

Punjab-Haryana High Court

Karan Singh Bajwa vs Jasbir Singh Sandhu And Others on 3 September, 2012

CRWP No.1432 of 2012

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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANAAT CHANDIGARH

Cr1.W.P. No.1432 of 2012 (O&M)

Date of Decision: September 03 , 2012

Karan Singh Bajwa

... Petitioner

Versus

Jasbir Singh Sandhu and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Anil Malhotra, Advocate,
along with petitioner.

Mr. S.S. Brar, Advocate,
along with respondent Nos. 1 and 2.

Ms. Jaspreet Kaur, AAG, Punjab.

Paramjeet Singh, J. (Oral)

Heard.

Joint statement of the petitioner and respondent No.2 has been
recorded separately and is placed on record.

Prayer in Criminal Writ Petition:

The instant habeas corpus petition has been filed by the
petitioner - Karan Singh Bajwa against respondent Jasmine Bajwa wife
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and Jasbir Singh Sandhu father-in-law for production, release and return of the minor children, namely, Kundani Bajwa, daughter and Harman Singh Bajwa, son (hereinafter to be referred as "the children"), who have acquired permanent resident status by immigration to Canada. The averments in petition are that the children have been illegally, wrongfully detained by respondent no.1 Mr. Jasbir Singh Sandhu father-in-law and respondent no.2 -wife Ms Jasmine Bajwa, allegedly contrary to the sole custody and restriction orders dated 01.01.2012 (date of orders is incorrectly mentioned in this petition) passed by the Hon'ble Supreme Court of British Columbia, Canada vide Annexures P/18 and P/19, correct date of these orders is dated 01.08.2012, made without notice to Ms. Jasmine.

Interim Orders of this Court:

This Court after perusing the documents on paper book submitted to this Court and hearing the learned counsel for the petitioner passed the following order on 07.08.2012:

"Learned Counsel for the petitioner contends that the

petitioner is father of minor Harman Singh Bajwa, born on 22.11.2006 and Kundani Bajwa, born on 31.12.2001. Harman Singh Bajwa was born in Canada and Kundani Bajwa was born in India, but has adopted Canada as a country of permanent resident. The petitioner is also a permanent resident of Canada and presently is in full time regular employment as a Senior Chief Engineer with British Columbia Ferries at British Columbia, Canada. Learned counsel for the petitioner has further

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contended that the age of Harman Singh Bajwa is 6 years, so even under the Custody laws of India, custody vests in the father. Similar is the position of Kundani Bajwa. Learned counsel further contends by referring to various documents that the children have studied in the various schools at British Columbia, Canada. Learned counsel further contends that in fact the children from their childhood have resided in Canada and have

acquired the habits and culture of that country. Learned counsel further contends that in fact the children and mother (respondent No.2) had come to India for enjoying holidays from 22.06.2012 to 03.08.2012 and the air tickets have been issued for this very visit.

Learned counsel for the petitioner further contends that in fact, respondent No.1 in connivance with respondent No.2 is not permitting the children to come out and even the very visit which was as a picnic for them had been spoiled for them. Learned counsel further contends that the petitioner had approached the Canadian Court wherein orders (Annexure P/18 and P/19) have been passed wherein it has been held that the children, namely, Harman Singh Bajwa and Kundani Bajwa are habitual residents of Canada and even the movements of the children out of Canada has been restrained. Learned counsel further contends that as per orders (Annexures P/18 and P/19), the custody of the children solely vests in the father. During most of the period, except the period from 24.06.2012 till date, they have been in Canada. As per the Canadian Laws, as well as, Indian Laws as applicable to the petitioner and respondent No.2, petitioner is entitled to the custody even the custody, vests in the petitioner.

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Notice of motion for 09.08.2012.

However, the learned counsel for the petitioner has contended that since the Harman Singh Bajwa is a Canadian citizen, a notice may be issued to the Consulate General of Canada, Chandigarh as they have already intervened. On the oral request of the counsel for the petitioner, Consulate General of Canada, Chandigarh is allowed to be impleaded as respondent No.5 and notice be issued to him. The address of respondent No.5 will be supplied by the learned counsel for the petitioner. Registry is directed to carry out the necessary corrections in the Memo of Parties accordingly.

Keeping in view these facts as averred in the petition, since the children are in the custody of respondent Nos. 1 and 2 without any authority of law, this Court deems it fit and proper that a warrant officer be appointed for taking custody of the children and they be brought to this Court along with their passports. Ordered accordingly. The Registry is directed to nominate a Warrant Officer, who shall visit the place/places to be pointed out by the petitioner to search out the children with the help of respondent Nos. 3 and 4. The charges of Warrant Officer, as assessed by the Registry, are to be borne by the petitioner. The Warrant Officer shall submit his report on or before the adjourned date of hearing."

Pursuant to the order passed by this Court, the Warrant Officer of this Court traced the children with their mother Ms Jasmine at her parental house in Patiala and produced the children in Court on

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08.08.2012. The parties also appeared in person along with their learned counsel.

I heard the children, the couple and father-in-law of the petitioner individually and jointly in the chamber. After hearing the petitioner, wife - Jasmine, her father and children, prima facie, I came to a conclusion that this dispute has embroiled upon some mis-understanding between the couple; the petitioner appears to have rushed in huff to the Hon'ble Supreme Court of British Columbia for sole custody, restraint order and children abduction complaint. It is common, in matrimonial disputes that parties rush to the Courts in hot haste without realizing the consequences that may follow thereafter, sometime even leading to marriage break down. During conversation, I advised Jasmine and her father not to file counter to the petition at this stage. I also advised them that before taking recourse to the Court proceedings in such type of cases, one should think twice. I reminded the couple of their vows taken before the sacred book of their faith and told about the significance of the "Anand Karaj" (Blissful Union) and the four holy verses sung while performing the four wedding rounds, walking around the Sri Guru Granth Sahib, sacred book of Sikhs, as bride and bridegroom in the presence of congregation. During the Court mediation efforts, after hearing the parties, I deemed it appropriate to take personal initiative to save the family instead of sending parties to mediation center of this Court. I reminded them about their culture, values and moral commitments, how the marriage differences used

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They should recall their past and see how their parents and ancestors used to solve family issues, the seriousness of adverse effect on growth and mental state of the children in case of prolonging disputes and misunderstanding between parents. I suggested to the couple for amicable settlement of their dispute. They willingly agreed to my suggestion. Considering my suggestions they did not even had a second thought, they immediately willingly agreed to reside together initially on experimental basis along with children for a week. Accordingly, direction was issued to live together in a hotel in Chandigarh and following order was passed by this Court on 08.08.2012:

"Parties are present in person.

In pursuance of order dated 07.08.2012, the Warrant Officer has produced the children in Court, today, I have persuaded the parties. The parties have agreed that they will stay for a week in one of the Hotels i.e. Taj, Mountview or Marriott in Sector 17/35, Chandigarh.

List on 09.08.2012."

In the next round of hearing, the couple along with children appeared in person on 09.08.2012. Meanwhile, the Warrant Officer submitted his report along with two Passports and a Permanent Resident Card of Kundani Bajwa, which were taken on record. After hearing the couple and children, following order was passed on 09.08.2012:

"Report of the Warrant Officer along with two passports and permanent Resident Card of Kundani Bajwa are taken on record.

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I have heard the parties again in Chamber and find that there is possibility of an amicable settlement. Therefore, the parties will reside, without interference of the family, either of the husband or the wife together at an independent place. However, they are at liberty to

check in at any other hotel available in the city if the accommodation is not available at the suggested hotels.

To come up again on 16.8.2012.

As prayed, copy of the report of the Warrant Officer be supplied to the learned counsel for the parties on payment of usual charges, if any."

The matter was again taken up on 16.08.2012. The couple and children were heard in person individually and collectively in the chamber. Kundani, minor daughter, handed over a secret handwritten note to me in chamber. What transpired between the Court and the children, the notes of conversation were jotted down on a paper. The letter and conversation notes were kept in a sealed cover with an intention that at this stage the parents may not know what are the views of the children regarding them and their grand-parents maternal as well as paternal. This Court felt that every thing was working well with the parties, children were also happy and passed the following order:

"Parties are present in person.

I have heard the children and their parents individually and jointly in-camera in my chamber. Children have informed the court about the conduct and behaviour of their parent during the stay at hotel Mount View as well as their conduct while in Canada. Kundani daughter has given me a hand written secret note which

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is taken on record. The notes of conversation between the court and the children have been separately jotted down on a paper. Conversation notes and a secret note written by Kundani handed over to the court in chamber are ordered to be kept in sealed cover. These will be opened at the time of the final hearing.

Today, petitioner and respondent no.1 have agreed that they along with children would now stay on 16.08.2012 at the house of the petitioner in Chandigarh and will proceed to Patiala on 17.08.2012 after noon and all four will stay at in-laws house of petitioner at Patiala till 20.08.2012 after noon and will return to Chandigarh to stay at house of the petitioner.

Adjourned to 22.08.2012."

The case came up for hearing on 22.08.2012 and this Court

passed the following order:-

"Parties are present in person.

The parties state that they have complied with order dated 16.08.2012 in letter and spirit. Now, the parties appear to have settled their disputes amicably.

Respondent No.2 is apprehending that orders dated 01.08.2012 (Annexures P/18 and P/19) passed by the Hon'ble Supreme Court of British Columbia, Canada, will come in her way and it may create some problem again. Now, the parties have agreed that the petitioner will send email to his counsel regarding the amicable settlement with regard to the custody of the children and instruct his learned counsel to move appropriate application(s) before the Hon'ble Supreme Court of British Columbia, Canada to withdraw all the application(s) and rescind the orders with regard to the

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sole custody of the children, restrictions imposed on respondent No.2 - Mrs. Jasmine Bajwa and her father respondent No.1 - Jasbir Singh Sandhu and also inform Ms. Paula Maan of the RCMP regarding the settlement between the parties. To remove the apprehension in the mind of respondent No.2, petitioner is directed to send email for withdrawal of the petition with regard to the interim sole custody and restrictions against respondent Nos.1 and 2 to Ms. Paula Maan of RCMP for not enforcing the orders.

The petitioner will file the documents in support of compliance of the above direction on the adjourned date. Adjourned to 24.08.2012.

Copy of the order be given under the signatures of the Bench Secretary for compliance."

The parties appear to have amicably settled the dispute though

Jasmine was having some apprehensions / misunderstandings about the consequences which may follow from the orders already passed by the Hon'ble Supreme Court of British Columbia, Canada. In order to remove the misapprehensions, the petitioner agreed to file documents in support of the compliance of the above orders and the case was adjourned to 24.08.2012 . On 24.08.2012 following order was passed.

"Parties are present in person.

The parties seek time to place on record some documents.

Adjourned to 29.08.2012."

On 29.08.2012 following order was passed:

"Parties are present in person. They seek time as
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they have to comply with some formalities and entered
into some written agreements.

Adjourned to 31.08.2012.

On 31.08.2012, when the case came up for hearing, following
order was passed:-

"CRM-W-869 of 2012

Cr1. Misc. application is allowed subject to all
just exceptions. Annexures P/21 to P/24 are taken on
record.

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I have heard the learned counsel for the parties.
During the course of hearing, learned counsel for the
petitioner has given me photocopy of the email dated 23th
August, 2012 addressed to Paula Maan, a copy of email
dated 24.08.2012 sent by Jack Hittrich, as well as
photocopies of Airways Tickets, which are taken on
record as Annexure 'PA', 'PB', 'PC' and 'PD'. Learned
counsel for respondent no.1 and 2 also gave me copy of
email dated 23.12.2012 written by Pawanjit Joshi to
Jasmine Bajwa and email dated 28.08.2012 from
Pawanjit Joshi, counsel for Jasmine Bajwa which has
been sent to Jack and Jasmine. The same are taken on
record as Annexure 'RA' and 'RB'.

The petitioner and respondent No.2 are present in
person. I have heard them in my chamber. They have
informed me that they have purchased Airways Tickets
for Canada and 11th September, 2012 is the confirmed
departure date. The couple has told me that they have
amicably settled all the disputes and mis-understandings
and promised that they will withdraw all the litigation

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pending between them in Canada, as well as, in India
other than this petition on which they want order be
passed as a consent order or as this Court may deem fit
in accordance with law. They further state that they
hope, they will have comfortable and smooth sailing
family life in future.

To come up on 03.09.2012 for further consideration
and appropriate order."

Factual Background

:

Petitioner Karan Singh Bajwa (hereinafter for brevity as Mr. K) and respondent no. 2 Jasmine Bajwa (hereinafter for brevity Ms. J) are followers of Sikh religion and were married on February 11, 2001 according to Sikh way of life. Their marriage ceremony was by way of Anand Karaj. Anand Karaj is prescribed form of Sikh marriage. Words 'Anand Karaj' if translated literally mean "Blissful Union". The four verses of Lavan (hymns) explain the four stages of love and married life and are the essential part of the Sikh marriage ceremony known as "Anand Karaj". The four sacred hymns are sung as the bride and bridegroom make the four wedding rounds, walking around the Sri Guru Granth Sahib, sacred book of Sikhs, in the presence of congregation. I deem it appropriate to describe in brief the significance of the four sacred lavan (hymns):

First Laav: Asserts that marriage is encouraged as the best state of life for a Sikh. (Emphasizes the performance of duty to the family and the community) Second Laav: Conveys the awakening feelings of love a bride has when leaving her former life, and beginning a new life in partnership with her husband. (Signifies the stage of yearning and love for each other) Third Laav: Declares the bride's detachment from the world and outside influences, while becoming more deeply devoted to her husband wishing only to live for him. (Signifies the stage of detachment) Fourth Laav: Declares a spiritual union of love and devotion where no feeling of separation is possible, imparting perfect joy, and contentment. (Signifies the final stage of harmony and union in married life during which human love blends into the love for God).

Upon completion of the fourth round, the bride and bridegroom are considered as husband and wife. Explaining the meaning of marriage, Sri Guru Amar Das ji, in Sri Guru Granth Sahib, at page 788 said as under:

""They are not said to be husband and wife, who merely sit together. They alone are called husband and wife, who have one light in two bodies."

Having taken vows before Sri Guru Granth Sahib, the parties cohabited as husband and wife, first issue, daughter Kundani Bajwa, has born on 31.03.2001 in India. "Mr. K" and "Ms. J" migrated to British Columbia, (for brevity BC) Canada on 29.12.2003 and son Harman Singh Bajwa has born on 22.11.2006, in Victoria, British Columbia. Mr. K, Ms. J and Kundani Bajwa are citizens of India and are holding Indian passport, but have acquired 'Permanent Resident' status by immigration to Canada. Harman Singh Bajwa is citizen of Canada by birth, born to Indian citizen parents.

Mr. K is in regular full time employment as a Senior Chief Engineer with British Columbia Ferries and Ms. J has a teaching degree and is also a whole time licensed Realtor in Canada. Their current matrimonial home before leaving for India was/is at #73-8737, Street No 161, Surrey, British Columbia.

The children had been studying in BC, remained very close to their family in British Columbia. Mr. K. and Ms. J. had been enjoying with their children. The children used to spend major part of their time with Ms. J; Mr. K used to enjoy the company of children when possible after duty hours, ostensibly for work reasons. Since 2003, Mr. K. and Ms. J. off and on had been visiting India, their country of origin along with the children and had been spending 'quality time' with their extended families in India.

In the petition Mr. K. described, besides other things, sports as the "anchor" of the children's relationship with him, a description that is borne out from the conversation with the petitioner by this Court and further conversation with Ms. J. reveals that Ms. J. has been doing the duties of organization of and participation in the children's sports. She has been playing major role in children's studies. She has played also a very important part of her day-to-day life for the well-being of children. Mr. K. agreed in conversation with me in-camera proceedings in my chamber that in the past 12 years, she had probably taken children to 80% of their activities because of availability of time with her. It has also transpired that it is she who has taken primary responsibility for their health, safety, education and overall welfare and dealt with more of the mundane but necessary arrangements of their lives and needs. Mr K and Ms J admitted that they had good time with each other except natural wear and tear in the family life, which always exists between individuals.

Ms J told me that when she was a newly wed, she discovered/suspected that Mr. K. was having an affair with another woman. Not surprisingly, she was very hurt. She and her family have had difficulty in coming to terms with Mr. K.'s conduct which had resulted into stress, strain and shock to her but she withstood that and continued to live with Mr. K forgetting this incident. She said to me that she has no intention or even a thought has never occurred in her mind that she should separate from Mr. K. The attempts of reconciliation and counseling ultimately appear to have continued smooth sailing family life. Mr. K. has mentioned many things in the petition about the past conduct of Ms J also and Ms. J also mentioned many things against Mr. K in my chamber. This Court advised the respondents not to file any reply to this petition since the matter can be resolved amicably. This Court after conversation with the children and the contesting parties had come to a conclusion that there is possibility of amicable settlement. Filing of reply to the petition would result into unnecessary counter allegations against each other which may derail the process of reconciliation and amicable settlement between the parties so this Court thought it fit not to direct the respondents to file reply as the parties expressed their inclination on the first day of appearance to settle the matter amicably. Otherwise, respondents are required to be afforded opportunity to file reply to rebut the averments made in the petition.

Certainly, Mr K and Ms J condoned their past mistakes and conduct towards each other and continued with smooth sailing family life for about 12 years in spite of some doubts, suspicions and various type of allegations regarding behaviour and violence on the part of each other. The circumstances and facts narrated would raise a strong inference of condonation. Inference stands uncontradicted by not having explained the compelling circumstances in which they continued to live together for such long time and two children were born. I hold that all the past doubts,suspicious and allegations stand condoned against each other. How this Children Custody battle embroiled in NRI Couple?

Mr. K and Ms. J along with their children had come from Canada to spend vacations from 22.06.2012 till 03.08.2012, in Chandigarh, Patiala (Punjab) (India) and elsewhere. Unfortunately, the relations between Mr K and Ms J began to deteriorate from the afternoon of 05.07.2012, as alleged by Mr. K when he received a phone call from father-in-law respondent no.1 inquiring from him when petitioner, respondent no. 2 and children are coming to visit Patiala. It would be pertinent to mention here that Chandigarh is parental house of Mr K and Patiala is parental house of Ms J. It is the anxiety of every parent and member of the extended family specifically the father who want to see his daughter and grand children. It is but natural, he will certainly make such an inquiry. I do not find amiss in such a call nor anything wrong has been committed by the father of Ms. J. Rather it indicates the authoritative and dominating attitude of the petitioner. A trivial issue has been blown out of proportion resulting into child custody battle in India and Canada. Petitioner perhaps forgot that children in court might be unduly traumatic, seeing jam packed courtroom of this court with litigants. The children are too innocent and fragile to understanding the court working. Children's views :

I have heard the children in the chamber alone on the first day of their appearance. Kundani said she will stay with Mom wherever she lives, be it Canada or India, Chandigarh or Patiala. She further told me about the conduct of the parents in Canada and in India. Harman said he wants to go back to Canada as early as possible, but he has shown his love and affection for both parents. Since the parents have compromised I ordered that secret written note given by Kundani, and the conversation and what transpired between this court and children noted down by me be kept in a sealed cover so that Mr. K and Ms. J may not know what children think about their conduct and behaviour towards each other. I have however, given some hints about the views of children to the parents. Then, Mr. K tried to explain that even some debate between him and Ms. J is perhaps taken by children as yelling and arguing. I believe that the parents have become aware how the children think about them specifically Mr. K, for a wise person a hint is sufficient. I salute both the children. They promised that they will always persuade their parents to remain united. I wish them good luck and they may not have to see court in their life again in such circumstances.

Effect of the orders dated 01.08.2012 (Annexures P/18 and P/19) passed by the Hon'ble Supreme Court of BC and abduction complaint.

Since the parties have agreed to return back to Canada along with children, the issue of habitual residence and jurisdiction is not required to be decided at this stage by this Court. The counsel for the parties do not press this issue. Ms. J and Mr. K have agreed that they will maintain status quo regarding custody of children as was existing on 22.06.2012, until such time as is otherwise agreed by the parties or ordered by the competent court, if need arises.

Hon'ble Supreme Court of BC is already seized of the issue concerning the children's custody and restraint order against Ms. J, the orders have been suspended by the Hon'ble Supreme Court of BC vide order dated 23.08.2012 (Annexure P/21). Annexure 'RB' indicates that notice of discontinuation and withdrawal with consent of the parties will be filed in the Hon'ble Supreme Court of BC, in view of the amicable settlement between Mr. K and Ms. J whereby all the issues of custody, restraint order as well as the complaint regarding abduction stand resolved. Mr. K and Ms.

J have agreed before me that they will withdraw all pending cases in India and in Canada against each other.

I note that Mr. K has already filed a motion in Hon'ble Supreme Court of BC on August 1, 2012. On the suggestion of this court Mr. K & Ms J agreed that the children's interests would be better served by their continuing to live in B C because:

- a) They would remain in the residence and attend the schools and extra curricular activities that they have done so well to date.**
- b) The children would retain the support of their friends in the community.**
- c) The children already have an excellent relationship with their relatives both in India and Canada which they have established and maintained while living with them and visiting them which would continue as it has been so successful to-date, except the recent unfortunate litigation between parents.**

There is a distinct personality difference between Ms. J and Mr. K which is reflected in their style of caring for their children. I am satisfied that Mr. K is a successful Senior Chief Engineer with an admirable record with his employer and has an active interest in sports amongst other things. I am also satisfied that Ms J is having teaching degree besides being a licensed realtor, her teaching skill may certainly help in taking children to heights in studies as the academic record of children suggests, She particularly and Mr. K also have much to offer to children as parents.

The cause of differences between the parties appears to be exacerbated by the misunderstanding that Ms. J's family is estranged from Mr. K in a way that they would draw the children away from him, to his detriment. I believe that this is ill-founded belief of Mr. K, incidents were much older. I have already held above that those stand condoned. Thereafter, they continued to live a smooth family life.

Mr. K and Ms. J had migrated from same country and have same religion, faith, culture, ethnicity, language, tradition, family structure and educational experience. There should be no difficulty in understanding and adjusting in the matrimonial life of Mr. K and Ms J. I have reminded them that when children are the subject of such disputes, the challenges are often greater and the emotions generally run far higher. Money can be divided but children cannot. Only slight counseling would have been sufficient to pacify the parties and to come out of minor misunderstandings. This belief is strengthened from the fact that with the mild efforts of this Court, they have amicably settled all the disputes and have promised to progress jointly in future. The Canadians experts (counselor, psychologist, trained mediator or any guide) may not be in a position to draw correct conclusion till he/she knows about environment, culture, family background, religion of this couple. I am of the view that opinions of the foreign experts may not have been correct since the couple had grown up in India, not in Canada. This court readily made out from the conversation with the couple as to what is the cause of marital discord. Since matter stands amicably settled, I am not required to go into deep details regarding foreign expert opinion.

In June, 2001 when I was a lawyer, I had the occasion to appear before learned Superior Judge Court, Brampton, Canada as an Hindu Law expert in family law dispute which too was between an immigrant couple migrated from Punjab(India). I was called in court to assist the court . I was examined as an expert witness . I was told by the learned Judge of Superior Court, Courts in Canada are facing difficulty when the parties invoke personal law. Such problems do arise in Canada being a multicultural society. The Courts feel some difficulty in understanding those personal law problems, always have to rely upon expert advice.

Children Abduction Issue:

The case projected in petition by Mr. K is that it is a case of children abduction. But it is not borne out from the facts and averments made in the petition by Mr. K. He is living in desperate fear that Ms. J has abducted children to India. He will never see the children again, is his desperate apprehension. It is ill-founded belief of Mr. K. The children are currently located exclusively in jurisdiction of this Court. The local law of this country is to determine as to what is best for the welfare of the children. As per Hague Convention on the Civil Aspects of International Child Abduction, children who have been "wrongfully taken" or "wrongfully retained" overseas should normally be returned promptly to their country of habitual residence.

Does International children abduction issue arise in the present case?

In my opinion, certainly, no international child abduction issue arises in the present case. Even from the unrebutted averments in the petition, it is crystal clear that Mr. K and Ms. J genuinely brought the children for a limited family visit to their country of origin. Mr. K and Ms J along with their children had come to spend vacations from 22.06.2012 till 03.08.2012, in Chandigarh and Patiala (Punjab) (India). The children have told to me that they were doing very well, where-ever they had been, be it Chandigarh or Patiala. They are happy. They have not been wrongly taken or wrongly retained, both father and mother stayed with them, but a call from the father of Ms. J to Mr. K. asking Mr. K as to when they would visit Patiala resulted into children custody battle between this NRI couple. All families have differences and personality issues. Parties come under tremendous pressure and trauma though child custody is always a personal matter between husband and wife. Now, disputes having been resolved between the parties, it is quite likely that stress stands removed. It will improve their current and future situation. I have been informed that children will be joining schools in next class. Academic session is commencing in the first week of September. They would require substantial adjustments in going to school and making friends. Bajwa's must have suffered a very significant financial loss in the process of marital discord though for a brief spell. They would be having less time for their children as they too will be busy in their jobs. Custody decision is inherently exercised in discretion, case-to-case unique circumstances are considered regarding each child which is the hallmark of decision making process in child custody case. If I had to pass the order I would have considered the balanced evaluation of the best interests of the children which would have enabled me to arrive at a decision by exercising discretion. Generally, mother has to be granted children's custody and father's generous access to the children is also a necessity. In custody and access cases, the welfare of the child whose future is at stake is of paramount consideration. The multitude of factors impinges on the children as best interests. Rules of burden of proof can be

relaxed in such cases. In this case being a Judge, I played a inquisitorial role than usual, keeping in view the future of the children and to save the family from parting ways. Thank God, this is settled.

In this family dispute the most important issues are the custody and primary residence of the children, herein, a daughter aged 11, and a son aged 6. These issues appeared to me particularly difficult at the initial stage, but became easier when I interviewed the couple and the children. Now, both parents have been granted joint custody of the children. I find that the restriction imposed by the court of BC on the mother's custody of the children is not supportable by the applicable legal principles and facts of this case. Mr. K and Ms. J had left Canada on family visit. Nothing has been brought on record which may suggest that custody with mother was not in the best interest of the children. The children's wishes, specifically of Kundani, were clear that she prefers to stay with Mom, but she subsequently changed mind when the parents started living together. In view of the mobility of modern society, permanent conditions restricting the movement of a custodial parent should not be imposed except in the rarest of rare cases. The mother could play vital role for better facilities, better schooling for children in BC given the fact that her husband has considerable resources. Looking at the role of mother in past towards children and taking primary responsibility for their health, safety, education and overall welfare; which parents deal with mundane but necessary arrangements of their lives - clothing, haircuts, extracurricular activities, gifts for friends, doctors' and dentists' appointments, contact with their extended family; and mother has the best perception of the emotional needs of the children specifically female child. How this Court approached the child custody issue when the children were produced in Court and thereafter:

It would, in my view, have been a grave dis-service to Bajwa's children rather Bajwa's family not to act promptly and effectively. I took up this case as a test case when the children were produced in my Court on 08.08.2012 by the Warrant Officer of this Court. On seeing them I retired to my chamber from court room, I called Kundani and Harman in my chamber, made them comfortable, offered them water, because seeing the jam packed court room, the children appeared to me under unduly traumatic situation, they are too innocent and fragile to understand court working and proceedings. I offered them tea/coffee. They asked for lemon tea. They have come from extreme hot environment in the summer days and were some what frightened. I turned friendly with them to release pressure on them. I interviewed them, asked mild questions about their education, schooling, extra activities, stay in Chandigarh, Patiala and Canada. Thereafter I inquired about the behaviour of the parents. Kundani told me many things about the behaviour of the father and the mother. She told me that they suddenly start yelling and arguing, all of sudden some time they speak in Punjabi and appears to be in violent mood. She further informed me that some time they are very happy. Kundani told me that she cannot understand them. Mom used to refer to my grandmother (Mr.K's mother) and Dad referred to maternal grandfather (Ms.J's father) and thereafter, they start arguments. Kundani also told me many other things which need not be mentioned here.

After that, I heard Ms. J, Mr. K and Mr. Jasbir Singh Sandhu - respondent no.1 individually.

Ms. J said many things about the past conduct of Mr. K and his possible relation with some woman which disturbed her very much as she was a newly wed and was not aware much about the culture in Canada. I need not detail the entire conversation here in this order.

Mr. K told me about the violent behaviour of Ms. J. Her unwillingness to respect his mother who turned out widow when he was a small kid. He also told that perhaps Ms. J is having some psycho problem and does not take treatment. The things were almost the same which have been mentioned in the petition.

Mr. Jasbir Singh Sandhu told me that no father will think of disturbing the matrimonial life of his daughter. He lives alone and is an ex- army officer. It was his desire that children and Ms.J must visit him since they are in India and for that reason he had made a telephonic call to Mr. K. He said, he never wanted that the children should stay in Patiala forever. He is 70 years old and staying alone. He was anxious for their visit to Patiala.

Thereafter, I heard the parties jointly. After hearing the parties and children, I narrowed down the issues and area leading to marital discord in the present child custody litigation and the litigation pending in this regard in Canadian Court. The only issue which I could make out from the conversation is that Karan wants that Jasmine should remain with his mother and Jasmine asserts that she also has right to visit her father. Dislikes of the couple is for each others parents. They think, they interferes in their family life. I suggested them that this is a small issue. Everyone is required to respect the sentiments of the elders. I made them understand that Mr. K is required to respect the father-in-law (father of Ms.J) and Ms. J is required to respect the mother-in-law (mother of Mr.K). The children are the only hope of parents as per Indian family system in the old age. The children always follow what their elders do specially parents. They may also have to face same situation as their children will grow. Both Mr. K and Ms. J are from the same background i.e. their fathers were in Army, profess same religion, same culture, same language and had grown up in the same country before migrating to Canada. They should inherit something from their ancestors. They were also reminded of the vows, they have taken before the holy Sri Guru Granth Sahib, the impact of this litigation on the children and the future of the children. I reminded them of the old age saying, 'money can be divided, but children cannot. I also told about the slogan "two to make them, two to raise them". Ultimately, I am happy that the efforts have resulted into amicable settlement. I adopted the approach of helping the hurting couple, the children and the families. The interview and conversation with the children and the parties individually and jointly led me to conclude that it is not a case of high conflict nature, it can be solved. The interim orders passed by this Court speaks itself how I approached this case. Judges try to reconcile the parties but this works occasionally. But I believe this case has encouraged me that with the efforts of presiding judge there is always possibility of solution to marital discords. The little efforts can help in saving the breaking families. The Judges' role in dealing with the matrimonial cases should be more inquisitorial than usual. Judge must see the parties, interview them, understand their psychic state and the cause of marital discord.

I earnestly desire that Mr. Karan Bajwa, Ms. Jasmine Bajwa, Kundani Bajwa and Harman Bajwa should grow and progress in life as a family unit. In my opinion, Bajwas' are a remarkable couple and at the age of 41/36 have shown wonderful attributes of insight, forbearance, forgiveness and understanding, at least for the sake of children. I wish them good luck.

As the children were recovered by the Warrant Officer of this Court and are in deemed custody of this Court, the custody of Kundani Bajwa and Harman Singh Bajwa is ordered to be given as joint custody to petitioner and respondent no.2. The parties are at liberty to take children out of India to Canada as per airways reservation already made vide Annexures 'PC' and 'PD'.

Others Miscellaenous Issues :

(a) Issue of Diplomatic Immunity:

This Court has impleaded the Canadian Consulate, in Chandigarh on the request of the learned counsel for the petitioner as counsel had submitted that Consulate had already intervened in the matter, which is clear from the interim order dated 07.08.2012 reproduced herein above. The warrant officer of this Court has given a copy of the petition to the Canadian Consulate office at Chandigarh, but they claimed diplomatic immunity. This Court is conscious of the fact that diplomatic immunity is provided under the Diplomatic Relations (Vienna Convention) Act, 1972. In pursuance of the request of the counsel for the petitioner and the possible assistance, Consulate may provide in matrimonial disputes, this Court had issued notice. This Court did not press for the presence of the representative of the Consulate. The basic purpose of the notice was that consulate may provide some assistance to the amicable settlement of the child custody dispute. I am of the opinion that the Consulate representative would have helped in this specific child custody case. It would not have amounted to submit to the jurisdiction of this Court. This reference has been made only to clarify the position. Consulate's assistance in such matters would be of great help as they may explain about the foreign laws which may be involved in such like cases.

(b) Apprehension created by the e-mail:

This Court deems it appropriate to make specific reference to email dated August 24, 2012 (Annexure 'PB') sent by Mr. Jack Hittrich, counsel for the petitioner in Canada to Mr. Anil Malhotra, Advocate and the petitioner. The email reads as under:-

" J a c k H i t t r i c h j h i t t r i c h @ h o t m a i l . c o m t o : A n i l M a l h o t r a <anilmalhotra1960@gmail.com> Karan Bajwa <karan2304@hotmail.com> date: Fri, Aug 24, 2012 at 4:57 AM subject: Bajwa v. Bajwa - today's Order Aug.23 Anil, please find attached the entered Order of Master Caldwell pronounced this afternoon (it is only 4:25 in the afternoon on the West Coast of Canada), as well as the filed Notice of Application (you received an unfiled copy earlier today).

Please advice Mr. Justice Singh that given that the children and the parties were not in his jurisdiction, in the best interests of the children, he was not prepared to make a final recission of his earlier orders but he did suspend all key provisions so that Mr. Bajwa should have no concerns about returning to Canada.

We hope that this will suffice. Please advice us of the outcome of the upcoming hearing.

JACK HITTRICH Barrister and Solicitor Suite 300, 15230 No.10 Hwy Surrey, BC V3S 4K7"

The aforesaid email gives an impression that this Court has no jurisdiction to hear the matter and the Canadian Court is not inclined to make a final rescission of its earlier orders. It further created apprehension in the mind of respondent No.2 that she may be arrested in pursuance of abduction complaint since the orders are not likely to be rescinded. Since the amicable settlement was in progress and the parties were residing together along with children, this Court made clear to the parties that the jurisdiction of this Court is not barred as at present the petitioner and respondents are within the territorial jurisdiction of this Court. They are Indian Citizens except Harman Singh Bajwa, having been born to the Indian couple in Canada is also present in India, so this Court has jurisdiction qua him also to decide the child custody issue and pass appropriate order. Since the matter has been amicably settled, no detailed order regarding the jurisdiction has been passed. The petitioner has approached this Court which means he has acquiesced to the jurisdiction of this Court.

The apprehension created by the aforesaid email in the mind of respondent no.2 may have derailed the entire process of amicable settlement reached between the parties by that time. This Court has to make extra efforts to clarify the apprehension of respondent No.2. Generally, parties predicate on trivial meaningless incidents. I believe in such cases the Benches are more specialized in domestic relationship fields because they have to deal with number of cases and have to hear different stories. It has been made clear to respondent no.2 that she may not be in trouble due to the abduction complaint. This Court explained to her that the Courts of law whether in India or in any other country of the world will never do any harm to the family relationship by passing any such type of order which may unsettle the family life. Legal system in the entire world exercises control only when dis-agreement between the parties exists. No court will send the person behind bars when the matrimonial discords stand amicably settled.

Conclusions:

In view of the above discussions and keeping in view the facts that petitioner, respondent No.2 and Kundani Bajwa are citizens of India and Harman Singh Bajwa has born in Canada to the Indian citizens, this Court considering the entire sequence of facts and circumstances of this matrimonial discord, child custody petition, deems it appropriate to allow the children to move back to Canada even though it would mean allowing the children to move out of the jurisdiction of this Court. This Court is passing this order in the interest of children and the family. As a measure of safeguard, this Court deems it appropriate to issue following directions to the parties:

1. The conversation note and the secret note submitted by Kundani Bajwa to this Court shall be kept in a sealed cover and no certified or uncertified copy or inspection of the sealed papers/notes shall be given to the parties or any other person.

Seal shall not be opened except the specific order passed by this Court.

2. The deemed custody of children vesting in this Court is released and now custody of children shall vest in Mr. Karan Singh Bajwa (petitioner) and Ms. Jasmine Bajwa (respondent No.2) jointly.

3. Two passports and one Permanent Resident Card on the record of this Court, shall be released by the Registrar (Judicial) to respondent no.2 - Jasmine Bajwa under receipt as were taken into custody by the Warrant Officer of this Court.

The same shall be released subject to execution of a bond regarding the conditions mentioned in this order by the petitioner and respondent no.2 to the effect that they shall produce the children in this Court whenever ordered by this Court.

4. The petitioner and respondent No.2 will send report to this Court after every three months from today giving sufficient details about the well being of the children till further orders by this Court.

5. The petitioner and respondent no.2 will also submit report every three months to this Court as to how their matrimonial life is going on, till further orders by this Court.

6. The petitioner and respondent no.2 will inform the Registrar (Judicial) of this Court about their address of residence. Any change in residential address shall be immediately notified to the Registrar (Judicial) of this Court.

7. The petitioner and respondent no.2 will also bring children to this country from time to time to meet their extended families i.e grandmother and maternal grandfather - Sh. Jasbir Singh Sandhu.

8. If any dispute regarding the custody of children arises or children are not brought to India, the whole issue involved in this petition may be reviewed suo motu by this Court or at the instance of petitioner, respondent no.2 or respondent no.1 for modification, alteration and cancellation of this order.

9. Parties are at liberty to move this Court for stoppage of compliance of some of the conditions mentioned above after passing of considerable time says two years.

All the communications addressed to the Registrar (Judicial) of this Court shall must mention CRWP No. 1432 of 2012 titled as "Karan Singh Bajwa versus Jasbir Singh Sandhu and others".

Disposed of accordingly.

September 03, 2012
vkd

[Paramjeet Singh]
Judge