REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

PRATEEK GUPTA V. SHILPI GUPTA (2018)

BENCH: Mr. Justice Ranjan Gogoi & Mr. Justice Amitava Roy **DECIDED:** December 6, 2017

RATIO DECIDENDI & PRECEDENTIAL CRUX:
Habeas corpus writ in child custody matters is an extraordinary remedy; summary return cannot be ordered without evaluating paramount child welfare.

1. Factual Matrix & Background:

The father brought his minor son from the United States to India. The mother filed a writ of habeas corpus in the High Court, which ordered the father to hand over the child for return to the US. The father appealed to the Supreme Court.

2. Substantive Legal Questions Framed:

Whether a High Court exercising habeas corpus jurisdiction can order summary repatriation of a minor child solely because the child was brought from abroad in breach of foreign custody.

3. Analysis & Ratio Decidendi:

The Supreme Court reversed the High Court, holding that the writ of habeas corpus in child custody matters is not to be used merely to enforce parental rights or foreign orders. The court acts as parens patriae. Even where a child is removed from another country, the court cannot order summary return without satisfying itself that returning the child is in his best physical, moral, and emotional interest.

4. Principles Enunciated:

- 1. Habeas corpus in custody cases is guided exclusively by the child's welfare.
- 2. Summary return of child cannot be ordered based solely on foreign court orders.
- 3. The child's integration into their new environment in India must be carefully weighed.

5. Practical Litigation Implications:

- Oppose habeas corpus custody petitions by arguing that writ jurisdiction is summary and custody disputes requiring elaborate factual inquiries must be relegated to Family Courts.

.....J.
[SUPREME COURT BENCH]

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