



FACULTY OF JURIDICAL SCIENCES

**MOOT COURT EXERCISE AND
INTERNSHIP
(CLINICAL)**

Course : BBALLB , 3rd Semester

Subject code : BBL903

Faculty Name : Ms Taruna Reni Singh

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical training on how the proceedings of the court take place.

The Paper will have following components

- Moot Court: Every student may be required to do at least one moot court in a year. The moot court work will be on assigned problem.
- Observance of Trial in one case, either Civil or Criminal.
 - Students may be required to attend one trial in the course of the last year of LL.B. studies. They will maintain a record and enter the various steps observed during their attendance on different days in the court assignment.
- Interviewing techniques and Pre-trial preparations and Internship diary.
 - Each student will observe one interviewing session of clients at the Lawyer's Office/Legal Aid Office and record the proceedings in a diary. Each student will further observe the preparation of documents and court papers by the Advocate and the procedure for the filing of the suit/petition.
- The fourth component of this paper will be Viva Voce examination on all the above three aspects.
- Student will be required to undertake legal awareness programme in association with N.S.S. and other authorities as directed by the Faculty.

LECTURE 31

IN THE COURT OF THE GUARDIAN JUDGE, DELHI

Raj Malhotra PETITIONER Versus

Shivani Malhotra RESPONDENT

Instructions to Counsel for Petitioner

The Petitioner is an Indian citizen, Punjabi by origin, and presently resident of New Delhi. The Respondent is a British citizen, Gujarati by origin, and resident of London. The Petitioner met the Respondent during their MBA course in London. They fell in love with each other and their marriage was solemnised according to Hindu rites and ceremonies in London on January 15, Yr...9. The parties were blessed with a son, Rohan, on March 26, Yr...8 and a daughter, Muskaan, on April 2, Yr...6.

Differences had arisen between the parties right from the beginning of the marriage, primarily due to incompatibility. The friction between the parties grew, particularly after the birth of the two children. Fed up with frequent arguments and fights at home, the parties got their marriage dissolved by a decree of divorce on January 10, Yr...2. It had been agreed between the parties that the minor children would remain in the custody of the Respondent, with the Petitioner having temporary custody of the children on the weekends from 10 am on Saturday to 8 pm on Sunday. The decree of divorce had been passed in terms of the said agreement. The decree further directed that the party seeking to take the children out of United Kingdom would have to apply for such permission from the London Court, which might grant the same on such terms so as to ensure the return of the children. The parties were directed to contribute equally for the maintenance and education of the children.

The Petitioner states that on January 3 Yr...0, his 65 year old father in New Delhi fell seriously ill and was hospitalised. Around the same time, he learnt that the Respondent had started a live-in relationship with a divorcee, Ajay Khanna, and had, since the previous week, taken the children to reside with her in Ajay Khanna's house. The Petitioner decided that he would leave London for good and return to New Delhi. He, however, did not want to leave his children behind with the Respondent and her partner; particularly since he believed that it would not be in their welfare, morally and emotionally, to witness their mother have a live-in relationship with another man. The Petitioner knew perfectly well that the Respondent would not give him the custody of the children either. So taking advantage of the weekend custody of the children, the Petitioner took the flight from London to New Delhi on Saturday, January 10 Yr...0, along with the children. The Petitioner states that given the urgency of reaching New Delhi to be with his ailing father, he brought the children to New Delhi without applying for permission to do so from the London Court.

The Petitioner has learnt that the Respondent had then moved the London Court complaining of the violation of the Court's decree by the Petitioner. The London Court has even issued a warrant of arrest against the Petitioner on the ground of unlawful taking and restraining the children outside United Kingdom. The warrant, however, has not been executed as the Petitioner is in India. The Petitioner states that thereafter the Respondent came to New Delhi and visited the parental home of the Petitioner on January 24 Yr...0, where the Petitioner let her meet the children for several hours. The Respondent demanded that the children be returned to her. The Petitioner refused to do so. Apprehensive the

Respondent would take the children out of his custody, the Petitioner has filed custody and guardianship proceedings before the Guardian Judge, Delhi, under the Guardian and Wards Act 1890 pleading that he is the natural guardian of the children and that the children are now in his custody, and within the jurisdiction of the Indian Courts. He maintains that given the fact that the Respondent started a live-in relationship with another man in London subsequent to the passing of the decree by the London Court, it is in the welfare of the children that they should now remain in his custody. He offers that the Respondent could meet the children whenever she visited New Delhi. The Petitioner undertakes to provide for the maintenance and education of the children. In fact, the children have already been admitted to a reputed school in New Delhi and have even made friends. The Petitioner points out that his mother is a housewife and stays at home and is quite competent to look after both the children. The Petitioner express his regret for having to violate the consent decree of the London Court but contends that in such cases, the matter has to be decided not on consideration of the legal rights of the parties but on the sole criteria of what would best serve the interest and welfare of the minor children. The Petitioner prays that it would be in the interest of the children if they are directed to remain in his custody and the Respondent be restrained from taking the children out of his custody. The Petitioner has also filed an interlocutory application under Section 12 of the Guardian and Wards Act 1890 seeking a restraint order forbidding the Respondent from removing the children from his custody pending the disposal of the matter.

The Guardian Judge has granted ex-parte the interim restraint order against the Respondent till further orders. Summons was sent to the Respondent two weeks ago for last Friday, on which day the Respondent filed her Written Statement to the Petition and Reply to the interlocutory application. The Petitioner had also been directed to produce the children before the Court on that date, which he duly did. The statements of the children were recorded by the Guardian Judge in Chambers on the same date. The matter is now listed today for arguments on the interlocutory application of the Petitioner.

Apprehensive the Respondent would take the children out of his custody, the Petitioner has filed custody and guardianship proceedings before the Guardian Judge, Delhi, under the Guardian and Wards Act 1890 pleading that he is the natural guardian of the children and that the children are now in his custody, and within the jurisdiction of the Indian Courts. He maintains that given the fact that the Respondent started a live-in relationship with another man in London subsequent to the passing of the decree by the London Court, it is in the welfare of the children that they should now remain in his custody. He offers that the Respondent could meet the children whenever she visited New Delhi. The Petitioner undertakes to provide for the maintenance and education of the children. In fact, the children have already been admitted to a reputed school in New Delhi and have even made friends. The Petitioner points out that his mother is a housewife and stays at home and is quite competent to look after both the children. The Petitioner express his regret for having to violate the consent decree of the London Court but contends that in such cases, the matter has to be decided not on consideration of the legal rights of the parties but on the sole criteria of what would best serve the interest and welfare of the minor children. The Petitioner prays that it would be in the interest of the children if they are directed to remain in his custody and the Respondent be restrained from taking the children out of his custody. The Petitioner has also filed an interlocutory application under Section 12 of the Guardian and Wards Act 1890 seeking a restraint order forbidding the Respondent from removing the children from his custody pending the disposal of the matter.

The Guardian Judge has granted ex-parte the interim restraint order against the Respondent till further orders. Summons was sent to the Respondent two weeks ago for last Friday, on which day the Respondent filed her Written Statement to the Petition and Reply to the interlocutory application. The Petitioner had also been directed to produce the children before the Court on that date, which he duly did. The statements of the children were recorded by the Guardian Judge in Chambers on the same date. The matter is now listed today for arguments on the interlocutory application of the Petitioner.

In the Court of the Guardian Judge, Delhi

Raj Malhotra PETITIONER

Versus

Shivani Malhotra RESPONDENT

Instructions to counsel for Respondent

The Respondent has received last week summons from the Court of the Guardian Judge, Delhi enclosing a copy of the application of the Petitioner seeking custody and guardianship of the two minor children, Master Rohan and Baby Muskaan, and a copy of the interlocutory application seeking a restraint order forbidding the Respondent from removing the children from the custody of the Petitioner. The summons were accompanied by an order passed by the Guardian Judge, granting such restraint order ex-parte till further orders. It was indicated in the said order that the interlocutory application of the Petitioner would be taken up for hearing on the coming Friday on which date the Petitioner also had been directed to produce the children in Court.

The Respondent immediately filed her Written Statement and her Reply to the said interlocutory application of the Petitioner under Section 12 of the Guardian and Wards Act, 1890.

The Respondent has pleaded in her Written Statement that as per the decree of divorce of January 10, Yr...2 passed by the London Court, the minor children would remain in her custody, with the Petitioner having temporary custody of the children on the weekends from 10 am on Saturday to 8 pm on Sunday. The decree further directed that the party seeking to take the children out of United Kingdom would have to apply for such permission from the London Court, which might grant the same on such terms so as to ensure the return of the children. The parties were directed to contribute equally for the maintenance and education of the children.

The Respondent states that in terms of the said decree, the Petitioner duly returned the children to the Respondent when he took them for weekend custody. The children had gone to stay with the respondent on January 10 Yr...0 and were to be returned to her on January 11 Yr...0 at 8 pm. When the children did not return, she frantically tried to contact the Petitioner, only to learn from his neighbours that he had left for India with the children. Accordingly on January 19 Yr...0, the Respondent applied to the London Court for the warrant of arrest against the Petitioner on the ground of unlawful taking and restraining the children outside United Kingdom. The said warrant still stands outstanding against the Petitioner.

The Respondent pleads that like the Petitioner, she too is the natural guardian of the children, and more important, she is the person entitled to their custody under the order of a competent foreign Court, the certified copies of which she annexed to her Written Statement. She contends that she has reason to believe that the Petitioner's father was not unwell as stated by the Petitioner in his application and that he had cooked up the story about his father's illness merely to justify his sudden flight from London. She adds that the Petitioner has shown scant respect for the decree of the London Court and that his conduct of abducting the children does not inspire confidence that he is a fit and suitable person to be entrusted with the custody and guardianship of the children. The Respondent states that the children were born, brought up and educated in London and are still accustomed and acclimatized to the place of their birth.

The children were going to school in London and are presently losing out on their studies on account of the reprehensible conduct of the Petitioner.

The Respondent admits that she is living with Ajay Khanna, but states that she ensures that the children do not witness any inappropriate or embarrassing situations. She points out that it does not necessarily outrage sensibilities in London for a divorcee to have a partner, nor does she consider it to be morally depraved. Rather, Ajay Khanna is very fond of the children and tries to give them fatherly love. Moreover, the minor daughter, Muskaan, is a growing up girl and needs the constant attention of the Respondent. It would be cruel to separate Rohan and Muskaan from each other at such tender age, more so, because they are each other's best friend.

The Respondent states that she has to report back to her job in London next week and cannot stay in New Delhi to contest the custody and guardianship case filed by the Petitioner. She further submits that if she is restrained from taking the children back to London, the Petitioner would gain an advantage by his wrongdoing and that it would encourage the tendency of sudden and unauthorised removal of children from one country to another. The Respondent offers that should the Petitioner withdraw the instant matter and let her take the children back to London, she would co-operate with the Petitioner for the withdrawal of the warrants of arrest outstanding against the Petitioner and that she would raise no objection to the restoration of his weekend custody rights which have since been terminated by the London Court.