. Her petition filed under Sections 7, 8, 10 and 11 of the

Guardians and Wards Act 1890 registered as G.P.No.49/2011, for being appointed as a guardian of the minor girl child born on June 19, 2006 to her during the subsistence of her marriage with the respondent, Philip David Dexter, and for custody of the said minor girl child has been dismissed. The view taken by the learned Judge, Family Court is that the Family Court at Delhi lacks territorial jurisdiction, inasmuch as Section 9 of the Guardians and Wards Act 1890 confers territorial jurisdiction on such District Court within jurisdiction whereof the minor ordinarily resides. The respondent in the Appeal, Philip David Dexter is the writ petitioner in WP(Crl.) No.1562/2012. He prays therein that the minor daughter be directed to be produced in Court by Dr.Neeta Misra and her custody be given to him.

2. In the appeal and the writ petition, we are therefore concerned with a little girl child born on June 19, 2006, who would be aged 6 years and 9 months as of date; far away from the age of adolescence. To respect the anonymity of the child and at the same time not to undermine her persona by labeling her with a letter, we shall give her a name for the purpose of our decision. We shall call her: 'Hope'.

3. We must confess at the outset that we had heard arguments at length spread over the afternoon session on three days i.e. March 01, 2013, March 05, 2013 and lastly on March 19, 2013, on which date the appeal and the writ petition were reserved for judgment as also pending applications therein; notwithstanding that for the purposes of the appeal we were required to adjudicate the limited point pertaining to the jurisdiction of the Family Courts at Delhi. Thus, we were not to hear any argument on the sustainability of the claim of Dr.Neeta Misra in Guardianship Petition No.49/2011. But, while deciding the writ petition filed by Philip David Dexter, and for considering the prima-facie claim of Philip David Dexter for a direction that Dr.Neeta Misra should produce Hope in Court and her custody be entrusted to him, it became necessary to consider the factual aspect of the matter and thus we were compelled to hear learned counsel for the parties at considerable length with respect to not only the legal position, but also the factual backdrop of the litigation; and we unhesitatingly record that learned counsel for Dr.Neeta Misra, Ms.Malvika Rajkotia and learned counsel for Philip David Dexter, Mr.Anil Malhotra, presented the rival viewpoints with the forensic expertise which one would expect from lawyers appearing before Courts of Record. We go back, therefore, to the year 2004 when Dr.Neeta Misra married Philip David Dexter in December 2004. It was the first marriage of Dr.Neeta Misra and the second for Philip David Dexter, who was married for the first time in the year 1991 and was blessed with a son aged 13 years or so as of December 2004, who was living with Philip David Dexter after his parents obtained a divorce. From a live-in relationship, a son was blessed who was aged around 6 years as of December 2004 and was living with Philip David Dexter after his parents separated. Hope came into the world of the living when Dr.Neeta Misra and Philip David Dexter were blessed on June 19, 2006.

4. Relationship soured between Dr.Neeta Misra and Philip David Dexter. They took recourse to legal help. The Solicitors engaged by the two had a meaningful dialogue on the terms of separation. Both moved an application for divorce by mutual consent to snap the matrimonial bond; requiring Philip David Dexter to pay monthly maintenance of 3000 Rand to Dr.Neeta Misra. The couple agreed to the joint custody of Hope as also how Hope would share her invaluable time with the two separated parents.

5. Divorce by mutual consent was granted on October 11, 2010 by the High Court of South Africa (Western Cape High Court), inter-alia, binding the parties as under (While reproducing verbatim the relevant terms of the consent order dated October 11, 2010 to protect the anonymity we have changed the name of the baby girl to Hope):-

"2.1 Guardianship It is recorded that the parents are co-guardians of the minor child, HOPE RACHEL DEXTER, born 19 June 2006, (hereinafter referred to as "HOPE") as provided in sub-sections 18(2)(c), 18(4) and 18(5) of the Children's Act 38 of 2005. Neither parent shall remove HOPE from the Republic of South Africa for any purpose without the other parent's written consent, which shall not be unreasonably withheld.

X X X 2.2.4 The parents shall make joint decisions in respect of any choice of or change in HOPE's schools and tertiary education, extra-mural activities, major medical interventions, choice of religion, and decisions which are likely to significantly change HOPE's living conditions or to have an adverse effect on her well-being.

2.31. It is specifically recorded that both Philip and Neeta agree in principle that it may be in HOPE's best interests to reside equally with both parents. Neeta records that she may in the future apply for HOPE to relocate with her and Philip records that he shall oppose any such relocation which prejudices or affects his rights of contact.

2.3.2 The parties agree to refer the issue Philip's contact to the Facilitator who shall be appointed as per paragraph 8 below.

2.3.3 The Facilitator shall first attempt to mediate a solution to the issue together with the parties. If this appears to be impossible, the Facilitator shall be requested to make a directive, with the assistance of an expert report to be obtained, if necessary, from a child psychologist to be appointed by the Facilitator and paid for in equal shares by the parties. The Facilitator may nevertheless, following receipt of the expert report, order that the apportionment of the costs of such expert be paid by one or other of the parties.

X X X 8.1 In order to resolve disputes arising from the parties exercising their parental rights and responsibilities, maintenance or proprietary consequences as set out herein, the parties agree that a facilitator be appointed in accordance with the following:

8.1.1 The facilitator shall be Astrid Martalas, or failing her, a jointly-appointed facilitator accredited by the Family Mediators' Association of the Cape (FAMAC). Should the parties fail to reach agreement regarding the appointment of a facilitator, they shall approach the chairperson for the time being of FAMAC to appoint a

facilitator.

8.1.2 The facilitator shall continue to act until he/she resigns, or both parties agree in writing that his/her appointment shall be terminated, or his/her appointment is terminated by an order of a Court having jurisdiction. If the facilitator's appointment is terminated or he/she resigns, he/she shall be substituted by another facilitator appointed in accordance with the terms of this Agreement.

8.1.3 If the parties are unable to reach agreement on any issue concerning HOPE's best interests and/or any issue where a joint decision is required in respect of HOPE, the dispute shall be formulated in writing and referred to the facilitator who shall attempt to resolve the dispute by way of directive, as speedily as possible.

X X X

8.1.3.7 The facilitator is authorized to

appoint such other person as may be necessary in order for the facilitator to make a decision in respect of the issue in dispute, including the appointment of experts if he/she deem it appropriate or necessary.

X X X 8.6 In the event that a party fails to participate in any facilitation despite having been requested to do so by the facilitator, or fails to attend a facilitation session, or fails to reply to the facilitator's communications within 5 (FIVE) days, which communications may be by telephone, email or fax, or fails to pay the facilitator's costs upon request, or fails to co-operate with the facilitation process in any other way, the facilitator shall proceed with the facilitation in the absence of that party. The facilitator shall be entitled to issue a directive and his/her decision shall be binding on both parties as if they had both participated in such facilitation until such decision has been varied by a court of competent jurisdiction.

X X X 11.1 The parties hereby acknowledge that the foregoing constitutes a full and final settlement of all outstanding difference between them. The parties agree to withdraw all Protection Order Proceedings currently instituted by them one against the other, forthwith upon signature of this document. Both parties further undertake and agree to withdraw the complaints of assault which they have laid criminally against one another and to do all that is reasonably possible to discourage the State from proceeding with such charges."

6. It is apparent that Dr. Neeta Misra and Philip David Dexter agreed to Hope's joint custody. They also agreed that Hope would be with her mother, but every Wednesday at 04:00 PM she would be with her father who would send her to school the next morning. Hope would spend the evening and the night of Wednesday with her father. At 05:00 PM evening every alternative Friday, Hope would be in the custody of her father, to be returned to the mother on Sunday at 04:00 PM. It was agreed between the couple that Hope would not be removed by either parent from the Republic of South

Africa without the written consent of the other parent. The parents agreed to take joint decisions regarding Hope's school, education, extra mural activities, choice of religion, major medical interventions etc. Expecting that there may be issues which may arise in the future regarding Hope, which may embrace the joint custody including relocating Hope to another city or a country, the parties agreed that if said issue could not be amicably resolved, a facilitator named Astrid Martalas would attempt to resolve the dispute by mediation. Failing which, the parties could request the facilitator to make a directive with the assistance of an expert child psychologist to be appointed by the facilitator. The parties agreed to be bound by the directions issued by the facilitator until the decision of the facilitator was varied by a Court of Competent Jurisdiction (para 8.6).

7. Things did not move smoothly and it appears that Philip David Dexter had some issue with Dr. Neeta Misra not truthfully disclosing her income in South Africa and he being required to pay 3000 Rand per month to her. He stopped making payments resulting in Dr. Neeta Misra moving an application for warrants of attachment to be issued to satisfy her claim for maintenance. She also filed an application apprehending violence to her person. She was granted protection order on March 10, 2011. Philip David Dexter moved an application on March 27, 2011 to reduce the maintenance granted to Dr. Neeta Misra.

8. In June 2011, a theft took place at the residence of Dr. Neeta Misra and since, apart from other things, research material gathered by Dr. Neeta Misra pertaining to the subject she was researching upon for her Doctorate (Ph.D.) was stolen. She suspects that Philip David Dexter had a hand in the incident.

9. Dr. Neeta Misra claimed that on September 08, 2011, a Thursday, when she went to school to pick up Hope, she heard Hope tell her friend Stella that she must not ask her boyfriend to suck on his pee pee (sex organ). When she asked Hope where she had heard this. Hope told her that while standing on the top floor of her father's house she heard her father ask his girlfriend Bregje to perform oral sex, and as she quizzed for more details Hope told her that she had seen Bregje perform oral sex on her father on more than one occasion. On September 09, 2011 Dr. Neeta Misra sent an e-mail to Astrid Martalas with a request to refer the incident to Rob Sandenbergh, a child therapist, for the reason, if it was true, it was indeed a serious matter since Hope was five years old and ought not be exposed to see oral sex between two consenting adults. Philip David Dexter claims this to be a figment of Dr. Neeta Misra's imagination and a ploy; the foundation of a contrivance to abduct Hope from the Republic of South Africa and flee to India.

10. Astrid Martalas referred the issue to one Rob Sandenbergh, a Clinical Psychologist and Child Therapist, who associated one Juana Horn and Kate Scott, the former a Clinical Psychologist and the latter an Educational Psychologist, and submitted, if we may say some kind of an interim opinion in October 2011, which suggests that initially Hope denied having told any such kind of a thing to her mother but at the second breath said that she did, but refused to use the same phrase which she allegedly used while conveying to her mother the oral sex escapades which she claimed to have seen involving her father and his girlfriend. The report records that the retracted second stage incriminating statement was claimed to be made by Hope to her mother in a car when her friend Stella was present i.e. the place of the narration and the child friend of Hope i.e. Stella being

present, being corroborative of what was claimed by Dr. Neeta Misra. The report suggests that Hope could possibly have said imaginary things about her father, because Hope had said that everyone is „talking too much about this and so saying she changed the topic. The report concludes by noting that Rob Sandenbergh can make no further progress because Hope was no longer in the country.

11. But something of importance had taken place prior to October 2011, by when Rob Sandenbergh could furnish a tentative interim report. Dr. Neeta Misra had addressed an e-mail to Philip David Dexter seeking his permission to take Hope for a holiday to United Kingdom informing him that her sister with her daughter were to be in London in the first week of October 2011 and she desired that Hope should meet her aunt and her cousin. Philip David Dexter did not give the consent and thus Dr. Neeta Misra moved an application on September 07, 2011 in the Court seeking permission to take Hope for a holiday to the United Kingdom requiring Hope to be absent from the Republic of South Africa from September 27, 2011 to October 02, 2011. In the application Dr. Neeta Misra inter-alia pleaded as under:-

"4. That insofar as Respondent's signature is necessary for the purpose of obtaining a visa or any other travel documentation, such requirement be dispensed with and Applicant be authorized to sign any such documentation on behalf of Respondent in his stead.

5. That the Respondent forthwith hand over possession of the said minor child's Sought African passport to the Applicant's attorney of record, failing with the Sheriff of the above Honourable Court is directed and authorized to take possession of the passport and hand it over to Applicant's attorneys of record."

12. Required to depose to an affidavit in support of the application, Dr. Neeta Misra, inter-alia, deposed as under:-

"4. I am a citizen of the United States of America. I am resident in the Republic of South Africa. I am a Post Doctorate Fellow at the University of Cape Town. I am also under contract to a local publisher to write a book on South African Trade Unions. I have been granted temporary residence and am permitted to work in the Republic of South Africa until 2013.

X X X

12. HOPE's school holidays commence on 28 September 2011 and end on 9 October 2011. We are booked to leave on the evening of 27 September 2011 and to return to South Africa on 2 October 2011. She will not be missing any school time.

I annex hereto marked "NM3" a copy of our travel itinerary as provided by the travel agent.

13. I am advised that I require Respondent's consent to remove HOPE from the Republic of South Africa in terms of sections 18(5) and 18(3) of the Children's Act 38 of 2005.

X X X

20. Respondent cannot have any fears of Hope travelling abroad, as HOPE accompanied Respondent on a 14 day holiday to Bali, Indonesia in January 2011. May travelled with me to New York in December 2010. We spent two weeks in New York. In March 2011 HOPE accompanied me to India where we visited my family. Respondent willingly gave his consent for these trips. Since August 2010 HOPE has been to Durban at least six times with Respondent."

13. Disposing of the application filed by Dr. Neeta Misra to take the minor child, Hope, for a holiday to United Kingdoms, the learned Judge of the Western Cape High Court passed an order on September 15, 2011 which, inter-alia, reads as under:-

"5. The Respondent shall forthwith hand over possession of the said minor child's South African passport to the Applicant's attorney of record. The Applicant shall hand over the minor child's Indian and USA passports to the Applicant's attorneys of record for safe keeping. The Applicant, on her return to the Republic of South Africa shall hand over the minor child's South Africa and UK passports to her attorneys of record, who shall hold all these passports until the parties otherwise agree in writing."

14. But, what did Dr. Neeta Misra do? She was obliged to hand over Hope's Indian and US passport to her attorney for safe keeping. She did not do so. As regards Hope's South African passport which was with her father and who gave it to the attorney of Dr. Neeta Misra, on the strength thereof Hope left the shores of the Republic of South Africa on September 27, 2011 with Dr. Neeta Misra and reached Heathrow Airport (London) the next day on September 28, 2011. She never went outside the Airport. She took a connecting flight for Mumbai the same day and reached Mumbai the day next i.e. September 29, 2011. The passports would evidence that on the strength of the South African passport, Hope flew out of Cape Town with her mother and flew out of London on the American passport. With much hesitation, to which fact we would be referring to a little later, Dr. Neeta Misra now admits that she had already purchased a round trip ticket on September 21, 2011 for herself and her daughter Hope which was used by her to reach Mumbai from London. She contacted a lawyer at Delhi on September 30, 2011, got drafted, and on October 05, 2011 filed a petition under the Guardians and Wards Act 1890 with which we are dealing, pleading therein that she and her minor daughter were residing at 234, Westend Marg, Said-ul-ajab, New Delhi.

15. There are gross suppressions in the petition. There is no reference to the joint custody order dated October 11, 2010 passed by the competent Court at Cape Town. There is no reference to the undertaking given by Dr. Neeta Misra to the Court in Cape Town to return to the Republic of South Africa along with Hope on October 02, 2013. From a perusal of the petition it becomes clear that

Dr. Neeta Misra has complained about Philip David Dexter not paying her maintenance and the fear of violence at his hand and for which she annexed the complaints filed by her in the Court in South Africa and the protection order which she had obtained as also the application filed by her to seek warrants of attachment to realize her maintenance dues. She referred to the trauma caused to Hope at the hands of Philip David Dexter, to whom she attributed statements of telling Hope that he would see that Hope and her mother were sent to jail. She referred to the fact that Philip David Dexter has a half sister having a daughter named Hayley; a stated drug addict and suffering from Bipolar Disorder. She made a grievance that Philip David Dexter used to occasionally send Hope to sleep, without parental supervision, with Hayley; thereby endangering Hope. She referred to Hope's half-brother, the child born during a live-in relationship of Philip David Dexter, slapping Hope and bullying her as also that Philip David Dexter permitting the adolescent half-brother of Hope to sleep in the same room with Hope. Dr. Neeta Misra pleaded that so traumatized was she that she had to escape from the long arms of Philip David Dexter, whom she referred to as a politician in the Republic of South Africa. She pleaded that she left United Kingdom for a short holiday in September 2011 (date has not been mentioned by her). She claims that at the departure, when the Immigration Authorities found that she was a divorcee but was on a spousal visa in the Republic of South Africa, she was told that her return to South Africa would be a problem. The reason to reach India, as pleaded in paragraphs 38, 39 and 40 of the petition, would be better noted by us in the language used by Dr. Neeta Misra. She pleaded as under:-

"38. At the time of her departure the Petitioner was shocked when the Immigration Authorities told her that as she was living in South Africa under a spouse visa and as her marriage with the Respondent had been dissolved in October 2010, the Petitioner would not be entitled to return to South Africa on the said visa. The Petitioner has a modest grant for research till March 2012 which is soon to expire.

39. After clearing immigration in the UK the petitioner enquired at the South African consulate in London and was told that it would take 4-6 months to get a new visa and that she must return to her country of residence to apply. In these circumstances, although, the petitioner was in the U.K. she decided to come to India initially to apply for a new visa to come to South Africa which application for Visa could have been applied from the U.S. or from the India. As the Petitioner would need a residence permit/visa and not a tourist visa, the Petitioner realized that she could not lose time and needed to come to India and cancel her UK holiday as the Petitioner has limited means and living in the US is far more expensive than living in India. Petitioner has thus come to India, has cancelled her return ticket to South Africa and has decided to permanently reside in India along with her minor Daughter Hope.

40. That the petitioner has the advantage of having her mother and family on whom she can depend in her time of need. The Petitioner has thus come to India as a result of an emergency which came to the fore. At the time of the Petitioner leaving South Africa for the U.K. the Immigration Authorities warned the Petitioner that she would not be allowed to re-enter South Africa. The Petitioner does not know what to do. The Petitioner has the custody of the minor daughter Hope. The Petitioner has no

objection to supervised visitation rights by the Respondent. The Respondent is a man of low moral value and high political influence, Petitioner cannot hope to compete with the Respondent either in terms of money or in any other manner."

16. Listed before the learned Judge Family Courts on October 05, 2011; kept in the dark about the order dated October 11, 2010 passed by the Western Cape High Court as also Dr. Neeta Misra's undertaking to the said Court when she was permitted to take Hope for a holiday to United Kingdom and also kept in the dark about the order dated September 15, 2011 passed by the Western Cape High Court, the learned Judge Family Courts passed an order restraining Philip David Dexter to remove the minor child from the custody of Dr. Neeta Misra. The said injunction order was passed because Dr. Neeta Misra expressed an apprehension that Philip David Dexter would kidnap Hope.

17. We need to highlight at this stage that the pleadings of Dr. Neeta Misra suggest to the Court that in view of the information she received at the departure by the Immigration Authorities and further information received by her from the South African Consulate in London, it was her compulsion to fly to India. She has not disclosed that she flew to Mumbai and reached Mumbai on September 29, 2011 because her mother resides in Mumbai. Her pleadings are suggestive as if she flew to Delhi, meaning thereby, this was her plea to confer territorial jurisdiction in the Courts at Delhi.

18. All this while Philip David Dexter was distressed because Hope never crossed out from the precincts of Heathrow Airport at London. Since Dr. Neeta Misra had indicated that she would be staying with her sister at the house of a friend named Sameena Zaidi at 90 Exmouth Road, London, E 17, Philip David Dexter tried to locate Hope at said address and had to contact a Solicitor in London to do the needful who got in touch with Sameena Zaidi and received information from her that Dr. Neeta Misra nor her daughter had reached her house. She informed that Dr. Neeta Misra had told her of having some matrimonial problem and took her permission to use her address limited to bring Hope to the United Kingdom.

19. On October 07, 2011 the Solicitor of Dr. Neeta Misra at Cape Town informed the Solicitor of Philip David Dexter that henceforth he had no authority to act on behalf of Dr. Neeta Misra and henceforth her attorneys in India would be doing the needful; and along with the communication he enclosed a copy of the ex-parte ad-interim order passed by the learned Judge, Family Courts on October 05, 2011. The communication dated October 07, 2011 reads as under:-

"We refer to previous correspondence herein.

We have been instructed to forward a copy of the Indian court order dated 5 October 2011 to your offices, a copy of which has been attached hereto.

We have furthermore been instructed to advise that we shall no longer be representing our client and that all queries will have to be set to our client's attorneys in India, who shall be making contact with you shortly."

20. It was followed soon thereafter by an ex-parte ad-interim order dated October 20, 2011 obtained by Dr. Neeta Misra in C.S.No.382/2011 wherein she sought an injunction against Philip David Dexter to approach her and Hope, expressing a fear of physical harm. The order restrains Philip David Dexter to be within 100 metre of Dr. Neeta Misra and Hope. It needs to be highlighted that even in the said suit facts pertaining to the consent orders passed by Court of Competent Jurisdiction in Cape Town which had a bearing on Hope's custody and not to be brought to India were suppressed. For record, said suit ultimately came to be dismissed on April 24, 2012. It was held that the matter had to be adjudicated by the Guardianship Court.

21. Pertaining to Guardianship Petition with which we are concerned, Philip David Dexter opposed the prayers made, on merits as well as on jurisdiction; pleading that there was contrivance by Dr. Neeta Misra who had already made up her mind to remove Hope from the Republic of South Africa. He pleaded that the story weaved by Dr. Neeta Misra in paragraphs 38 to 40 of the petition was a ruse, for the reason there was no time for Dr. Neeta Misra, as pleaded by her in paragraph 39 of her petition, to approach the South African Consulate in London inasmuch as she never stepped out of Heathrow Airport. Flying out of Cape Town on September 27, 2011 and reaching London the next day on September 28, 2011, she flew out of Heathrow Airport with Hope the same day and reached Mumbai on September 29, 2011. He pleaded that since Dr. Neeta Misra's mother resides at Mumbai, she reached Mumbai. She treats Mumbai as her abode and her residence, evidenced by income tax returns filed all these years at Mumbai. Philip David Dexter referred to income tax returns till the assessment year 2011-2012 filed at Mumbai showing Dr. Neeta Misra's address at Mumbai. He drew the attention of the Court to the documents filed by Dr. Neeta Misra and especially at Serial No.4 to 16 of the petition, the documents being: (i) Marriage certificate of the parties; (ii) Hope's birth certificate; (iii) Copy of legal notice sent by his Solicitor to Dr. Neeta Misra on May 11, 2006; (iv) Copy of hospital records; (v) Copy of an e-mail dated September 08, 2011; (vi) Copy of divorce proceedings; (vii) Details of the trips made by Philip David Dexter; (viii) Copy of profile of Philip David Dexter; (ix) Copy of newspaper cutting in 'THE CAPE TIMES' pertaining to Philip David Dexter; and (x) Copy of Domestic violence complaint filed by her, to highlight the patent absurdity in Dr. Neeta Misra's story for the reason as per her she was compelled to reach Mumbai due to the Immigration Authority at the Departure of the Airport at Cape Town telling her about the status of her visa i.e. spousal visa and information that she could not return to South Africa on the visa with further information received from the South African Consulate in London. He pleaded that if Dr. Neeta Misra was an innocent traveler as claimed by her why would she be travelling with aforesaid documents? Obviously, she was pre-armed to reach India and open a battlefield after abducting Hope. Territorial jurisdiction was opposed by pleading that there was no evidence to even prima-facie suggest that Dr. Neeta Misra and Hope had made up their mind to have a permanent residence at Delhi and thus the sine qua non for jurisdiction i.e. the place where the minor ordinarily resided was not Delhi. Philip David Dexter relied upon the quick succession of events to not only bring out contrivance but even the fact that Dr. Neeta Misra and Hope could not claim to be ordinarily residing at Delhi. Of course, he opposed the relief prayed on merits.

22. Unfortunately for us, the learned Judge, Family Courts, has not discussed afore-noted facts and the evidence save and except the proceedings at South Africa. It has been held that in his opinion it could not be said that Hope was ordinarily a resident of Delhi.

23. In FAO 29/2013 Dr.Neeta Misra had stood by her story as disclosed by her in paragraphs 38 to 40 of the Guardianship Petition filed by her, containing her reasons to leave Republic of South Africa for good and set up residence at Delhi.

24. In WP(Crl.) No.1562/2012, an order was passed on January 21, 2013 directing Dr.Neeta Misra to deposit her and Hope's passport (passports) with the Registrar General of this Court. Order dated March 12, 2013 passed in the writ petition required inspection of the passports to be given to learned counsel for Philip David Dexter in the presence of the counsel of Dr.Neeta Misra.

25. As noted by us herein above, we had heard arguments in the appeal on March 01, 2013 as also March 05, 2013, on which dates Ms.Malavika Rajkotia Advocate, has made submissions in the appeal filed by Dr.Neeta Misra. By March 05, 2013, learned counsel for Dr.Neeta Misra had completed submissions. The appeal and the writ petition were adjourned for March 12, 2013, on which date arguments could not be advanced in reply by Philip David Dexter resulting in the matters being adjourned for March 19, 2013. On March 12, 2013, inspection of the passports deposited with the Registrar of this Court was granted and it was at this stage that it was revealed that Dr.Neeta Misra had already purchased a round trip ticket on September 21, 2011 for herself and Hope; enabling the two to travel to Mumbai and this was after she had obtained the order on September 15, 2011 from the Court at Western Cape Town. The passports evidenced that she and her daughter flew out of Cape Town on September 27, 2011. They departed on the strength of the South African passport. Reaching Heathrow Airport the next day on September 28, 2011, the mother and daughter simply crossed over the terminal from Heathrow Arrival to Heathrow Departure and same day flew out to Mumbai, where they reached on September 29, 2011. Dr.Neeta Misra then realized that the cooked up story containing reason to reach with her daughter to Mumbai was up. The cat was out of the bag. She made a confessional statement in the form of an affidavit deposed to by her on March 19, 2013, realizing that it would be better to state the truth voluntarily. She did so, but not with the candour expected of a person who wants to make a confession. She confessed in paragraph 16 of the affidavit that she had already made up her mind to be with her mother in Mumbai to discuss the situation in which she was, to try and find a solution, and that was the reason why she had purchased a round ticket on September 21, 2011. But in the very next paragraph i.e. paragraph 17, she reiterated the reason, being the fact statedly disclosed to her at the Immigration counter before she left South Africa. She admitted in the next paragraph i.e. paragraph 18, that landing at London she took the flight from the Airport to Mumbai; thereby admitting that she never had an occasion or the time to contact the South African Consulate in London. In the next paragraph i.e. paragraph 19 of the affidavit she stated that she came to Delhi on September 30, 2011 and approached the Courts to ensure that her daughter was not separated from her. But in the same breath she stated that she contacted the South African Embassy who told her that she could obtain a non-spousal visa to visit the Republic of South Africa where she was a fellow at the University pursuing her Doctorate.

26. In an affidavit deposed to on March 19, 2013, after Dr.Neeta Misra's counsel had concluded submissions and learned counsel for Philip David Dexter had to commence reply arguments, in paragraph 16 to 19, she disclosed as under:-

"16. I requested permission to take Hope on a holiday to London in October, 2011 as I was entitled to as per the divorce agreement. My former husband refused on financial grounds. I took him to the high court and won permission to leave the country. Following this on 21.09.2011 I bought a round trip ticket from London to Mumbai. I had permission to travel to London from 27.09.2011 to 04.10.2011. I bought a round trip ticket to Mumbai from London leaving September 28.09.2011 to 02.10.2011 that would allow me return to South Africa. I planned to visit my mother who lived in Mumbai to discuss this situation and try and find a solution.

17. As I was leaving South Africa at the immigration counter I asked the officer if my existing South African visa was valid and he asked me if I was still married to a South African citizen. When I answered in the negative he advised me that I would need to apply for a fresh visa from my country of residence and could not come back to South Africa on my existing spousal visa.

18. I landed in London and got on a flight to Mumbai. Once I got there I met with my mother and decided together that Delhi would be the best place for me to go to while I resolved these issues for work reasons and my mother agreed to re-locate to Delhi with me to give Hope support during this difficult time.

19. Around 30.09.2011, I arrived in Delhi and approached the courts to ensure that my daughter was not separated from me while I investigated the issues around my visa. It became apparent after I contacted the South African embassy that it would almost impossible for me to get a new visa for South Africa and that by the time I did so my existing employment contact would have ended and I would have no source of income in South Africa. In any event the Respondent has taken out an arrest warrant against me in South Africa thus rendering me unemployable."

27. We find that Dr.Neeta Misra's stand that she was permitted to reside in South Africa on a spousal visa is incorrect inasmuch as the category of visa was changed, when permission was accorded to her to reside in South Africa till May, 2013, to one under Section 11 of the Immigration Act, 2002 in the Republic of South Africa. She holds a visitors visa on the strength of her being engaged in the Republic for research work. She can return to the Republic of South Africa.

28. In the aforesaid factual backdrop we need to consider whether Dr.Neeta Misra has prima facie established a case warranting a summary or a regular inquiry to be held i.e. evidence recorded to determine whether she and her daughter are ordinarily residing at Delhi.

29. Ms.Malvika Rajkotia, with reference to the decision of the Supreme Court reported as AIR 2011 SC 1952 Ruchi Majoo v. Sanjeev Majoo vehemently urged that a person being ordinarily a resident in a place is primarily a question of intention, which in turn is a question of fact. Thus, learned counsel submitted that without holding an inquiry to determine the fact i.e. the intention, the learned Judge of the Family Court could not have non-suited the petitioner.

30. Blacks Law Dictionary defines the word 'ordinary' to mean : Regular; usual; normal; common; often recurring; according to establish order; settled; customary; reasonable; not characterized by peculiar or unusual circumstances; belonging to, exercised by or characteristic of, the normal or average individual.

31. The dictionary defines the word 'reside' as : live; dwell, abide, sojourn, stay, remain, lodge. The decision 129 F2d 135 Western Knapp Engineering Co. v. Gillbank CCA defined 'reside' : To settle oneself or a thing in a place, to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a time, to have ones residence or domicile; specifically, to be in residence, to have an abiding place, to be present as an element, to inhere as a quality, to be vested as a right.

32. To put it simply, 'reside' means more than a flying visit to, or a casual stay at a particular place.

33. What makes residence a matter of intention and hence a matter of fact is that it relates to a person choosing to make a particular place his/her abode.

34. To wit : A person decides one day to seek premature retirement. In furtherance of the intention, the person applies to the employer, giving notice envisaged by the terms of engagement, to be voluntarily retired from service. Anticipating acceptance, the noticee visits a small town where he intends to reside post-retirement and negotiates a lease for a house. He opens an account with the bank in the said small town. He returns to the city of his work place and closes the bank account. He surrenders the gas connection and determines the lease. Voluntary retirement request is accepted and in the evening the office colleagues give the farewell party. Bag and baggage, the same evening this man leaves for the small town. He becomes an ordinary resident of the small town the moment he reaches the town for the reason the conduct of the person shows his intention to have his abode in the small town.

35. If all these facts are admitted, it would be only a question of law : Whether from the said admitted facts an intention to have the abode in the same town stands evinced. No trial would be needed on said admitted facts.

36. Law recognizes the difference between proof of a fact being a matter of evidence and an inference to be drawn from a fact proved, which would be a question of law.

37. Meaning thereby, it all depends on what facts are projected by a party and whether or not the same are admitted. If all the facts projected by a party are admitted by the opposite party or are not put in dispute, no evidence whatsoever would be required; because no fact in issue arises warranting evidence to be led. Only the question of law would remain : Whether on the admitted facts or on the facts which are not traversed by the opposite party, in law, one can infer that the residence of the person is as claimed.

38. It is with this legal understanding that we proceed to consider the undisputed facts pertaining to Dr. Neeta Misra's claim that she and her daughter were ordinarily residents of Delhi.

39. The facts noted by us hereinabove would reveal that Dr. Neeta Misra had nothing to do with the city of Delhi and nor Hope. The two left Cape Town on September 27, 2011; reaching London the next day on September 28, 2011, the mother and daughter flew the same day to reach Mumbai on September 29, 2011. As deposed to in her affidavit dated March 19, 2013, contents whereof have been noted by us in paragraph 26 above, Dr. Neeta Misra reached Delhi on September 30, 2011 to investigate issues regarding her visa and engaged a counsel who drafted the petition which was filed on October 05, 2011. Dr. Neeta Misra has disclosed her residential address as 234 West End Marg, Said-ul- Ajaib, New Delhi, but has furnished no proof of having taken on rent the premises in question. The tax returns filed by her of all these years, and the last one being for the Assessment Year 2011-2012 would reveal that she had been filing the tax returns at Mumbai showing herself to be a resident of Mumbai at the flat where her mother was residing.

40. So telling are the facts which emerge from Dr. Neeta Misra's pleadings and the undisputed documents that no trial is warranted. The conclusion would be that take all the facts in favour of Dr. Neeta Misra, in law it cannot be said that the same evidence an intention to set up the abode at Delhi.

41. Thus, on the facts of the instant case we concur with the view taken by the learned Judge Family Court that Courts at Delhi did not have territorial jurisdiction to entertain the petition because when the petition was filed neither Dr. Neeta Misra nor her daughter Hope were ordinarily residents of Delhi.

42. That would be the end of FAO No.29/2013 filed by Dr. Neeta Misra, which we dismiss.

43. With respect to the Habeas Corpus petition filed by Philip David Dexter, we would be constrained to discuss all relevant facts pertaining to the custody issue of Hope and this would mean a virtual adjudication on the merits of Dr. Neeta Misra's claim that Courts in India should decide the issue of Hope's custody. But it cannot be helped.

44. Though, the fact has to be kept in mind, but without being blown out of proportion, that it is a case of an abducting parent approaching the Court in India.

45. When the abducting parent is the mother, it is common for her to claim that the matrimonial bond has broken down, and more often than not the allegation would be ill-treatment and domestic abuse by the male spouse. There are bound to be allegations that the conduct of the male spouse was of a serious kind with grave likelihood of risk to the mental or the physical health of the child born during the wedlock. Invariably, as an excuse to abduct the child from the foreign shores, she is bound to say that she resorted to a secret operation i.e. resorted to a stratagem of contrivance; pulling wool over the eyes of her spouse and even taking the Courts of that country for a ride; too afraid to do otherwise, she was left with no option but to flee to the country where her kith and kin by birth were available to provide her with comfort and support.

46. We would thus not be overtly influenced by the fact that Dr. Neeta Misra has abducted Hope and has brought her to India violating the joint custody order dated October 11, 2010 and in the teeth of

the order dated September 15, 2011 of the High Court of South Africa (Western Cape High Court) as also her solemn undertaking given to the Court under an affidavit, relevant parts whereof have been noted by us in para 12 above.

47. We do not burden ourselves with extensive case law cited by learned counsel for the parties for the reason learned counsel agreed that in parental abduction cases, where a spouse is residing separately or otherwise from the opposite spouse, in a particular country, and flees from the said country to her original home country along with the minor child born to the parties, and the issue of custody arises in the Court within territorial jurisdiction whereof the spouse and the minor child ordinarily reside, post abduction, the legal principles to be kept in mind are that irrespective of whether the country of the Court concerned is or is not a signatory to the 'Hague Convention on the Civil Aspects of International Child Abduction 1980' (popularly known as the Hague Convention), principles embodied in the Convention must be kept in mind. This would mean that if there is an order of a Court of competent jurisdiction in the country wherein the abduction took place, the said order has to be respected. The disadvantage to the other spouse has also to be kept in view. One has to keep in mind the injury caused to the mind of the child who is uprooted all of a sudden from a familiar surrounding; the psychological damage caused to the child due to sudden removal from a familiar environment to an unfamiliar environment. Injustice caused to the opposite spouse. The welfare principle i.e. the risk of harm while returning the child to the foreign shores; the welfare and interest of the child.

48. The bond between a mother and her child has always been held, especially in India, standing on a higher pedestal vis-à-vis the bond between a father and his child. From times immemorial, the Indian ethos gives the highest place in the life of a child to the mother, followed by the teacher and at third place comes the father.

49. But, this is only a starting point of discussion, or to put in legal language : The onus cast is against the father.

50. But, there are no easy solutions for the reason an organized civil society and an orderly world order require : (i) It being the object of every law to deter either parent from taking law into their own hands; and (ii) respecting the principle of comity of nations and Courts.

51. It has to be kept in mind that the principles of status quo ante require a Court to restore parties to the same position in which they were before one party, acting illegally and unlawfully, changed the status quo. He who violates the law and does an act to change the status quo should not be permitted to gain an unfair advantage. These principles of civil law, when transposed to the family dispute of parental abduction would mean that the object of the law and hence the legal debate would be : (i) To deter either parent from taking the law into his/her own hand; (ii) Restore the child as soon as possible to the home country; (iii) Status quo ante to be restored; (iv) Abducting parent should not gain any unfair advantage.

52. And the aforesaid three, to a considerable extent, shift the onus which is cast against the father on the weight of the mother-child bond; if the abduction is by the mother. The reason being that

unilateral action should not be permitted to pre-empt anybody's claim and that even the left behind parent has a legitimate interest in the future welfare of the child : without the existence of such a person the removal can never be wrongful. Restoring a child to the familiar surroundings is seen as likely to be a good thing in its own right and hence the assumption that the best interest of the child would be served by a prompt return to the country where the child is habitually resident. And this explains a catena of authorities where the thumb rule of a year lapsing after the abduction and the other spouse seeking return of the child is treated as defeating the equities and the presumptions in favour of the spouse aggrieved. The reason is : Children are malleable and easily adjustable. They adapt to changed environments very quickly and thus the very principle that a child should be taken back promptly to familiar surroundings operates in the converse i.e. the child not to be removed in the surroundings with which the child has become familiar over the one year. Of course, all these assumptions may be rebutted.

53. What resolves the issue of onus then?

54. Learned counsel for the parties rightly conceded that it is the best interest of the child.

55. Now, what does that mean?

56. Children, especially of a tender age, and by that we mean children who have not entered their teens, do not always know what is best for them though they may have acute perception of what is going on around them. They may profess to have authentic views about the right and the proper way to resolve matters, but the same would be hazy.

57. When we speak about a child's interest we understand the same to be comprising of two distinct parts. Part I : Maintaining family ties. Part II : Ensuring the child's development within a sound environment and least not such as would harm the development of the child. It is the second which is inherent in the rule requiring a prompt return of the abducted child, unless there is a grave risk that the child's return would expose the child to a physical or a psychological harm or otherwise place the child in an intolerable situation and its converse that if one year elapses from the date of the abduction when the aggrieved spouse moved for return of the child, the Courts should be reluctant to return the child.

58. Having understood what would be the interest of the child to be kept in mind, we need to lodge a caveat. The law requires that „the best interest of the child shall be a primary consideration. The law does not require that „the interest of the child shall be the primary consideration. The law also does not require that „the best interest of the child shall be a paramount consideration. Thus, the distinction between „a primary consideration ; „the primary consideration ; and „the paramount consideration has to be kept in mind.

59. It is clear that where the couple, as in the instant case, have submitted to the jurisdiction of the home country where they resided when the matrimonial bond was intact, the burden of proof would lie on the spouse who opposes the return of the minor child and it is for the said spouse to produce evidence to substantiate the exception. Of course, the standard of proof would be of the ordinary

balance of probabilities. Secondly, the inquiry has to be quick and fast, preferably summary in nature, a long drawn out inquiry being the exception, for the reason law presumes that the best interest of the child would be served by restoring the child to the familiar environment i.e. the place where the child was residing before being plucked away from the familiar environment. Thus the need to send back the child as early as possible. Thirdly, with respect to evidence relied upon by the spouse who opposes the return, the risk to the child must be established not only as real but also grave. Fourthly, the real risk, which has to be grave, may relate to a physical or a psychological harm to the child. Fifthly, since the Court is looking to the future, the situation in which the child will find herself on return has to be kept in mind; and this would embrace such measures protective of the child against the risk, if the Court decides that the child must return.

60. We clarify these are the principles to be kept in mind while deciding a petition under Section 9 of the Guardians and Wards Act 1890 in a case of parental abduction.

61. The inquiry has ordinarily to be a summary inquiry, and if inferences can be drawn from the facts which are brought before the Court, no evidence whatsoever is required to be led. Further, if the nature of factual dispute is such that the best evidence thereto would be available in the home country, parties have to be relegated to the remedies before the home country.

62. Dr. Neeta Misra and Philip David Dexter obtained divorce by mutual consent on October 11, 2010. On consent terms they agreed to Hope's joint custody. As per Dr. Neeta Misra, Philip David Dexter started disobeying the consent order when he did not pay the monthly agreed maintenance of 3000 Rand. But she has taken recourse to remedy in the home country. Attachment warrants were obtained and the amount was recovered. As per Dr. Neeta Misra, when she went to Hope's school to pick her up on September 08, 2011 she heard Hope tell her friend Stella that she must not ask her boyfriend to suck on his sex organ and on quizzing Hope as to where she heard of this, was horrified to learn that Hope had seen her father and his girlfriend perform oral sex. As per Dr. Neeta Misra, returning Hope to the Republic of South Africa would expose her to said psychological harm inasmuch as Philip David Dexter has a right to Hope's custody every Wednesday evening and night followed by every alternative Friday evening, the night thereof, the whole of Saturday including night thereof till Sunday 04:00 PM. As per Dr. Neeta Misra, Philip David Dexter sends Hope to the house of his half sister who has a drug addict daughter and when Hope is in Philip David Dexter's house he permits her to sleep in a room with an adolescent half brother of Hope. Dr. Neeta Misra claims the real risk of a physical harm i.e. Hope being physically abused by her half brother.

63. Admittedly, Dr. Neeta Misra had sought intervention from Astrid Martalas, the agreed facilitator, when she sent an e-mail to him on September 09, 2011. Dr. Neeta Misra had required Astrid Martalas to refer, what Hope allegedly told Dr. Neeta Misra on September 08, 2011, to one Rob Sandenbergh, a child therapist, for the reason, if what Hope told was true, it indeed was a serious matter. Admittedly, Astrid Martalas not only referred the issue to Rob Sandenbergh but also ensured that a Clinical Psychologist named Juana Horn and an Educational Psychologist named Kate Scott were associated. Admittedly, all three i.e. Rob Sandenbergh, Juana Horn and Kate Scott looked into the issue. They had sittings with Hope and submitted an interim opinion in October 2011, which did not rule out the possibility of Hope saying imaginary things about her father. We

highlight that the interim report is not conclusive for the reason on September 27, 2011, Dr. Neeta Misra fled; Hope in tow from the Republic of South Africa and thereby prevented the matter from being taken to its logical conclusion.

64. The scattered material which Dr. Neeta Misra relies upon to discharge the onus cast upon her to establish a real risk of grave harm to Hope is thus not only ex-facie insufficient but more than that, and which is of importance, is that the best evidence of whatever happened in the Republic of South Africa is available in the Republic of South Africa. The best evidence would be Rob Sandenbergh, Juana Horn and Kate Scott giving expert evidence on the issue.

65. Further, Dr. Neeta Misra has no explanation as to why she did not move the Court in the Republic of South Africa to vary the joint custody order. And we must confess that the system in place in the Republic of South Africa on future custody issues, in the form of an agreed facilitator being appointed to find a solution firstly by mediation and lastly be a directive for which he has to obtain assistance of Child Psychologist is far better than what we have in India, in the form of Court adjudications. What we intend to say is that Dr. Neeta Misra had a better forum available for resolution of the issue in the Republic of South Africa.

66. Contrivance on her part is writ large. Her pleadings that at the Immigration at Cape Town she learnt about her spousal visa and hence not being permitted to return has now been accepted by her to be a ruse. She admits in the affidavit deposed to by her on March 19, 2013 that she had much earlier made up her mind to flee from the Republic of South Africa with Hope and find a solution to the problem in India after consulting her mother. She has perjured herself when she pleaded on oath that when she reached London on September 28, 2011 she received further information from the South African Consulate in London that it would take her a few months to obtain a visa which would entitle her to return. She now admits of never having left the precincts of Heathrow Airport where she landed on September 28, 2011 and flew out the same day to Mumbai. We find that the visa with her is a non-spousal visa entitling her to return to the Republic of South Africa.

67. We have noted suppression of relevant facts by Dr. Neeta Misra, which disentitle her to any discretionary relief.

68. Any issue which Dr. Neeta Misra had which affected the physical or the psychological condition of Hope could certainly have been brought before the Court at Cape Town.

69. In our opinion Dr. Neeta Misra, for the moment, has no evidence to prima-facie justify risk of grave danger which Hope would be facing on return to the Republic of South Africa. By her act of contrivance, Dr. Neeta Misra has prevented the three experts : Rob Sandenbergh, Juana Horn and Kate Scott to interact further with Hope and identify the truth. Having aborted the inquiry by the three, she cannot claim the benefit of any scattered evidence which she projects.

70. It may be true that more than one year has elapsed since Hope came to India, but the scheming design of Dr. Neeta Misra has prevented Philip David Dexter from taking recourse to the Habeas Corpus Petition filed by him. By suppressing relevant facts she not only obtained the interim

custody order from the Family Court on October 05, 2011 but also obtained an ex-parte ad-interim order on October 20, 2011 preventing Philip David Dexter to be within 100 metre of herself and Hope, and in respect of which order, Philip David Dexter had an apprehension that if he visited India for legal help to recover his daughter, Dr. Neeta Misra would sue him for contempt by falsely alleging that he had tried to breach the line of security i.e. 100 metre distance from herself and Hope. The suit came to be ultimately dismissed on April 24, 2012. Thereafter, WP(Crl.) 1562/2012 was filed by Philip David Dexter.

71. Hope must therefore return to the Republic of South Africa.

72. Learned counsel Ms. Malavika Rajkotia had repeatedly requested us to have a chamber hearing with Hope. We declined to do so for the reason Hope is aged 6 years and 9 months as of today. She is far away from the age of adolescence. She may have an acute perception of what is going on around her and may have her own views about the right and proper way to resolve matters concerning her, but in our opinion she would not know what is best for her. Besides, the possibility of her being tutored by her mother was looming large in the realm.

73. We have kept in mind the entire family situation, the factual, emotional, psychological and other material placed before us. We have to strike a fair balance between the competing interests of Hope : to return her to her familiar surroundings in the Republic of South Africa as also the alleged grave risk which she may be exposed to if required to be returned. Finding evidence of the latter being scanty, further finding Dr. Neeta Misra to have prevented a fair inquiry by the three experts after having sittings with Hope, noting further the walls created by Dr. Neeta Misra which prevented Philip David Dexter to seek redressal within one year of Hope's parental abduction, respecting the comity of Courts, we find case made out in favour of Philip David Dexter in WP(Crl.) No.1562/2012.

74. But a preventive measure has to be put in place. When Dr. Neeta Misra returns to the Republic of South Africa and takes recourse to legal remedies there, a warrant of her arrest having been obtained by Philip David Dexter for having violated undertaking submitted by her to the Court in the Republic of South Africa when she filed the application seeking permission to take Hope for a holiday to United Kingdom, she should be protected lest she is handicapped in taking recourse to her judicial remedies.

75. Accordingly, we direct that upon Dr. Neeta Misra returning to the Republic of South Africa, Philip David Dexter would not move for the warrants of arrest to be executed for at least a period of two months to enable Dr. Neeta Misra to seek cancellation thereof.

76. We dismiss FAO No.29/2013.

77. We allow WP(Crl.) No.1562/2012 and issue a direction to Dr. Neeta Misra to produce Hope before the Registrar General of this Court on April 30, 2013. Hope's custody would be handed over by the Registrar General of this Court to Philip David Dexter. This direction would not be carried out if within two weeks from today Dr. Neeta Misra files an affidavit containing an undertaking that she would return to the Republic of South Africa with Hope, and along with the said affidavit she would

furnish proof of having purchased return tickets to fly back to Republic of South Africa for not only herself but even Hope. In said eventuality the passports deposited by Dr.Neeta Misra pursuant to the order dated January 21, 2013 passed in WP(Crl.) No.1562/2012 shall be returned to her. Failing which the passports of Hope shall be handed over to Philip Davit Dexter.

78. WP(Crl.) No.1562/2012 was listed before us on being transferred by the Roster Bench since we were seized of FAO No.29/2013. Since the appeal has been dismissed, we direct that should an application be filed by either party in WP(Crl.) No.1562/2012 the same be listed before the Roster Bench.

79. Noting gross suppression of facts by Dr.Neeta Misra and acts of contrivance, one would have been constrained to impose heavy costs on her, but we refrain from so doing because we are of the opinion that she has been led into the desert of folly by wrong legal advice given to her by her counsel in India who have chosen to suppress relevant information which Dr.Neeta Misra must have provided them while drafting pleadings on behalf of Dr.Neeta Misra. We give her the benefit of doubt. Therefore, there shall be no order as to costs. Crl.M.A.No.18499/2012 The application stands disposed of as infructuous since directions regarding passports have already been issued herein above while deciding WP(Crl.) No.1562/2012 and as regards access to Hope we direct that till mandamus issued in the writ petition is complied with, Philip David Dexter would continue to have the benefit of the consent order dated November 05, 2012.

Crl.M.A.No.1908/2013 The application is dismissed as infructuous since directions have been passed while deciding the writ petition pertaining to Hope s passport.

(PRADEEP NANDRAJOG) JUDGE (PRATIBHA RANI) JUDGE APRIL 02, 2013 dk