



**Calcutta High Court**  
**Constitutional Writ Jurisdiction**  
APPELLATE SIDE

Present:

**The Hon'ble Justice Debangsu Basak**  
**And**  
**The Hon'ble Justice Md. Shabbar Rashidi**

**WPA(H) 105 of 2025**

**Subhabrata Dutta**  
**Vs.**  
**Union of India & Ors.**

For the Petitioner : Mr. Biswaroop Bhattacharya, Advocate  
Mr. Dwaipayan Basu Mallick, Advocate  
Ms. Pritha Bhaumik, Advocate  
Mr. Apalak Basu, Advocate  
Ms. Sanghamitra Mridha, Advocate  
Mr. Yavik Singhal, Advocate  
Ms. Anusmita Bhattacharya, Advocate  
Mr. Nazir Ahmed, Advocate

For the Union of India : Mr. Rajdeep Majumder, Ld. D.S.G  
Mr. Sagar Saha, Advocate

For the State : Mr. Biplab Guha, Advocate  
Mr. Tapas Kumar Das, Advocate

For the Respondent  
No.3 : Mr. Probal Kr. Mukherjee, Senior Advocate  
Mr. Debanjan Bhattacharya, Advocate  
Mr. Rohan Ojha, Advocate  
Mr. Surojit Saha, Advocate  
Mr. Ayush Kr. Upadhyay, Advocate



Hearing concluded on : 01.04.2026

Judgment on : 01.04.2026

**DEBANGSU BASAK, J.:-**

1. Writ petition is taken up for final hearing on completion of affidavits.
2. Writ petitioner is a Canadian citizen of Indian origin. Writ petitioner seeks custody of his child who is also a Canadian citizen.
3. Respondent no.3 is the mother of the child. Court is informed that, the respondent no.3 although an Indian citizen possesses right of permanent residency in Canada.
4. In this petition for issuance of writ of Habeas Corpus, we are concerned with the welfare of the child born out of wedlock between the petitioner and the respondent no.3. Child was born on October 23, 2020.
5. Court is informed that, respondent no.3 was also working in Canada. She left for India on January 27, 2025. Writ petitioner complained to the authorities at Canada on January 27, 2025. In May 2025, writ petitioner approached the Ontario Superior Court of Justice, which passed an order dated July 29, 2025.
6. The order dated July 29, 2025 passed by the Ontario Superior Court of Justice relates to the child. One of the directions therein is that, the child must return to Ontario. It also noticed that, there were evidence that, the writ petitioner and the respondent no.3 agreed to shared parenting regime during their initial separation. Statement of the respondent no.3 before that Court was noted. Court directed the parties for shared parenting regime and the child to return to Ontario. Court also recorded



the confirmation of the writ petitioner that matrimonial home would remain available for the mother of the child being premises No. 33, Charleswood Crescent, Hamilton.

7. Writ petitioner filed a contempt petition for violation of the order dated July 29, 2025 passed by the Ontario Superior Court of Justice.
8. Such contempt petition was subsequently dropped on the ground that, the respondent no.3 was not served in terms of the Hague Convention.
9. It is trite law that, on the principle comity of Courts the subsequent Court should yield to the first Court assuming jurisdiction over the custody of the child. In the facts and circumstances of the present case, from out of the proceedings with regard to the custody of the child, one proceeding is still pending before Ontario Superior Court of Justice in which the order dated July 29, 2025 was passed. The other proceeding is pending in India. However, the Indian Court is yet assume jurisdiction. Issue of assumption of jurisdiction by the Indian Court is yet to be finally decided therein.
10. First strike on the custody of the child is by the Canadian Court. Child is a Canadian citizen. Writ petitioner is also so. Respondent no.3 is with rights of permanent residency in Canada.
11. Possibility of reuniting the writ petitioner, respondent no.3 and the child as a family in Canada is far greater than in India. Welfare of the child lies in the family reuniting. Efforts to explore and facilitate such possibility is in the best interests of the child and the family. It is on this consideration that we are passing this order.



12. The writ petition of Habeas Corpus is at the behest of the writ petitioner as noted above. Essentially, the writ petitioner seeks custody of the child in terms of the order passed by the Ontario Superior Court of Justice.
13. As noted in our earlier orders we endeavoured to reconcile the disputes and differences between the petitioner and the respondent no.3 which did not succeed.
14. At the hearing today, learned Senior Advocate appearing for the respondent no.3 drew our attention to an electronic mail dated October 24, 2025 issued to the respondent no.3 by the advocate for the writ petitioner from Canada. He also drew the attention of the Court to the e-mail of such advocate of the writ petitioner dated September 9, 2025.
15. The electronic mail dated October 25, 2025 tabulates various aspects which the writ petitioner will ensure is made available by him to both the child and the respondent no.3.
16. In response to a query of the Court, learned advocate appearing for the writ petitioner submits that, his client is agreeing to adhere to the commitments recorded in the electronic mail dated October 24, 2025. He submits on instructions that, the writ petitioner will come down to India within 15 days from date in order to accompany the child back to Canada. He also submits on instructions that, in the event, the respondent no.3 wishes to join the child back to Canada writ petitioner will make all necessary arrangements including providing them flight tickets. He submits on instructions that, in such an eventuality also, the



commitments made through the e-mail dated October 24, 2025 will be adhered to.

17. We drew the attention of the respective learned advocates to the contents of the order dated July 29, 2025 of the Ontario Superior Court of Justice. We enquired from the learned advocate for the writ petitioner as to whether, the writ petitioner will be complying with the directions contained therein, should the child is allowed to travel to Canada. The answer is in the affirmative.

18. Learned Senior Advocate appearing for the respondent no.3 submits that, the writ petitioner should be directed to pay a sum of 9,000 Canadian Dollar as three months assessed maintenance in order to permit the respondent no.3 to take care of herself in Canada. He submits that, such sum may be treated as an advance.

19. In response to a query of the Court, learned advocate appearing for the writ petitioner submits that, the writ petitioner is incapable of paying such amount upfront. In any event all commitments made in the e-mail dated October 24, 2025 will be complied with. Such commitments includes the stay and food of the respondent no.3 if, the respondent no.3 arrives with the child at Canada.

20. We are not entering in to the matrimonial disputes between the writ petitioner and the respondent no.3. Consequently, we should also not enter into the arena of the quantum of maintenance that the respondent no.3 is entitled to from the writ petitioner. We leave the parties to avail of their remedies before the appropriate forum in this regard.



21. Since, the respondent no.3 will be accompanying the child to Canada, we requested the writ petitioner who is available on the virtual platform to address us on issue of the request for sum money being made available to the respondent no.3. On the virtual platform, writ petitioner assures the Court that, a sum of 1,000 Canadian Dollar will be made over to the respondent no.3 in India. For the next month, the bank account of the respondent no.3 at Canada will be credited with the sum of 1,000 Canadian Dollar on the first of each month for a period of two months. In aggregate, the writ petitioner will be paying 3,000 Canadian Dollar to the respondent no.3 for the first three months.
22. The writ petitioner assures the Court on the virtual platform that, he will bear the cost of the mortgage, utilities, and property tax of the matrimonial home where the child and the respondent no.3 will be staying. He will provide for the groceries and other necessities of the child and the respondent no.3. He assures the Court that, he will continue to pay the mortgage in respect of the matrimonial house till a decision with regard thereto is arrived by an appropriate Court.
23. We clarify that, we did not quantify the amount of maintenance payable to the respondent no.3 and the child or their entitlement. The arrangements made herein are interim and made in order to facilitate the travel of the child back to Canada. It will be open to the parties to agitate their respective contentions before the appropriate forum in this regard.



24. It is also clarified that, this payment and receipt of 3,000 Canadian Dollar is wholly without prejudice to the rights and contentions of the respective parties.
25. Court is informed that, the travel documents of the child requires attention by the authorities.
26. Union of India is represented by the learned Deputy Solicitor General. Learned Deputy Solicitor General is requested to ensure that, all travel documents are made available to the respondent no.3 as also to the child in order to ensure that both the respondent no.3 and the child are in a position to travel to Canada with the writ petitioner.
27. **WPA(H) 105 of 2025** is therefore, **disposed of** without any order as to costs.

**(Debangsu Basak, J.)**

28. I agree.

**(Md. Shabbar Rashidi, J.)**