

economic offences. It was further contended that the petitioner had filed proceedings in the Court in Thailand and the application seeking permission to travel to Thailand should be mainly rejected on the ground that the petitioner happens to be a Thai citizen. The elderly two children of the couple are in the custody of the respondent. They have voluntarily chosen to reside with the respondent herein. The respondent apprehends that once the child is taken away from India, she would never return along with the child and although a petition seeking custody has been filed, he would permanently lose the custody of his child Ahren. He is concerned with the safety, security and permanent residence of the child. The respondent has fortified his submission by stating that she had filed proceedings in Thailand against the present respondent. It is further submitted that he had received a letter from Jamnabai Narsee School on 13.1.2014, stating therein that the child has not attended the School from 6.12.2013 till 13.1.2014. The respondent submits that he has several such communications from the School and, therefore, the petitioner shall not be permitted under any circumstances to travel with the child to Thailand. He has vehemently opposed in person as well as through his Counsel and the only apprehension of the respondent, being a biological father of the child, seems to be that the petitioner would not return to India along with the child and that he may lose the child forever.

2. Taking into consideration the submissions made by the Counsel for the respondent as well as the respondent, who has addressed this Court in person, this Court had asked the petitioner to give an undertaking that she would ensure the safety and return of the child.

3. The learned counsel for the petitioner has filed an undertaking before this Court, which is taken on record and marked as Article "X" for the purpose of identification. The said undertaking is as follows :-

"UNDERTAKING BY PETITIONER"

I, Aneesha Dutt, aged about 43 years, residing at F-1, Beach House, Gandhi Road, Juhu, Mumbai 400 049, do hereby state on solemn affirmation as under :-

1) *I am filing this Affidavit of my own free will and consent and hereby solemnly declare that if this Hon'ble Court is pleased to handover the two passports issued by the Passport Authority in the name of my minor biological child, Master Ahren Dutt alongwith Overseas Citizen of India Card (OCI) then I shall take him alongwith me to the residence of my father, Mr. jaswant Singh Madan residing at 54/23 Soi, Sukhumvit Road, Bangkok, 10110 Thailand for a period of 15 days commencing from 26th July, 2014 to 9th August, 2014.*

2) *I solemnly undertake, assure and irrevocably commits to this Hon'ble High Court that I shall bring back Master Ahren*

*Dutt back to India and within the jurisdiction of this Hon'ble Court on 9th August, 2014. I have made arrangements to ensure that the aforesaid commitment, undertaking and responsibility is duly discharged without any impediment by booking a non-refundable ticket in the name of Master Ahren Dutt on Flight 9W69 of Jet Airways scheduled to depart from Bangkok, Thailand on 9th August, 2014 at 1450 hours and scheduled to arrive at Chatrapati Shivaji International Airport on 9th August, 2014 at 1745 hours. I am enclosing herewith a photocopy of the ticket issued to me by Voltamp Travels, 514, Rewa Chambers, 5th Floor, 31, New Marine Lines, Churchgate, Mumbai 400 020. The said photocopy is annexed to this Affidavit and marked as **EXHIBIT – 1**.*

3) *I assure that Master Ahren Dutt will be in my custody throughout the period from 26th July, 2014 to 9th August, 2014 and I shall be solely responsible for his well being and welfare. I undertake to this Court that I, as his biological mother, will take proper care of Master Ahren Dutt during the aforesaid period and even thereafter when we come back to Mumbai. I undertake to this Hon'ble Court not to cancel and/or in any manner modify or alter the ticket issued in favour of Master Ahren Dutt and assure and undertake to this Hon'ble Court that he shall travel to and fro on the ticket as enclosed herewith.*

4) *I undertake that after return I shall cause to redeposit the two passports and OCI Cards with the Registrar – Judicial of this Hon'ble Court on or before 12th August, 2014. I undertake to redeposit the said two passports and OCI Card by personally*

visiting the office of the Registrar Judicial on or before the aforesaid date. I undertake and commit that after I returned back to Mumbai with my child, Ahren on 9th August, 2014 I shall ensure that he attends Poddar School from the next working day or immediately thereafter.

5) I undertake, assure and commit to this Hon'ble Court that there shall be no breach of any of the above undertakings and shall ensure that no breach is caused at any stage.

6) I pray that this Hon'ble Court be pleased to permit me to take Master Ahren Dutt to Bangkok, Thailand to visit my father, Jaswant Singh Madan from Saturday 26th July, 2014 to 9th August, 2014 and to undertake the said journey and direct the Registrar – Judicial, High Court to release the documents. For this act of grace I shall ever remain grateful to this Hon'ble High Court.

Solemnly affirmed at Mumbai

on this 18th day of July, 2014.

sd/-

(Seal)

(ANEESHA DUTT)”

On the last date of hearing, this Court had expressed the inclination to grant her permission to travel with the child for 15 days only on the condition that she gives the aforesaid undertaking and hence she has purchased tickets. Along with the undertaking the petitioner, in order to substantiate her undertaking, has also filed the Return Tickets which she has booked for the period 26th July, 2014 to 9th August, 2014. The tickets also bear the endorsement of “Do not cancel”. Besides this, the petitioner, who is present in the Court, submits that she also undertakes that she will not file any proceedings in Thailand Court. The undertaking is accepted.

4. The respondent has vehemently argued that initially she had filed the proceedings and, therefore, he has no faith in her. As against this, the petitioner has filed an affidavit in this Court stating that she had requested her counsel to withdraw the said proceedings. The respondent has demonstrated his suspicion in respect of this undertaking and still insists that there is every likelihood that she would not abide by her undertaking. The Passports are in the custody of the Registrar - Judicial of this Court and in the eventuality that the petitioner has to travel to Thailand along with the child, she has to receive the passports.

5. This Court has taken into consideration that the petitioner wishes to meet her ailing father and she happens to be the mother of the child. Their elderly two children have already withdrawn themselves from her custody and are residing with the respondent. It is made clear that this Court is only taking a sympathetic view in the interest of justice and is quite sure that the petitioner would abide by the undertaking which is given by her. It is made clear that the undertaking, which is given to this Court, a copy of the same shall be given to the Embassies of both the countries. The Embassies of both the countries shall take into consideration that the said undertaking has been given to the highest Court in the State and they shall see to it that the petitioner abides by the undertaking which is given to this Court. A duty is cast on the Embassies of both the countries

to see that the petitioner abides by the said undertaking. In view of this, the following order :-

ORDER

- (i) Rule. Interim relief in the following terms :-
- (ii) The Registrar – Judicial of this Court shall return the passports, the copies of which are part of the undertaking.
- (iii) Copy of the undertaking shall be given to the U.S. Consulate, Mumbai and the Consulate shall ensure that the petitioner abides by the undertaking given to this Court.
- (iv) The petitioner shall deposit the passports with the Registrar – Judicial of this Court on or before 13.8.2014.
- (v) The respondent, who is present in the Court, has orally prayed for stay of this order. The prayer is rejected.

Registrar (Judicial) to act on an authenticated copy of this Order.

The matter be listed on 13.8.2014.

(SMT.SADHANA S.JADHAV, J.)