REPORTABLE

2026 INSC 118

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of S.L.P. (C) No.28934 of 2025)

MOHTASHEM BILLAH MALIK ...APPELLANT(S)

VERSUS

SANA AFTAB ...RESPONDENT(S)

J U D G M E N T

PANKAJ MITHAL, J.

1. Leave granted.

2. This appeal is in relation to an unfortunate dispute regarding the custody of two minor sons namely Malik Karim Billah born on 17.10.2017 and Malik Rahim Billah born on 04.11.2019 to the appellant-husband and the respondent-wife.

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Reason:

3. Both the appellant-husband and the respondent-wife are Indian citizens and are well educated. They were married on

28.07.2015 in Srinagar in accordance with the Muslim Personal Law. As the appellant-husband was serving as an electrical engineer in Qatar since 2013, both of them started residing at Qatar immediately after the marriage where the aforesaid two sons were born to them out of the wedlock.

4. Sometime later, on account of matrimonial discord, both of them preferred separate divorce petitions, namely, Case No.882/2021[1] and Case No.1300/2021[2] before the Family Court at Qatar. Both the petitions were decided by a common judgment and order dated 29.03.2022 and a decree of judicial divorce based on mutual abuse was granted. The appellant-husband was directed to pay alimony, enjoyment compensation, monthly child support, custodian payment and for payment of custodian accommodation. The custody of the minors was given to the respondent-wife while guardianship was given to the appellant-husband. At the same time, the appellant-husband was directed to deliver all personal documents of the minors to the respondent-wife including their IDs, Medical Certificates, Birth Certificates and any evidential

[1] *Mohtashem Billah Malik Mohamed vs. Sanaa Aftab*
[2] *Sanaa Aftab vs. Mohtashem Billah Malek Mohamed*

documents of the children except the passports which were to remain in the custody of the appellant-husband being the guardian of the minors.

5. However, the respondent-wife travelled to India on 17/18.08.2022 by procuring fresh passports for the children or probably on the basis of duplicate or otherwise and started residing at Srinagar. Allegedly, the respondent-wife removed the minors from Qatar to India during their academic session, without the knowledge and consent of the appellant-husband, and without obtaining the original passports etc. or without prior permission from Qatar Courts.

6. The appellant-husband filed *Habeas Corpus* Writ Petition (Crl) No.636/2022 before the High Court of Jammu & Kashmir and Ladakh at Srinagar alleging that his minor sons are in illegal custody of the respondent-wife.

7. The aforesaid writ petition gave rise to LPA No.216/2022[3]. The said LPA was disposed of on 01.12.2022 in the light of the statement made by the respondent-wife who was present in court and which was even reduced to writing and placed on

[3] *Mohtashem Billah Malik vs. Union of India and Ors.*

record that she will go back to Qatar well before the reopening of the school of the elder son Malik Karim Billah on or before 02.01.2023 so that his education may not suffer and that she will undertake all necessary steps for obtaining residency permit for her younger son Malik Rahim Billah.

8. The aforesaid appeal having been disposed of in terms of the above statement, gave finality to the undertaking of the respondent-wife. The respondent-wife, for reasons best known to her, failed to keep her undertaking. She visited Qatar in the third week of December, 2022 but did not take the minors along with her.

9. In view of the violation of the aforesaid undertaking, the appellant-husband applied for the revocation of the custody of the minors which was given to the respondent-wife before the Qatar court. The said custody order of the minors in favour of the respondent-wife was revoked by the Qatar court on 31.10.2023 and the custody was ordered to be given to the appellant-husband. Thus, the custody of the minors in favour of the respondent-wife was terminated.

10. The appellant-husband simultaneously initiated proceedings for contempt in Srinagar *vide* CCP(D) No.4/2023 against the respondent-wife for violating the undertaking given by her on 01.02.2022 before the Division Bench in the LPA. The Contempt Court *vide* Order dated 06.08.2024 held the respondent-wife to be guilty of not honouring the commitment given by her to the court and for not even expressing any remorse for her conduct. Therefore, the court held her guilty of committing contempt of the court and sentenced her with a token fine of Rs.100/- to be deposited with the Registrar Judicial of the court within one month. She was issued warning to remain careful and conscious in future while making any statement and giving undertaking to the court. Since the LPA was disposed of in terms of the undertaking which has been violated by her, the LPA was ordered to be restored for consideration on merits.

11. This being the background, the appellant-husband initiated fresh proceedings before Family Court, Srinagar under Section 25 of the Guardians and Wards Act, 1890, seeking custody of the two minor children. The Family Court on 02.01.2025

allowed the petition and granted custody of the minors to the appellant-husband. The said order of the Family Court has been reversed by the High Court in appeal preferred by the respondent-wife *vide* judgment and order dated 08.09.2025.

12. Under challenge in this appeal is the aforesaid judgment and order of the High Court dated 08.09.2025 by which the order of the Family Court granting custody of the minors to the appellant-husband has been set aside and the custody has been ordered to be restored to the respondent-wife.

13. We have heard Ms. Meenakshi Arora, senior counsel for the appellant-husband and Mr. Altaf Hussain Naik, senior counsel for the respondent-wife.

14. Ms. Meenakshi Arora, senior counsel appearing for the appellant-husband had argued that the respondent-wife had removed the minors from Qatar in the middle of their academic session. The elder son Malik Karim Billah at the relevant time was studying in the Qatar International School[4] (a Gold Standard British Curriculam School) and the younger son Malik Rahim Billah in the Grandma British Nursery School.

[4] In short 'QIS'

They travelled to India leaving their education in between on 17/18th August 2022. The respondent-wife misled the court by alleging that she had admitted the minors in a school i.e. Foundation Word School in Srinagar. She even produced documents claiming that Malik Karim Billah was studying at Alama Iqbal Institute of Education, Srinagar in Class II. However, the admission form of Delhi Public School[5] reveal that the elder son Malik Karim Billah who was admitted there on 19.03.2024 had last attended QIS, Qatar, before being admitted to DPS in Class I, and the children were never admitted to Alama Iqbal Institute of Education, Srinagar, which happened to be a school run by the relatives of respondent-wife. The very fact that the respondent-wife removed the children from the school at Qatar in between the session and admitted them in DPS only in March 2024, means that for two years the children were not sent to any school.

15. It is also argued that even in DPS the attendance of the children is only about 60% as against the mandatory requirement of 75%. The said conduct of the respondent-wife making the

[5] In short 'DPS'

education of the children suffer disentitles her the custody of the minors. A further argument was made that in view of the various precedents of this Court, a parent who is indulging in doing a wrong by removing a child from a school mid-session and shifting to another country cannot take advantage of his/ her own wrongdoing.

16. The second argument of Ms. Meenakshi Arora is that the children, especially the elder one is quite grown up and capable of taking an intelligent decision. Therefore, in view of the report of the counselor of the Family Court submitted in the contempt proceedings who had met the children a number of times and opined that the children had a more comfortable relationship with the father, coupled with the fact that even the witnesses produced by the respondent-wife admitted that the children were not comfortable in Srinagar and were unhappy to continue to live there. The custody ought to be restored to the appellant-father and the minors be allowed to travel to Qatar with him.

17. She next argued that not only the conduct of the respondent-wife, but also failure on her part to furnish any plausible

explanation for shifting the children mid-session from Qatar to Srinagar, and that too without obtaining the consent of the appellant-husband and the original passports from him, is sufficient enough to disentitle her to the custody of the minors.

18. Lastly, she submitted that the work schedule of the respondent-wife clearly shows that she is required to travel to different parts of India in connection with her work, thereby leaving the children and their education at stake, and hence, tilts the scale of custody of the minors in favour of the appellant-husband, who has a flexible work schedule with an option to work from home enabling him to take care of the minors himself.

19. *Per contra*, Shri Altaf Hussain Naik, senior counsel appearing for the respondent-wife, submitted that there is no error or illegality in the judgement and order passed by the High Court, as in matters of custody the paramount interest is the welfare of the children and the High Court has repeatedly emphasized that the welfare of the children is best served in the hands and care of the respondent-wife. He further submitted that the financial capacity of the appellant-husband or the conduct of

the respondent-wife is not very material while deciding the custody of the children, as the welfare and interest of the minors outweighs all these aspects. He lastly submitted that both the children are settled and studying in a reputed school in Srinagar and that their annual progress report is more than satisfactory, and thus it cannot be said that their education is lacking in any manner or is suffering on account of their shifting from Qatar to India.

20. The High Court while passing the impugned judgement has proceeded on the premise that the Family Court had restored the custody of the minors to the appellant-father primarily on the conduct of the parties, the standard of living and income of the parents, and lastly, on the age and gender of the minors and the preference shown by them. The High Court held that none of the above aspects are relevant for deciding the custody of the minors and that the paramount consideration is only the welfare of the children.

21. The High Court further recorded that, although the minors may have exhibited an inclination to stay with their father and to accompany him to Qatar, much importance cannot be attached

to such gestures of the children, as after the conclusion of the hearing and reserving the judgement, the Court had interacted with the minors in chambers for about 40 minutes (in the absence of the parents) and noticed that the elder child did not express any resentment towards either of the parents. Further, in response to the query as to who would look after him while in Qatar, the elder child responded by saying that probably a maid would do so. As such, the Court went on to hold that the inclination of the children was also not very clear as to whether they wished to accompany the appellant-father to Qatar.

22. We have gone through the entire judgement and order passed by the High Court in the light of the submissions advanced by the parties and have also perused the documents on record. What we clearly notice from the above is that there is no dispute with the proposition that in matters of custody, the paramount consideration is the welfare of the children but nonetheless there are a host of other factors which weigh before the court while passing the final order of custody. These host of factors may include the conduct of the parties, their financial capacity, their standard of living, as well as the

comfort and education of the children. Therefore, it may not be entirely correct on the part of the High Court in holding that such factors are not very relevant and that the custody of the minors has to depend upon their welfare alone.

23. The High Court while writing the opinion had referred to the fact that the respondent-wife had travelled and moved the minors to India without the consent of the appellant-father, who was guardian and without obtaining the original passports from him but rather by procuring fake or duplicate or fresh passports while original already existed for travel purposes. However, the court below has not considered the effect and impact of this conduct while granting the custody to the respondent-wife.

24. We are of the opinion that the impact of the aforesaid conduct of the respondent-wife was a material aspect which ought to have been considered by the High Court while passing the order of the custody.

25. Secondly, the High Court completely failed to consider the impact of the judgement and order of the Qatar Court dated 31.10.2023, by which the custody order in favour of the

respondent-wife was revoked for the reason that she misconducted herself by removing the children from the jurisdiction of the Court, and that too without the consent of the appellant-father and the permission of the Court. The revocation of the order of custody was a crucial material for the purpose of determining the custody of the children. In fact, there was no subsisting order of custody of children in favour of the respondent-wife; rather, there was an order in favour of the appellant-husband appointing him as the guardian of the minors. All these aspects were highly relevant for passing an order of custody of the minors.

26. Thirdly, the Court below also ignored the impact of the order of the Contempt Court holding the respondent-wife guilty of committing contempt of the court for violation of her own undertaking given to the High Court on 01.12.2022 that she will return to Qatar by 02.01.2023 for the continuation of the minor's education but travelled alone leaving the minors behind in India, which had led to the disposal of the LPA without consideration on merits.

27. The aforesaid contempt order has attained finality and is conclusive, and as such, the respondent-wife cannot resile from her guilty conduct.

28. Lastly, in a criminal case regarding abuse and assault filed against the appellant-husband the Qatar Court had given a clean chit to him and there is no subsisting conviction for assault, which clearly demonstrates that the misconduct as alleged against him has not been proved so as to disentitle him from the company of the children.

29. Apart from the above, not only the findings recorded by the Family Court, Srinagar indicate that the minor children had shown inclination to accompany the appellant-father to Qatar, but the mediation report placed before this Court also contains material observations which bear directly on the issue of custody.

30. As per the mediation report, both children expressed an inclination towards joining their father. Though they had limited or no conscious memory of life in Qatar, where they were born, they nonetheless conveyed a desire to explore and reside there. When specifically asked as to who would look

after them in Qatar, the elder child stated that the presence of his father would be sufficient and that someone would inevitably be available to care for them. Both children appeared comfortable with the prospect of being without their mother. The younger child repeatedly expressed his wish to go with the father and was visibly distressed during the interaction. It was also recorded that both children speak only English, and found difficulty in conversing with local children.

31. The High Court has completely ignored the aforesaid material and crucial aspects while passing the impugned order. While these aspects may not, by themselves, be the sole reason for determining custody, they are nevertheless necessary and relevant factors, and their cumulative effect was at least relevant for determining the custody arrangement.

32. In view of the aforesaid facts and circumstances, we are of the opinion that the impugned judgement and order dated 08.09.2025 passed by the High Court of Jammu & Kashmir and Ladakh cannot be sustained in law and is liable to be set aside.

33. Accordingly, it is hereby set aside and the matter is remanded to the High Court for reconsideration on its own merits in accordance with the law most expeditiously, preferably within a period of four months from the day a certified copy of this order is placed before the court concerned.

34. The Civil Appeal is allowed with no order as to costs.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

NEW DELHI;
FEBRUARY 04, 2026