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Case No: FD21P00468

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/08/2021

Before:

THE HONOURABLE MR JUSTICE COBB

- -

Between:

J	**Applicant**
- and -	
J	**Respondent**

- -

J v J (Return to Non-Hague Convention Country)

- -

Hassan Khan (instructed by **Family Law in Partnership Ltd**) for the **Applicant (father)**
Indira Ramsahoye (instructed by **International Family Law Group LLP**) for the **Respondent (mother)**

Hearing date: 23 August 2021

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Approved Judgment

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THE HONOURABLE MR JUSTICE COBB

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

The Honourable Mr Justice Cobb:

1. By this application, brought on 14 July 2021 under the Court's inherent jurisdiction, a father seeks the summary return of his 5-year-old son, D, to Ahmedabad City, Gujarat, in the Republic of India. The application is opposed by the child's mother.

2. For the purposes of determining the application, I have received and read:

   i) Witness statements of the parties with exhibits;

   ii) A full 'run' of applications and orders generated in proceedings which are ongoing in the court in Ahmedabad, India;

   iii) An expert report (with three supplements) from Dr Pinky Anand, LLM, Senior Advocate, New Delhi;

   iv) A Child Assessment report recently prepared by West Sussex County Council (the authority in which the mother is currently resident) ('WSCC'); and

   v) Position statements of the parties.

   It has not been proposed that I should hear any oral evidence, and I have not done so. I have received detailed and able written and oral submissions from Mr Khan for the father and Ms Ramsahoye for the mother.

Background

3. The parties were both born in, and are nationals of, the Republic of India; they each have OCI status (i.e., Overseas Citizens of India) in that country. They are also British citizens with British passports. The father is 41 years old; the mother is 36 years old. The father currently manages a dairy farm in India. The mother does not currently work; she is an artist and a graduate in fine art.

4. In 2001, the father travelled from India to reside in the UK; he lived with his parents in a home which they jointly acquired in North West London. The parties met in early 2007 and were formally married in December of the same year in accordance with Hindu rites; it was an arranged marriage. They lived together briefly in Mumbai, before travelling together, in March 2008, to this country to live. While here, the mother took an English Literature and Fine Art Degree. The father worked as an engineer. The parties lived in the paternal family home in North West London.

5. In 2016, D was born, in England. During their period living in England, it appears that the parties incurred significant debt. The precise manner in which the debt was accrued, and for what reason, is in dispute. It is however agreed that the debt has now (probably very recently) been repaid by the father. The existence of the debt is relevant to what follows.

6. In 2018 the parties returned to India (as did the paternal grandparents), and they lived in Ahmedabad. There can be no real doubt that the parties became habitually resident in India in the period since their return; indeed, this is not in dispute before me. The Indian Court has accepted jurisdiction on that basis (see below).

7. D settled into pre-school, and when of an appropriate age, he progressed into private (fee-paying) school. He was able to enjoy relationships with his extended families on both sides in India.

8. It is the mother's case that throughout the marriage, the husband has been abusive – economically, physically, and emotionally; she asserts that he has exercised extreme forms of controlling and coercive behaviour towards her. The father denies the allegations of abuse, and has separately alleged that the mother is mentally unstable, has been physically abusive to D, and that she has recently been poisoning D's mind against him and his family. I deal with these issues a little further below.

9. It is agreed that on 23 April 2021, the mother left the father; in proceedings in India (a statement filed on 15 July 2021) she complained that she was then suffering mental and physical "torture". She took D and went to live with her parents, some 15kms away. The mother took her passport and D's passport, and D's birth certificate, with her. On 26 April the mother made a complaint to the Indian police about the father's conduct, and that of his family; she made a wide range of allegations, including a focus on financial abuse.

10. The mother facilitated contact for the father with D on his fifth birthday at the end of April; this was the last time that the father and D have met face-to-face. Since that time, the mother has facilitated video contact only. I am advised that the arrangements for this indirect form of contact have not been entirely straightforward, and in these proceedings have generated much inter-solicitor correspondence.

11. During May and June 2021, the parties engaged in mediation in India; altogether four sessions were held, though none of them in a joint meeting. This did not apparently lead to any agreement as to child arrangements (see further below at §42(iv)).

12. On 30 June 2021, against a backdrop of alleged difficulties around the facilitation of contact, the father instituted child welfare proceedings in India under the secular *Guardians and Wards Act 1890* ("the *1890 Act*"). The documents in support of the application contained a number of serious allegations about the mother (asserting that she suffered serious mental ill-health) and her poor care (i.e. ill-treatment) of D. The father sought custody and interim custody. The documents which launched these proceedings were served on the mother on 2 July 2021; she signed receipt of the documents and confirmed her intention to attend the hearing which had been fixed for 7 July. Both parties engaged, and are still represented by, lawyers in India. The hearing took place as scheduled on 7 July 2021 which the mother did not attend; her lawyer sought an adjournment on the basis that the mother was unwell. The Judge refused the adjournment and ordered her attendance; the mother could not be located. The Judge made the equivalent of a prohibited steps order to prevent the mother from leaving the country; the Judge also made a passport order, requiring the mother to surrender D's passport. A further hearing is scheduled for 2 September 2021.

13. It is now known that on 5 July, three days after being served with the court process in India, the mother urgently booked a flight to England for herself and D, and on the following day (i.e., the day before the court hearing), 6 July 2021, the mother and D took a flight from Ahmedabad to London Heathrow. On arrival in this country, the mother and D were compelled to quarantine at a hotel (as they had travelled here from a country then on the 'red list'). They have now left that quarantine hotel, and are

currently in temporary accommodation provided to her, and funded, by the Local Authority; the mother has applied for the full range of state benefits in this country although she is yet to receive any publicly funded support. She is being temporarily supported financially by the Local Authority.

14. The mother has a cousin in this country (B); her parents and wider family are in India.

15. Proceedings under the inherent jurisdiction were issued in the Family Division by the father on 14 July 2021, and on that day Judd J made a range of Tipstaff and other orders; two subsequent directions orders have been made. At the earlier hearings, I note that the mother made more than one unsuccessful application for a full Cafcass welfare report. As I indicated above (§2) I have nonetheless received a thorough child assessment report from WSCC which addresses (in some detail) the mother's and D's current situation. At the last directions hearing, Sir Jonathan Cohen made an order for WhatsApp video contact between D and his father on four occasions per week. This has happened, but (as indicated above) this has not been without its problems. On 13 August 2021, the mother issued an application for the instruction of a Single Joint Expert on Indian law; this instruction was agreed though no court order was in fact made. In fact, the application and supporting paperwork landed in my e-mail inbox from the court office during the course of the hearing, and I was happy retrospectively to make the relevant order. A report from Dr. Pinky Anand, a Senior Advocate in New Delhi, is in the bundle, together with three supplementary reports.

West Sussex County Council Child Assessment Report

16. It has been extremely useful to have available to me to a Child Assessment Report prepared within the context of *section 17 CA 1989* by WSCC. I do not propose to rehearse its detailed contents at any length in this judgment but consider it appropriate to highlight some of the more relevant sections. The social worker spoke with D; she reports:

> "[D] could recall things from when he was living at his mother and fathers' home, and told me that "Papa makes mummy cry" and [D] has worries that his Papa is going to find him and take him away. [D] also told me that his mummy does not have any money. I offered reassurance that we would be supporting his mum to ensure she has money. My view on these comments are that despite best efforts, [D] may be picking up on a lot of adult communication and is likely to feel worried about this."

The social worker was entitled, it seems to me, to be concerned that D has been picking up on the adult conflict, for which both parents bear responsibility.

17. It is said by the WSCC social worker that D is currently receiving adequate care with his mother:

> "… [the mother] is able to meet [D]'s basic care needs and has shown insight into the impact of the current situation on [D]'s well being. [The mother] has also shared she wishes to

> speak to a GP about her emotional well being as she is aware that she gets low at times with everything that is going on."

18. The mother complained to the social worker about the 'trail of debt' (see §5 above) which was vexing her. Of this debt, the social worker reported a conversation with the father as follows:

> "He stated that he and [the mother] had taken a few loans when living in London, and when they moved to India it was to start getting themselves straight and they had to budget. [The father] admits he has had to ask his father and states he was embarrassed and felt shame but the debts are now all paid off and there is no debts in [the mother's] name."

As earlier indicated, it was accepted by the mother at this hearing that the debts have indeed now been cleared.

19. The WSCC social worker reported that the mother had complained to her that she was the subject of 'honour-based violence'; this is not the mother's case at this hearing, and the mother wonders whether the social worker had over-interpreted or misinterpreted what had been reported. The father speculates that the mother may have been embellishing her allegation of domestic abuse.

Proceedings in India

20. As indicated above, shortly after the mother left the father in April 2021, she made a complaint to the police alleging cruelty, criminal breach of trust and intimidation. Her complaints were that the father had stopped marital relations, not allowed her out of the home, and not allowed her to see her maternal relations; she complained that she suffered mental torture, financial control, and accused him of taking out a loan in the sum of £25,000 in her name without her consent.

21. In contemplation of the due investigation of this complaint, the father applied in June 2021 for 'anticipatory bail'.

22. On 18 June, the police reported on the mother's criminal complaint; the officer recorded that the police had asked the mother to attend the station to "record her statement" but she had not done so. Instead, it is noted that the mother's sister gave information to the police that "negotiations are going on through advocate for compromise, and compromise will arrive at shortly". This was surely a reference to the mediation sessions referred to above. Nothing in the documents which I have seen would suggest that after 18 June the mother pursued further her police complaint. On 19 June, the court ruled on the father's anticipatory bail application; there were then no offences pending (according to the police) and the application for anticipatory bail was deemed "premature". The court nonetheless granted an order which allowed the father seven days "interim protection" from arrest should the criminal matters be resurrected by the mother.

23. As indicated above, the father issued child welfare proceedings concerning D in India on 30 June 2021. In those proceedings he alleged that the maternal family had informed him (on 29 June) that they would stop his contact with D; the father applied for

'custody' and an 'interim injunction'. On 2 July the court summons was issued for 7 July. The mother was served with this summons. On 7 July, the equivalent of a Prohibited Steps Order was made. This order was served on the mother's parents.

24. On 15 July, the mother filed her response to the father's application and challenged the jurisdiction of the Indian Court to make orders in the family proceedings and requested the dismissal of the suit. The mother filed altogether three statements in those proceedings, detailing the abuse of the father. The Indian Court rejected the mother's challenge to its jurisdiction and confirmed 'without hesitation' that it possesses jurisdiction to determine the family proceedings on the basis of the parties' 'ordinary residence' in that country. The father has filed a rejoinder statement to the mother's evidence.

25. Interestingly, the Indian Court recorded the following finding about the mother's case, chiming with what I have recorded at §5 and §18 above, and §42(vi) below:

> "… it is not the say of the opponent [mother] that she has left India permanently. It is the say of the opponent that she was compelled to leave India to defend the cause [concerning the civil debt] in the UK."

Expert report

26. Dr. Anand helpfully prepared a report within a very limited period of time, and has provided three supplemental reports in quick succession in answer to specific questions raised by the parties (particularly, latterly in relation to the mechanism by which the Indian Court could/would recognise undertakings reflecting protective measures given here). The essential points of advice which I extract from those reports are these:

    i) The child welfare proceedings in India will be resolved by "what appears in the circumstances to be for the welfare of the minor" (*section 17* of the *1890 Act*); there is an equivalent 'welfare checklist' which the court is accustomed to applying;

    ii) There exists a relocation jurisdiction in India which is also governed by the best interests of the child. A relocation application would in these circumstances be considered within the custody proceedings ("the Court will look into whether the parent asking for custody is looking to relocate outside the country, and how it will affect the child in the future before deciding the custody"); although the process could take around three years to resolve, there is scope for the applicant to expedite the application and/or apply for an interim order;

    iii) The mother could obtain, and/or could have obtained, domestic abuse protection orders either under the *Protection of Women from Domestic Violence Act 2005* ("the *2005 Act*") or under the *Indian Penal Code 1860*. Under the *2005 Act* she could obtain one of altogether five potential orders (i.e., protection orders, residence orders, monetary relief, custody orders, compensation orders). Interim orders are available, and 'ex parte' orders are also available. The trial process can (again) take up to three years (subject to the fact that interim orders can be made in the meantime);

iv) Women and children are entitled to legal aid "irrespective of her income or financial status" under the *Legal Services Authorities Act 1987*.

Protective measures

27. In order to facilitate a smooth, and objectively safe, return for the mother and D in India, the father has offered a range of protective measures which he has offered to secure by way of orders or undertakings in this jurisdiction. For the purposes of this judgment it is not necessary for me to rehearse the route by which the protective measures issues were narrowed as this hearing progressed. It is sufficient for me to indicate that of the nine measures which the mother has set out on *her* proposed list of necessary protective measures (see §28) below, the father ultimately agreed that he will give undertakings in relation to all but (i) (immediate housing) (see §29 below). In a later e-mail, and in response to a further submission from Dr. Anand, he slightly modified his position but not, as I read it, in any material way, and I take his statement made in court as his definitive offer.

28. In order to secure sufficient protection on her return to India, the mother sought:

i) A fund for immediate housing. She asserts that she does not have anywhere to live in India and claims to need to rent a home with D, which would cost approximately £200-£300 per month (Rs20,000 to 30,000);

ii) Money for day-to-day expenses, in the sum of £150 per month (Rs15,000); the father offers this for three months;

iii) Two flight tickets to India – i.e., to enable the mother and D to return;

iv) Written confirmation that funding will be provided for D's school fees and medical insurance in India;

v) Confirmation that the father will not be present at the airport upon their return to India;

vi) For the father to undertake not to threaten, harass, intimidate, or pester the mother in anyway or instruct or encourage anyone else to do so;

vii) For the father to undertake to instruct his family not to contact the mother in anyway or to be abusive towards her;

viii) For the father to provide an undertaking that he will not seek any civil or criminal prosecution of any alleged act of child abduction in the event that D and the mother return to India;

ix) For the for the father to provide an undertaking that he will not remove D from the mother's care, save for by way of agreed contact or by way of a court order.

29. In relation to (i) above, it is the father's case that the mother and D can and should return to live with her parents for the time being (where they were for over two months until their departure on 6 July), at least until the Indian Court can consider interim issues of financial relief and her housing need. It is said that the maternal grandparents live in a large and comfortable home with ample accommodation for the mother and D.

30. The father further points out that the mother is able to access the full range of civil/criminal remedies in India quite independently of these undertakings.

31. An issue arose at the hearing as to whether it would be appropriate for me to require the orders or undertakings reflecting the 'protective measures' to be registered in India to ensure their enforceability should I order a return. Mr Khan suggested that there is sufficient degree of comity between our respective jurisdictions that registration is not necessary; on a superficial reading of Dr. Anand's main report, this is what seemed to be suggested. Ms Ramsahoye did not agree Mr Khan's reading of the report, and invited me to ensure that the orders are registered there before there is any return.

32. The point was clarified by Dr. Anand overnight following the hearing. She explained that there is no procedure for "registering" an order of the English Court as such. There is, however, a process for achieving recognition of an English order (for the purposes of enforcement/"execution") in the Indian District Court. If a consent order is made in this country, the Indian District Court would be invited to "accept" the same; I understand that it will "hear the parties" and "decide on the conclusiveness of the foreign decree". There appear to be only limited (essentially public policy) exceptions available to the court to refuse recognition of a foreign order which would not obtain here.

33. As I have elsewhere referred in this judgment, there is a hearing on 2 September, and this may well provide the opportunity for the court to consider the making of protective orders in India pending the return.

The law

34. It is clear law that the court in this jurisdiction will determine an application for a summary return of a child to a non-Hague Convention country by reference to the child's best interests. My attention has been drawn to what Lord Wilson (in *Re NY* at [30]) and Baroness Hale (in *Re J* at [26]) both described as the "classic" observations, the "*locus classicus*", of Buckley LJ in his judgment in *Re L (Minors) (Wardship: Jurisdiction)* [1974] 1 WLR 250, (obviously a pre-*1980 Hague Convention* decision but with evidently enduring relevance and standing). He said this:

> p.264F: "To take a child from his native land, to remove him to another country where, maybe, his native tongue is not spoken, to divorce him from the social customs and contacts to which he has been accustomed, to interrupt his education in his native land and subject him to a foreign system of education, are all acts (offered here as examples and of course not as a complete catalogue of possible relevant factors) which are likely to be psychologically disturbing to the child, particularly at a time when his family life is also disrupted. If such a case is promptly brought to the attention of a court in this country, the judge may feel that it is in the best interests of the infant that these disturbing factors should be eliminated from his life as speedily as possible. A full investigation of the merits of the case in an English court may be incompatible with achieving this. The judge may well be persuaded that it would be better for the child that those

> merits should be investigated in a court in his native country than that he should spend in this country the period which must necessarily elapse before all the evidence can be assembled for adjudication here. Anyone who has had experience of the exercise of this delicate jurisdiction knows what complications can result from a child developing roots in new soil, and what conflicts this can occasion in the child's own life. Such roots can grow rapidly. An order that the child should be returned forthwith to the country from which he has been removed in the expectation that any dispute about his custody will be satisfactorily resolved in the courts of that country may well be regarded as being in the best interests of the child."
>
> p.265A-B: "… judges have more than once reprobated the acts of "kidnappers" in cases of this kind. I do not in any way dissent from those strictures, but it would, in my judgment, be wrong to suppose that in making orders in relation to children in this jurisdiction the court is in any way concerned with penalising any adult for his conduct. That conduct may well be a consideration to be taken into account, but, whether the court makes a summary order or an order after investigating the merits, the cardinal rule applies that the welfare of the infant must always be the paramount consideration."

36. As Baroness Hale later observed in *Re J* see below, the same point was made by Lord Justice Ormrod in *Re R (Minors)(Wardship: Jurisdiction)* (1981) 2 FLR 416, at p 425: the 'so-called kidnapping' of the child, or the order of a foreign court, were relevant considerations,

> "… but the weight to be given to either of them must be measured in terms of the interests of the child, not in terms of penalising the 'kidnapper', or of comity, or any other abstraction. 'Kidnapping', like other kinds of unilateral action in relation to children, is to be strongly discouraged, but the discouragement must take the form of *a swift, realistic and unsentimental assessment of the best interests of the child, leading, in proper cases, to the prompt return of the child to his or her own country*, but *not* the sacrifice of the child's welfare to some other principle of law." (First emphasis mine)."

37. I was then taken to the current definitive statement of the law pronounced by the House of Lords in *Re J (A Child) (Child Returned Abroad: Convention Rights)* [2005] UKHL 40. I have extracted from the speech of Baroness Hale the following 11 key quotes which I have borne firmly in mind in reaching my conclusions:

i) "… any court which is determining any question with respect to the upbringing of a child has had a statutory duty to regard the welfare of the child as its paramount consideration" [18];

ii) "There is no warrant, either in statute or authority, for the principles of The *Hague Convention* to be extended to countries which are not parties to it" [22];

iii) "…in all non-*Convention* cases, the courts have consistently held that they must act in accordance with the welfare of the individual child. If they do decide to return the child, that is because it is in his best interests to do so, not because the welfare principle has been superseded by some other consideration." [25];

iv) "… the court does have power, in accordance with the welfare principle, to order the immediate return of a child to a foreign jurisdiction without conducting a full investigation of the merits. In a series of cases during the 1960s, these came to be known as 'kidnapping' cases." [26];

v) "Summary return should not be the automatic reaction to any and every unauthorised taking or keeping a child from his home country. On the other hand, summary return may very well be in the best interests of the individual child" [28];

vi) "… focus has to be on the individual child in the particular circumstances of the case" [29];

vii) "… the judge may find it convenient to start from the proposition that it is likely to be better for a child to return to his home country for any disputes about his future to be decided there. A case against his doing so has to be made. But the weight to be given to that proposition will vary enormously from case to case. What may be best for him in the long run may be different from what will be best for him in the short run. It should not be assumed, in this or any other case, that allowing a child to remain here while his future is decided here inevitably means that he will remain here for ever" [32];

viii) "One important variable … is the degree of connection of the child with each country. This is not to apply what has become the technical concept of habitual residence, but to ask in a common sense way with which country the child has the closer connection. What is his 'home' country? Factors such as his nationality, where he has lived for most of his life, his first language, his race or ethnicity, his religion, his culture, and his education so far will all come into this" [33];

ix) "Another closely related factor will be the length of time he has spent in each country. Uprooting a child from one environment and bringing him to a completely unfamiliar one, especially if this has been done clandestinely, may well not be in his best interests" [34];

x) "In a case where the choice lies between deciding the question here or deciding it in a foreign country, differences between the legal systems cannot be irrelevant. But their relevance will depend upon the facts of the individual case. If there is a genuine issue between the parents as to whether it is in the best

interests of the child to live in this country or elsewhere, it must be relevant whether that issue is capable of being tried in the courts of the country to which he is to be returned" [39];

xi) "The effect of the decision upon the child's primary carer must also be relevant, although again not decisive." [40]

Baroness Hale summarised her views in this way:

> "These considerations should not stand in the way of a swift and unsentimental decision to return the child to his home country, even if that home country is very different from our own. But they may result in a decision that immediate return would not be appropriate, because the child's interests will be better served by allowing the dispute to be fought and decided here." [41]

38. I was then taken to *Re NY (A Child)* [2019] UKSC 49, a case in which the Supreme Court set aside an order made by the Court of Appeal under the court's inherent jurisdiction in what are accepted to be very different circumstances to those obtaining here. Mr Khan argued that I should give (as the judgment suggests) "some consideration" ([55]) to the eight linked questions posed by Lord Wilson in that case:

i) The court needs to consider whether the evidence before it is sufficiently up to date to enable it then to make the summary order ([56]);

ii) The court ought to consider the evidence and decide what if any findings it should make in order for the court to justify the summary order (esp. in relation to the child's habitual residence) ([57]);

iii) In order sufficiently to identify what the child's welfare required for the purposes of a summary order, an inquiry should be conducted into any or all of the aspects of welfare specified in *section 1(3)* of the *1989 Act*; a decision has to be taken on the individual facts as to how extensive that inquiry should be ([58]);

iv) In a case where domestic abuse is alleged, the court should consider whether in the light of *Practice Direction 12J*, an inquiry should be conducted into the disputed allegations made by one party of domestic abuse and, if so, how extensive that inquiry should be ([59]);

v) The court should consider whether it would be right to determine the summary return on the basis of welfare without at least rudimentary evidence about basic living arrangements for the child and carer ([60]);

vi) The court should consider whether it would benefit from oral evidence ([61]) and if so to what extent;

vii) The court should consider whether to obtain a Cafcass report ([62]): "and, if so, upon what aspects and to what extent";

viii) The court should consider whether it needs to make a comparison of the respective judicial systems in the competing countries – having regard to the

speed with which the courts will be able to resolve matters, and whether there is an effective relocation jurisdiction in the other court ([63]).

The father's case

39. Mr Khan, on behalf of the father, asserts that this is a "hot pursuit" case, and that the court here should act briskly and decisively to effect D's return, in his best interests, to his country of habitual residence, India. He points out that the Indian Court is already well seised of the welfare issues, and has confirmed its jurisdiction to make substantive welfare orders. The only real connection which D currently has in this country is that he was born here, and he has British citizenship. D is habitually resident in India. D has very limited extended family in this country.

40. Mr Khan submits that it will be open to the mother to apply to the Indian Court for permission to relocate to this country within the custody proceedings should she still wish to do so. Although Dr. Anand describes a three-year delay in processing of these cases in the Indian court, he suggests that an interim order could possibly be applied for. Alternatively, and particularly as there are extant proceedings, the mother could apply for an expedited hearing/order. In addressing my concerns about the considerable delay in concluding the private law process in India, Mr Khan points to the increasing backlog of unresolved private law disputes in the courts in this country, though accepts that the timeframe for the resolution of private law proceedings in this jurisdiction would compare very favourably.

41. Mr Khan referenced the points raised in *Re J* above, and the eight factors in *Re NY*, and urged on me that each of those factors pointed to a summary return; taken cumulatively, he argued, the case was a very strong one indeed.

42. He addressed the mother's allegations of domestic abuse at some length. He pointed out that the mother's case in relation to domestic abuse has not been consistent. She appears to have spoken to WSCC only of "emotional abuse", not physical abuse, and had apparently separately referenced suffering "Honour Based Violence". He argues that the allegations do not withstand careful analysis;

    i) The mother made a range of complaints to the police in India about the alleged abuse in April 2021 but Mr Khan characterises the allegations as "vague" and observes that "there is some backtracking" by mid-June 2021;

    ii) The police were apparently to some extent 'stood down' by the mother's sister who described the parties as close to reaching a 'compromise' (§22 above), and cannot therefore be criticised for not taking the allegations seriously;

    iii) The mother could have obtained non-molestation orders in India but did not do so (see the advice of Dr. Anand above);

    iv) In her evidence in these proceedings, the mother has said that she wanted the father "to change". In that regard "we had 4 sessions of mediation." Mr Khan argues that the fact that the mother engaged in mediation is not consistent with her being the survivor of domestic abuse;

v) She told the Indian Court in response to the father's child welfare application that she had been "compelled" to leave India "to defend and to file appropriate proceedings against the judgment passed by the UK (Northampton) Court because my husband-applicant has taken advances/credit card on my name without my knowledge and consent". It is notable that she did not plead that she was fleeing from the wider forms of domestic abuse alleged elsewhere;

vi) That the mother had given as a main reason in these proceedings for coming to this country that:

> "I told [the father] that I wanted to return to the UK to find out about my debts and to repay them."

Mr Khan postulates that the mother was not altogether ruling out reconciliation.

vii) The mother had gone on in her statement in these proceedings:

> "I did not think there was anything left for me in India. I was extremely terrified that [the father] will take [D] from me or will hurt me. I could not continue living with my parents. I do not have any money or a place to live in India. I decided to come back to the UK with [D] to deal with my debts and to seek some stability and safety in our lives."

43. I was shown a number of text messages passing between the couple in the last six months of their relationship which, Mr Khan argued, undermined the mother's current case that she was the victim of severe domestic abuse by the father. In her messages, she describes the marriage to her husband not as abusive but as "boring"; she indicates a wish to be "single" and for "excitement"; she describes how much she loves the father (January 2021) "I know you love me so much"; she complains of a lack of intimacy in the relationship; he responds by saying that he is not being respected. I am conscious that the text messages may not tell the whole story; as they stand, however they are not consistent with the mother's pleaded case about abuse, or with the substance of her complaint to the police in India in April 2021.

44. Materially, it is also apparent from the text exchanges that after the separation of the parties, D missed his father (13 June 2021: "[D] is really missing you… he cried so many times" … "I am not a person who will away (sic.) my son's father"). The mother says that she too is missing the father "I missed you so much even when I had corona…". She says that she is frustrated about the relationship which is "0% as a couple". "I will be yours if you want me". She later denied that she had made a First Information Report (to the police) but has put in "just a small complaint".

45. Mr Khan suggests that the mother's successful achievement of tertiary qualifications in this country undermines the case that she was 'caged' in the home.

46. Mr Khan argues finally in this regard that even if the allegations of domestic abuse are taken at their highest, the protective measures offered by the father can be sufficient objectively to assure the mother's safety should she return to India.

The mother's case

47. The mother's case, put succinctly by Ms Ramsahoye, is that she is fleeing violence. She does not regard it as safe for her to return. She asks that further investigation be made of the domestic abuse allegations in this jurisdiction, and that the full welfare enquiry be undertaken in the Family Court of England and Wales.

48. In making her case, she conceded that:

    i) D has lived in India for three years, and is habitually resident there;

    ii) The mother and D came here clandestinely, without the knowledge or (so far as D was concerned) the consent of the father;

    iii) Although there were debts in her name, generated during the marriage, the father has now cleared these;

    iv) The mother has engaged in the Indian Court proceedings; she had unsuccessfully challenged that jurisdiction; the Indian Court is therefore seised of child welfare issues;

    v) It is not *entirely* true that she wanted to come here to resolve the issue of debt, only partially so.

    The mother agrees with the way in which the law has been presented by Mr Khan, as I have summarised it above.

Conclusion

49. I have paid very great attention to the competing arguments of the parties so ably advanced by counsel, the evidence which the parties have filed, and the supporting independent evidence from WSCC and Dr. Anand. I have carefully considered the pronouncements of the law which I have rehearsed at §34-§38 above. Having taken all those matters into account, I have reached the clear conclusion that it is in D's best interests that he should be returned to India forthwith, and for his future to be determined in the courts of Ahmedabad. I draw the threads of the evidence and submissions together as follows.

50. D is habitually resident in India, the country to which he is most closely connected (*Re J* at [33]); it is now his 'home country' (*Re J* at [32]) and has been for more than three years (well over half of his life). India is where D's religion, his culture, and ethnicity is deepest rooted. He is receiving a good (private school) education in India (currently disrupted), and he has a significant network of relatives there on both sides of his family. D was reported (by the mother) to be sad at not seeing his father when separated from him in the weeks prior to his journey here (see §44 above); it is likely to be in D's interests that contact is successfully re-established. D's situation in this country is at best currently transitory and fragile – he is housed in temporary accommodation, with no established financial security, and no (or limited) family support.

51. No party has argued that I do not have all the relevant information on which a decision can be made; nor has any party asked me to hear oral evidence. There is no need for me to make any factual finding about D's habitual residence (India) as this has already been effectively decided in the Indian court and is in any event not disputed in this

litigation. I have the benefit of a detailed report from WSCC which obviates the need for a Cafcass enquiry (the need for which has, in any event, been judicially considered and rejected).

52. As to the *Section 1(3)* welfare checklist, I have, for this purpose, been able to draw on the useful *section 17* CFA report from WSCC. The author of the report has seen D and has spoken to both parents. D has provided limited articulation of his wishes and feelings; when seen by the social worker "he was extremely shy". He is plainly closely attached to his mother ("[h]e was a little unsettled talking to me in the lounge area while his mum was in the next room as he hasn't spent any time away from her for a considerable amount of time"). His physical and emotional needs are met by his mother, though he needs a safe relationship with his father and his contact with him is only currently indirect, and not without its difficulties. I have in mind that even before the mother left India, she told the father that D was missing him, a situation which must be all the more acute now that they are over 4,000 miles apart.

53. As for his educational needs, D was successfully integrated in full time private education in India (the mother proposes that this educational arrangement be re-instated in the event of her return); there is no school provision yet for D in England. Currently D is said to be 'confused' while he is living in temporary accommodation in England; as the social worker observed: "He has experienced a big move from India to the UK and he is trying to make sense of the situation he finds himself in".

54. As to his age/sex/background; he is a 5-year-old boy of Indian heritage who speaks Gujarati and English. He has plainly (in the view of the WSCC social worker):

> "… been exposed to arguments involving his parents and paternal grandparents" … "[D] will need to be kept safe from witnessing any further incidents/arguments and it is clear his mother is taking steps to do this."

55. There is little doubt that the mother has demonstrated a capability to care for D; the social worker reports:

> "[The mother] is able to meet [D]'s basic care needs and has shown insight into the impact of the current situation on [D]'s well being".

That said, the mother nonetheless took, she concedes, unilateral, abrupt, and clandestine action in removing D to this country; this was primarily prompted, in my judgement, by her wish to avoid engaging in family court proceedings in India. There is very little evidence that she gave any real thought to the implications of her decision, booking her flight and travelling the next day with her young son, arriving in this country from a 'red list' country (at the time), forcing D and herself to spend 14 days in a quarantine hotel, and thereafter finding herself without any form of accommodation, let alone any ostensible means of support. Ms Ramsahoye advises me that she has become dependent on the Local Authority for her basic subsistence. In this regard, I find that the mother's 'capability' as a responsible parent has been found wanting.

56. The mother raises serious allegations of domestic abuse which were at one time the subject of police complaint in India and would, as I understand it, have been

pursued/investigated further had the mother and her family wished for this. In any event the allegations have been laid bare before the Indian Court in the child welfare proceedings in India. Although I am not trying the issue, Mr Khan makes several effective points about the internal inconsistency of the mother's case, but this will be for the Indian Court to resolve. In any event, on the mother's return to India, the risk of harm to her from this alleged abuse can, in my judgement, be appropriately mitigated by a combination of:

i) The extensive protective measures offered by the father as undertakings/orders (set out above: see §27 & §28);

ii) The fact that she can return for the time being to live with her parents in India (where she was living with D from April to July 2021) until the Indian Court can consider issues of financial relief and housing need (§29);

iii) The availability of civil law process (the equivalent of non-molestation proceedings) in India (of which the mother has not yet availed herself) (§26(iii) above).

57. I am satisfied that the Indian Court is appropriately seised of child welfare proceedings concerning D; the Court there adopts an appropriately 'welfare-focused' approach to child arrangements; both parents have the benefit of legal representation and the mother to legal aid. If the mother continues to wish to live in this country, she has the ability to present such a case to the Indian Court for a relocation order and could apply for interim or expedited relief in that regard.

58. I will require the father to give undertakings in the form set out at §28 to lay in place the protective measures for the mother and D's return. For the reasons set out herein, I am of the view that the return of D to the Republic of India should happen as soon as practicable.

59. That is my judgment.