RAMA UNIVERSITY

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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

Moot Court Exercise and Internship

Objective: The objective of having moot courts is to give the students practical tanning how the proceedings of the court takes 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 35

Thereafter, **MRS ELIZABETH DINSHAW**

v.

ARVAND M. DINSHAWAND ANR.

NOVEMBER 11, 1986

(V. BALAKRISHNA ERADI AND G.L. OZA, JJ)

Constitution of India, I 950- Article 32- Divorce in USA -Minor child- Custody given to mother and visitation rights to father by American Court- Father abducted the child and brought to India against express orders of the American Court - Orders of proper foreign Court - Should be regarded- Child restored to mother to be taken back to USA.

The petitioner, a citizen of the United States of America residing in Michigan, was married to the first respondent, an Indian citizen, who after marriage settled down in the United States and secured employment. A male child was born to the couple in America. Differences arose between them and the petitioner along with her son took up separate residence. She filed a petition for divorce in the Circuit Court for the country of Saginaw, Michigan, which granted a decree holding that there had been a breakdown in the marriage relationship and declared the marriage as dissolved. The decree also directed that the petitioner shall have the care, custody and control of the minor child until he reaches the age of 18 years. The first respondent, the father was given visitation rights by the decree. On the subject of travel with the minor child to any place outside the United States, it was directed that only on a petition the Court shall make a determination as to whether such travel is in the best interest of the minor child, and what conditions shall be set forth to ensure the child's return. The Court also directed that the first respondent shall notify the Office of the Friend of the Court promptly concerning any changes in his address.

Taking advantage of the weekend visitation rights granted by the said decree, the first respondent picked up the child from his school and secretly left America for India on January 11th 1986. He had not intimated the Court about his intention to take the child out of its jurisdiction and outside the country nor had he given the slightest indication to the petitioner about his intention to leave America permanently for India. Immediately before leaving for India, the first respondent sold away his immovable property and it was only from the Airport that he posted a letter tendering his resignation from his job.

Coming to know that the minor child had not been returned to the day care centre by the first respondent, the petitioner moved the Circuit Court complaining against his violation by the first respondent of the terms of the Court's decree. The Court issued a warrant of arrest against the first respondent on the ground of unlawful taking and retaining the child outside the State, followed by the issue of a Federal warrant of arrest on the ground of unlawful flight to avoid prosecution. Since the first respondent had already come over to India with the minor child these warrants could not be executed in the United States. The Consular Officer, American Consulate General, Bombay, visited the residence of the first respondent's parents in Pune but the minor child was not present there and the grandparents reported that the child and his father had gone North, possibly to Kashmir and that they were not aware of their exact whereabouts. Thereafter, have restricted visitation rights in America and should also extend her co-

operation for the withdrawal of the warrants of arrest outstanding against the first respondent. [183 F-184C]

Original Jurisdiction: Writ petition (Crl.) No. 270 of 1986

Under Article 32 of the Constitution of India

Mrs K Hingorani for the petitioner

Kapil Sibal, Karanjawala, MrsKaranjwala and CV Subba Rao for the Respondents

The Judgment of the Court was delivered by

BALAKRISHNA ERADI, J. Immediately on conclusion of the hearing of arguments in the above Writ Petition on June 11, 1986, having regard to the urgency of the matter, we passed the following order: –

"We allow the Writ Petition and direct that the minor boy, Dustan be restored forthwith to the custody of the petitioner i.e. the mother with liberty to the petitioner to take him to the United States. The child will be a ward of the concerned Court in Michigan and it will be open to the father, first respondent herein to move that Court for a review of the custody of the child, if he is so advised. Detailed reasons will follow. The passport of the child which is in deposit with the Registrar of this Court will be returned to the petitioner i.e. the mother of the child today itself. The concerned authorities of the Govt. of India will afford all facilities to the mother to take the child back to the United States pursuant to the order passed by this Court."

We now proceed to state in this judgment our reasons in support of the order.

The petitioner, Mrs. Elizabeth Dinshaw is a citizen of the United States of America residing in the State of Michigan. She is employed as a case worker for the State of Michigan in Genesee County Department of Social Services, Flint Michigan. The first respondent, Mr. Arvand M. Dinshaw, who is an Indian citizen, was a student at Northern Michigan University in 1971. During that period the petitioner was also studying there. What started as a friendship between them on the campus later developed into love and the petitioner was married to the first respondent in a civil marriage before a legal magistrate in Negaunee, Michigan on February 26, 1972. The first respondent thereafter settled down in the United States more or less on a permanent basis having secured employment as an Accountant for the Controller's Office in Genesee County, and having obtained a permanent immigration Visa. A male child, Dustan, was born to the couple on August 30, 1978 in Rochester, Michigan, United States of America where they were having their marital home.

Unfortunately, differences arose between the two spouses late in the year 1980 and on December 23, 1980, the petitioner along with her son took up separate residence in a women's shelter in Saginaw, Michigan. She filed a petition for divorce on January 2, 1981 in the Circuit Court for the County of Saginaw, Michigan. By a decree dated April 23, 1982, the Circuit Court held that it had been established that there had been a breakdown in the marriage relationship to the extent that the objects of matrimony had been destroyed and there remained no reasonable likelihood that the marriage could be preserved and hence it declared the marriage as dissolved and granted a divorce to the petitioner as prayed for. By the same decree, it was directed that the petitioner shall have the care, custody and control of the minor child

of the parties until he reaches the age have restricted visitation rights in America and should also extend her co-operation for the withdrawal of the warrants of arrest outstanding against the first respondent. [183 F- 184C]

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same decree, it was directed that the petitioner shall have the care, custody and control of the minor child of the parties until he reaches the age of 18 years or until the further orders of that Court. The first respondent, the father was given visitation rights by the decree and it was provided that he shall have visitation with the minor child from approximately 5 P.M. to 8 P.M. on the Wednesday of every week during which he does not have a weekend visitation. It was further ordered that the father shall have visitation with the minor child on alternate weekends from 5 P.M. on Friday until the following Monday morning when he should return the child to his day care centre. On the subject of travel with the minor child to any place outside the United States, it was specifically directed in the decree as follows: –

"IT IS FURTHER ORDERED AND ADJUDGED THAT should the Defendant ARVAND M. DINSHAW wish to travel with the minor child outside the territorial limits of the United States. He shall bring a petition before this Court setting forth the conditions under which he intends to leave the country with the minor child. The court shall then make a determination as to whether such travel is in the best interests of the minor child and what conditions shall be set forth to ensure the child's return."

Taking advantage of the weekend visitation rights granted to him by the above decree, the first respondent picked up Dustan from his school on January 10, 1986 and secretly left the United States of America for India on January 11, 1986 at about 8.30 in the night. He had not intimated the Court about his intention to take the child out of its jurisdiction and outside country nor had he given the slightest indication to the petitioner about his intention to leave the United States of America permanently for India. It may be stated that immediately before leaving for India, the first respondent had sold away the immovable property consisting of a house and its premises owned by him in Seymour, Lindan, Michigan, where he had been residing and it was only from the Airport that he posted a letter tendering his resignation from his job as Accountant in the Country. In this context it is significant to recall that the decree of the Circuit Court contained the following directions:

"IT IS FURTHER ORDERED AND ADJUDGED that the Defendant shall notify the Office of the Friend of the Court promptly concerning any changes in his address. The Court further finds that the Defendant is presently residing at 14155 Seymour, Lindan, Michigan."

It was only late in the day on Monday, January 13, 1986 that the petitioner came to know that the minor child, Dustan had not been returned to the day care centre by the first respondent. She immediately moved the Michigan Circuit Court complaining against the violation by the first respondent of the terms of its decree. A warrant of arrest was issued by the Michigan Circuit Court against the first respondent on January 16, 1986 on the ground of unlawful taking and retaining the child outside the State. This was later followed by the issue of a Federal warrant of arrest against the first respondent on the January 28, 1986 on the ground of unlawful flight to avoid prosecution. Since the first respondent had already come over to India with the minor child, these warrants could not be executed in the United States. The first respondent has his ancestral home in Pune where his parents are residing. The petitioner made frantic efforts through American Consulate General at Bombay to trace out the whereabouts of Dustan. She received a reply that the Consular Officer, American Consulate General, Bombay travelled to Pune on Friday, March 7, 1986 and though she was able to visit the residence of the first respondent's parents and she spoke with them, the minor child, Dustan was not present there and the grand-parents reported that Dustan and his father had gone North, possible, to Kashmir and that they were not aware of the exact whereabouts of Dustan and the first respondent. The petitioner finding herself totally helpless to recover back the custody of her

minor child, whom she had brought up for more than 7 years, thereafter arranged to have this petition filed in this Court seeking the issuance of writ of Habeas Corpus directing the respondents to produce in Court her minor child, Dustan and to hand over his custody to her as the person entitled to his custody under the order of a competent foreign Court.

In response to the notice issued by this Court directing production of the child before the Court, the first respondent appeared and produced the child in Court. He has filed a counter-affidavit but significantly there is absolutely no satisfactory explanation given there for his conduct in abducting the child from America without seeking permission of the Court in that country of which the minor child, was ward. His only explanation is that his father was seriously ill and he wanted that his father in his ailing condition to see Dustan. He has further stated that his son Dustan has told him on an enquiry that he would prefer to stay with him in Pune and hence he had got Dustan admitted in St. Helena's School in Standard III. According to him he had not deliberately done anything wrong in bringing Dustan with him from the United States and that now the minor child is well settled here in India and it will be in the interest of the child that he should be allowed to reside with him in India as per the child's desire.

The conduct of the first respondent in taking the child from the custody of the person to whom it had been entrusted by the Court was undoubtedly most reprehensible. The explanation sought to be given by him namely, his father's illness, is far from convincing and does not in any way justify such gross violation and contempt of the order of the Circuit Court in Michigan.

Whenever a question arises before Court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties but on the sole and predominant criterion of what would best serve the interest and welfare of the minor. We have twice interviewed Dustan in our Chambers and talked with him. We found him to be too tender in age and totally immature to be able to form any independent opinion of his own as to which parent he should stay with. The child is an American citizen. Excepting for the last few months that have elapsed since his being brought to India by the process of illegal abduction by the father, he has spent the rest of his life in the United States of America and he was doing well in school there. In our considered opinion it will be in the best interests and welfare of Dustan that he should go back to the United States of America and continue his education there under the custody and guardianship of the mother to whom such custody and guardianship have been entrusted by a competent Court in that country. We are also satisfied that the petitioner who is the mother, is full of genuine love and affection for the child and she can be safely trusted to look after him, educate him and attend in every possible way to his proper upbringing. The child has not taken root in this country and he is still accustomed and acclimatized to the conditions and environments obtaining in the place of his origin in the United States of America. The child's presence in India is the result of an illegal act of abduction and the father who is guilty of the said act cannot claim any advantage by stating that he has already put the child to some school in Pune. The conduct of the father has not been such as to inspire confidence in us that he is a fit and suitable person to be entrusted with the custody and guardianship of the child for the present.

In Re. H. (infants) [1966] 1 All E.R. 886, the Court of Appeal in England had occasion to consider a somewhat similar question. That case concerned the abduction to England of two minor boys who were American citizens. The father was a natural-born American citizen and the mother, though of Scottish origin, had been resident for 20 years in the United States of America. They were divorced in 1953 by a

decree in Mexico, which embodied provisions entrusting the custody of the two boys to the mother with liberal access to the father. By an amendment made visitation rights in America with all necessary, proper and adequate safeguards and that the petitioner would also extend her co-operation for the withdrawal of the warrants of arrest outstanding against the first respondent in case he approaches her with such a request.

For the reasons stated above, the Writ Petition is disposed of with the directions issued by our order dated June 11, 1986.Petition disposed of.