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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 1780 OF 2023

IN

FAMILY COURT APPEAL NO. 17 OF 2021

Ashu Dutt ... Applicant/Appellant

vs.

Aneesha Dutt ... Respondent

WITH

INTERIM APPLICATION NO. 2605 OF 2023

IN

FAMILY COURT APPEAL NO. 17 OF 2021

Aneesha Dutt ... Applicant

IN THE MATTER OF

Ashu Dutt ... Appellant

vs.

Aneesha Dutt Respondent

Mr. Rohaan Cama with Ms Ayushi Anandpara and Ms Neha Achaliya i/by Ms Sapana Rachure, for the Appellant/Applicant in IA/1780/23.

Mr. Santosh Paul, Senior Advocate with Mr Mahir Bhatt, Mr Maithreya Shetty i/b Mr Wasim Ansari, for Respondent/ Applicant in IA/2605/2023.

**CORAM : R. D. DHANUKA AND
GAURI GODSE, JJ.**

**RESERVED ON : 31st MARCH 2023
PRONOUNCED ON : 11th APRIL 2023**

ORDER: (PER: GAURI GODSE J)

1. The issue involved in both Applications is regarding the visitation rights of the Applicant in Interim Application No. 1780 of 2023 to meet his minor son Ashu Dutt - the Applicant ("father") in Interim Application No. 1780 of 2023, is the father of the minor child . Aneesha Dutt – Applicant ("mother") in Interim Application No. 2605 of 2023, is the mother of .

2. The Family Court Appeal No. 17 of 2021 is filed by the father for challenging judgment and order dated 30th September 2020 passed by the learned Judge of Family Court No. VII, Mumbai, in Petition No. D-87 of 2012. By the judgment and order impugned in the Family Court Appeal, the Petition filed by the father seeking custody of minor children and , is partly allowed. By the said impugned judgment and order, both parents are granted joint custody of both minor children.

3. The father is held entitled to retain physical custody of / (sister of), and the mother is entitled to retain physical custody of . By the said impugned judgment and order, the mother was directed to provide free access to the father, his parents

(grandparents of) and to the siblings to meet , . /
and are siblings, and they have already attained majority. By the same order, the father is directed to provide free access to the mother to meet . , has attained majority during the pendency of the proceedings. Now the dispute between the parties is with respect to the custody and access of . .
During the pendency of proceedings before the Family Court as well as this Court, various orders are passed by the Family Court, High Court as well as the Hon'ble Supreme Court.

4. Interim Application No. 1780 of 2023 is filed by the father for directing the mother to bring to India for interacting with his siblings and the father during the summer holidays between 5th June 2023 and 15th August 2023. Presently the mother and are residing in Thailand. has dual citizenship in Thailand and USA.

5. In the said Application, the father has also prayed for imposing conditions upon the mother as previously ordered by the Hon'ble Supreme Court by Order dated 25th August 2015 passed in Civil Appeal No. 6516 of 2015 and Order dated 12th June 2019 passed by this Court and confirmed by Hon'ble Supreme Court by order dated 17th December 2020 passed in Writ Petition No. 5376 of

2019. The mother has filed Affidavit in Reply to oppose the said Application.

6. Interim Application No. 2605 of 2023 is filed by the mother, praying that this Court may interview by video conferencing. She has also prayed for issuing notice to the Union of India and the State of Maharashtra and immigration Authorities to ascertain as to any Look Out Circular/Coercive Action/ order of detention has been passed against her and . In the said Application the mother has annexed previous orders passed by the Hon'ble Supreme Court granting protection to her and to travel safely from India to Thailand. The mother has also placed on record the details of various proceedings initiated by the father against her. It is the case of the mother that in view of various proceedings initiated by the father, the said application is filed for seeking protective orders.

7. Litigation between the father and the mother has a chequered history. There are various orders passed by this Court as well as the Hon'ble Supreme Court. Before dealing with the merits of the Applications, it is necessary to refer to the various orders passed in a chronological manner. Following are the various orders passed by Family Court, this Court, as well as by the Hon'ble Supreme Court;

25th August 2015: Hon'ble Supreme Court allowed the Civil Appeal No. 6513 of 2015 filed by the mother to challenge the order dated 15th June 2015 passed by this Court by which her application to take along with her to Bangkok was rejected. The Hon'ble Supreme Court had set aside the order passed by this Court and had permitted the mother to take to Thailand for a period of two weeks with prior intimation to the Family Court indicating the date of departure and the date of return. The Hon'ble Supreme Court also directed the mother to file an undertaking stating therein that she and will return to India within a period of two weeks from departure, and in the event, she does not return in terms of the undertaking, the extent of her shareholding in the companies mentioned in the report of the Registrar of the Companies shall stand forfeited. This order was passed during the pendency of the custody petition in the Family Court.

12th June 2019: This Court decided Criminal Application No. 245 of 2019, filed by the mother and Criminal Application No. 296 of 2019, filed by the father in Criminal Writ Petition No.

2330 of 2012. By the said Order, this Court permitted the mother to travel to Thailand along with [redacted] for a period of three weeks. The said permission was granted on the condition of the mother submitting an undertaking to this Court that she, along with [redacted], would return to India on or before 15th July 2019 and in case she failed to return along with [redacted], her shareholding in the companies mentioned in the report of the Registrar of the Companies and residential flat situated at Juhu shall be forfeited.

18th January 2021: The Hon'ble Supreme Court disposed of the Criminal Appeal No. 50 of 2021 filed by [redacted] through the mother, along with Criminal Appeal No. 51 of 2021. The Hon'ble Supreme Court, in the said Order, had observed that [redacted] being a citizen of Thailand and the USA, there was no reason that he should not be permitted to continue his balance school education in Thailand in an appropriate school to be determined by the mother who has his physical custody. The Hon'ble Supreme Court further observed that the aspect with respect to interaction between the siblings, interaction of [redacted] with his paternal grandparents and with the father, Orders were already passed by the Family Court, and hence

every endeavour shall be made to implement the same in its true letter and spirit. Since the Appeal against Family Court Order was pending before this Court, larger issue will be decided in the Appeal pending in this Court. By the said order, it was directed that will be brought to India during the time when his siblings come to India, which information will be given by Counsel to Counsel, and that arrangement should also be made for the interaction of with the father and paternal grandparents. The Hon'ble Supreme Court thus disposed of the Appeal, thereby directing that all concerned, including the authorities, act in furtherance of the directions that were passed by the Hon'ble Supreme Court so that can travel to Thailand under the custody of the mother for school education.

14th February 2022: Miscellaneous Application No. 238 of 2022 filed by the mother was decided by the Hon'ble Supreme Court, thereby directing that the Order dated 18th January 2021 would continue to operate for the benefit of and the mother and in view of the statement made by the Counsel for the father that there was no occasion for him

to obstruct the same. The Hon'ble Supreme Court thus directed the Immigration Authority at the Airport not to obstruct in any manner the to and fro travel of the mother and . In view of the orders passed by the Supreme Court, which were in furtherance of the objective of interaction with the family, by the said order, the Immigration Authorities were directed to accordingly update the system and permit free passage of the mother and in all manner.

5th May 2022: The Family Court passed an Order below Exhibit 27 in Petition No. RD-251 of 2020 filed by the father and directed the mother to hand over custody of to the father for the first half of the summer vacation and directed the father to hand over back the custody of to the mother after completion of the access period.

5th July 2022: This Court, while hearing Interim Application Stamp No. 93897 of 2020 filed by the mother, had interacted with through video conferencing. This Court, in the said order, has in detail recorded the observations on the interaction of this Court with . This Court, after recording the details of the interaction with , adjourned the hearing

of the Application to enable the parties to reconcile the thought process expressed by

2nd January 2023: The Hon'ble Supreme Court disposed of Miscellaneous Application No. 2208 of 2022 filed by the mother. The Hon'ble Supreme Court referred to its orders passed on 18th January 2021 and 14th February 2022, as well as the order of this Court, passed on 5th July 2022. The Hon'ble Supreme Court expressed a view that it will be in the fitness of thing that this Court works out the arrangement for siblings to interact with each other and to interact with the father personally. The Hon'ble Supreme Court thus observed that endeavour should be made to see in what manner and where the physical interaction would be possible with the siblings and the father in a suitable manner, but in terms of orders dated 18th January 2021 and 14th February 2022 passed by the Hon'ble Supreme Court.

8. Thus, both the present applications are required to be decided in view of the observations made by the Hon'ble Supreme Court in the Order dated 2nd January 2023. Since the short issue to be decided is with respect to the visitation rights of the father to meet , it is important to understand the feelings of as

well as in what manner it will be in the best interest of to meet his father. is now 15 years old. This Court, in the Order dated 5th July 2022, has in detail recorded the observations regarding the conversation with . This Court has recorded the thoughts expressed by during the interaction held on video conferencing. From the observations made by this Court, it appears that has suffered a setback in view of the litigation bitterly fought by his parents. To better understand the state of mind of , it is necessary to reproduce paragraphs 3 to 9 of the Order dated 5th July 2022, wherein this Court has recorded the details of the interaction with . Paragraphs 3 to 9 of the Order dated 5th July 2022 read thus:-

“3. was alone in his room in front of his laptop. The side camera gave a clear view of the entire room. We asked to tell us about himself. He said he was 15 years old. His school had recently commenced physical attendance classes and he was attending classes in school and was busy with the same. On being asked about his ambition and future plans in life, he replied that he wanted to study Aerospace Engineering in the United States and more specifically,

had a clear notion of studying in Massachusetts Institute of Technology (MIT) or any of the IVY League colleges in the US to nurture his dream and ambition. Despite being in school, he told us that he had already commenced aligning his thought process towards studying to attain his desired goal and had earnestly began his preparations. He told us that he had done a fair amount of research about his future career prospects in his desired field of Aerospace Engineering and allied studies. had a clear mind while interacting and speaking with us.

4. *Thereafter, we asked about what he felt about having to meet his biological father as his father was keen to meet him. To that reply was very clear and blunt. He told us that he would not like to meet his father due to vivid, strong and very unpleasant memories of certain incidents etched in his mind which had occurred 5-7 years ago when he was living in Mumbai along with his mother in the flat situated a few floors below the flat in which his biological father was staying along with his two elder siblings and his family.*

told us that the incidents had left a deep scar on his mind and recalled the incidents viz. police personnel in uniform visiting and knocking on the doors of the flat which was occupied by him and his mother and questioning them; as also another incident when his father indulged in constant banging on the door of the flat occupied by him and his mother and threatening them. recalled the shouting and chaotic atmosphere due to the estrangement between his mother and father. After recalling some incidents was very clear in his mind and expressed that he would not want to meet his biological father and accept his proposal of having to meet him in India as he feared that he might lay a trap for him and take him away to live in India and thereafter not allow him to return to his mother in Bangkok. During this conversation, was very clear, unperturbed, erudite and appeared transparent to both of us.

5. *Thereafter we asked, as to whether he would like to meet his father either in Singapore or any other neutral place of his choice to which once again he was*

very clear that he would not want to leave Bangkok to meet his father. He completely ruled out the possibility of leaving Bangkok and travelling either to Mumbai or New Delhi, Singapore, Malaysia or any other neutral place suggested by him. However, he clearly expressed that he would not hesitate to meet him in Bangkok, if the father so desired though he was not keen even for that. He was also not keen to meet his paternal grandmother.

6. *Thereafter, we asked [redacted] about his thoughts on his two elder siblings who lived with his father and were now studying in USA and were visiting India for their summer holidays. [redacted] told us about the age difference between him and his two elder siblings and that he did not have much interaction with both of them, save and except on certain occasions during rakhi or Diwali festival. He was very clear in his thought process again when he told that since he had grown up now and was in a position to understand and make his decisions, he would be extremely happy to meet both his siblings and interact with them. He understood that there was*

nothing wrong or incorrect in interacting with his elder siblings, though he told us that in the past he had repeatedly made earnest efforts on his own accord to interact with both of them by sending them birthday messages and / or wishing them on their birthdays or sending them a card. He told us that he did not receive any reply from them but this did not disturb him or make him sad at all and he held no grudge whatsoever and would be more than happy to meet and interact with both of them. We told him since both were in India for their summer vacation for a short time, would he want to meet them. He firstly said no and told us that he would be willing to meet them and welcome them with open arms and interact with them but that would only be possible if they travel to Bangkok. He told us that he did not like to travel to India or USA to meet them in view of the apprehension expressed by him about his father. He also said when he met them in the Family Court, they would only try to make him change his mind about their mother.

7. *told us that he had arranged for Zoom*

meetings with his family members, i.e., biological father, siblings and all other family members on his own accord on at least 16-18 occasions in the last couple of years. He told us that he had taken the initiative but he found neither his father or his siblings attended the Zoom meetings. We lauded him for his clear thought process and requested him to continue holding the Zoom meetings with his family members and suggested to the Advocates and Counsel of both sides to request the family members of their respective clients to attend the Zoom meetings in future to build an interaction between the parties and more specifically the children.

8. After the above communication we called the Advocates and Counsel in Chamber and had a further dialogue with [redacted] after informing him that the Advocates and Counsel would now be listening to his thoughts and decision. Once again we had a similar and identical dialogue as above with [redacted]. [redacted] was told to repeat what he had told us. At this time, once again [redacted] was very clear in his speech and formulation of his reasons which he had expressed to us

earlier. We expressed ourselves to and told him that he should consider the request of his father to meet him but his reply and answer was very clear. He was not keen to meet his father, but for both his siblings, he was ready to receive them in Bangkok with open arms without having any pressure whatsoever from his mother.

9. told us that he is extremely happy staying in Bangkok in the company of his mother and his maternal grandparents. He told us that he did not harbour any animosity or grudge against his father as also both his siblings and stated that on more than one occasion he missed having his elder siblings in his life so that he could look to them for advise and a healthy interaction. He told us and promised us that he would endeavour to continue his initiative of having Zoom meetings and dialogue with his elder siblings in future as a member of the family.”

9. Learned counsel appearing for the father submitted that though joint custody was given, the father was unable to have the

company of _____ as the physical custody of _____ was always with the mother. The learned counsel for the father invited our attention to the affidavit in reply filed on behalf of the mother. In the affidavit, copies of WhatsApp chats between the parties and the photographs are attached. In the photographs, the mother and _____ are seen waiting for the father to join the Zoom meetings. In the affidavit, it is contended that the father refused to attend the Zoom meetings arranged by the mother. It is submitted by the learned counsel for the father that the photographs regarding the Zoom meetings appear to have been deliberately clicked to create an impression that _____ was very happily waiting to meet his father, however, the father refused to join the meeting. Learned counsel submitted that considering the bitter litigation between the parties, it was not expected that the father would meet _____ in the presence of the mother and her parents, who would have never allowed the father to interact with _____ freely.

10. Learned counsel for the father relied upon the dates and events in a chronological manner and submitted that the mother has objected to/thwarted access between the children. He submitted that the dates and events would make it clear that the father has always made an attempt to meet _____. He further submitted that

nothing was produced on record in support of the allegation that any Look Out Circular was issued at the behest of the father, and that such apprehension expressed by the mother was baseless. Learned counsel submitted that perusal of the reply of the mother would show that she has only given empty assurances to bring to India. However, she has never complied with the assurances given by her. All the assurances given by the mother were subject to conditions which are not acceptable.

11. Learned counsel further submitted that the facts and circumstances of the case would show that is suffering from Parental Alienation Syndrome. Learned counsel relied upon the decision of this court in the case of *Perry Kansagra*¹. By relying upon the said decision, it was submitted that it was necessary to put the mother to conditions in order to ensure compliance with the assurance given by her. He thus submitted that the conditions imposed by this Court by order dated 12th June 2019, as well as by the Hon'ble Supreme Court in Order dated 25th August 2015, are required to be imposed upon the mother for the purpose of compliance with the assurances given by her. He thus submitted that it would be necessary to direct the mother to submit an

1 2022 SCC OnLine SC 1516

undertaking that in any event she refuses to abide by the assurances and fails to bring to India, she would forfeit her right in the company as well as her right in the flat. Thus, it was submitted that the application filed by the father be allowed by imposing conditions upon the mother.

12. Learned senior counsel appearing on behalf of the mother submitted that the real interest of the father is with respect to securing the assets and safeguarding his interest for the dispute, which is pending in NCLT. The learned senior counsel submitted that in the year 2012, the mother, as well as , were detained under the National Security Act at the behest of the father. The paternal grandfather of was an IPS officer, and by misusing his power, various false complaints were initiated against the mother. In view of the false complaints, the mother was detained under the National Security Act and was required to seek assistance from the All India Women's Conference.

13. The learned senior counsel referred to various FIRs lodged by the father against the mother in Mumbai as well as Bhopal. He further submitted that due to the intervention of the All India Women's Conference, there were orders passed by Hon'ble

Supreme Court for the protection of the mother. He submitted that the records and proceedings would show that the Look Out Circular was issued against the mother and . It was also apparent that the father, with the assistance and influence of his ex-IPS father, had managed to lodge a Look Out Circular against , who was four years old, as well as against the mother. Learned senior counsel also referred to the order passed in the domestic violence case initiated by the mother, which was partly allowed, and the father was directed not to commit any domestic violence against the mother and he was restrained from filing any complaint against the mother and her relatives.

14. Learned senior counsel referred to the Order passed by the Hon'ble Supreme Court on 9th April 2018 in the Writ Petition, which was filed by All India Women's Conference for seeking protection orders for the mother and . In view of the intervention of the All India Women's Conference, the Hon'ble Supreme Court had directed all the concerned parties to act in furtherance of the directions passed to enable the mother and to travel to Thailand for his school education. Learned senior counsel further referred to various ongoing litigations filed by the father against the mother and expressed apprehension that, in any event, if

proceedings are initiated against the mother during her visit to India, it is likely that she will be detained in India. In the event she is detained, resultantly [redacted] will also be detained in India, which will hamper his education in Thailand.

15. The learned senior counsel placed on record written arguments on behalf of the mother and prayed that it would be necessary to pass directions for the safety and security of [redacted] and the mother by issuing directions to the Central Agencies as well as the State Agencies to ascertain whether any detention orders or Look Out Circular have been issued against the mother and [redacted]. It was further submitted in the written arguments that [redacted] should be brought to India during the ten days period wherein he is able to visit India, as during the other dates, [redacted] is required to complete his internship. It is further submitted in the written arguments that the father should be directed to file an undertaking that he will not initiate proceedings and or trigger proceedings already filed by him, which would result in the detention of [redacted] and the mother. Thus, it was submitted that the mother is ready and willing to visit India along with [redacted] to enable the father to meet [redacted]. However, it was submitted that it is necessary to pass directions for the safe travel of the mother and [redacted] to India as well as back to Thailand.

16. We have heard both parties at length. We had requested both learned counsel to take instructions if both the parties are willing to give assurances to each other to take care of their respective apprehensions. However, considering the vehemence in the arguments and opposition to each other's submissions, we thought it fit to examine the contentions raised by both parties on merits and decide the matter by keeping in mind the parameters suggested by the Hon'ble Supreme Court in Order dated 2nd January 2023. We have considered the rival contentions and perused the record.

17. This is an unfortunate case where due to a bitterly fought matrimonial dispute between the parents, the children have suffered. In our country, matrimonial disputes constitute the most bitterly fought adversarial litigation. A stage comes when warring couples stop seeing reasons. The children are treated as chattel. In such cases, the role of the Court becomes crucial. The Court is required to exercise *parent patriae* jurisdiction and compel the parties to do something which is in the best interest of the child.

18. It is important to note that children cannot be treated as chattel or property where the parents would have absolute rights over the destiny and life of their children. The paramount

consideration is the welfare of the child and not the legal rights of the parents. In the present case, , who is 15 years old, appears to be very clear in his thoughts and his future prospects. Thus is required to be treated as an individual, and it is also necessary to respect his thoughts. If his thoughts and views are not given due weightage, the same can be detrimental to his future. Hence, it is necessary to strike a just and proper balance between the requirements of the parents and the welfare of

19. This is a very peculiar case where considering his past experience, has shown an unwillingness to meet his father. However, has expressed his willingness to meet his elder siblings. elder siblings and are now major. They were always residing with their father and presently are taking education in the USA. Due to the bitterly fought litigation between the parents, was deprived of having the company of his father and elder siblings. For the healthy growth of a child, it is necessary that a child has the company of both his parents as well as his siblings. is at a formative age as well as in a crucial stage of his education. It is thus necessary to strike a balance in deciding on the right of a father to meet his son , the right of to meet his elder siblings and the right of to have the company of his

father, by keeping in mind the views and wishes of .

20. Due to unfortunate incidents in the past, which have remained in mind as scars, he has shown an unwillingness to meet his father. However, it is brought on record that had made attempts to organise zoom meetings to meet his father and siblings. It is in the interest of that he has the company of both his parents. It is also in the interest of that the scars in his mind due to the unfortunate incidents in the past are washed out. Both parents, who are bitterly fighting the litigation and are trying to impose their respective rights and wishes on are expected to give preference to the welfare of the child over their own rights.

21. It will never be possible for the Applicants to rewind the clock and give a healthy, happy and complete family, which he always deserved. However, both the parents should express some regret and take this as an opportunity and adopt corrective measures and help wash out the scars in his mind. They should give utmost priority to the welfare of and provide him safe and comfortable atmosphere to interact with his entire family.

22. From the material on record, we are of the opinion that

is quite clear in his mind that he has no grudge whatsoever and would be happy to meet his elder siblings and interact with both of them. Though [redacted] has expressed his unwillingness to meet his father, he has also said that he has no grudge against him.

23. Hence, in such a peculiar situation, it is the responsibility of the Court to enter into the role of a guardian for the child and, by considering the paramount interest of [redacted], decide in what best manner [redacted] will be able to meet his father as well as his elder siblings and paternal grandmother. At the same time, the checkered history of the litigation between both Applicants cannot be ignored.

24. From the earlier orders passed by the Hon'ble Supreme Court, it is clear that Central Agency and Immigration Agency were required to be directed to allow the mother and [redacted] free and safe passage to travel to Thailand from India. The litigation between the parents is fought bitterly. However, the child is not expected to suffer the brunt of the litigation of the parents. In such peculiar facts and circumstances of the case, it is necessary to issue directions which will be in the interest of [redacted]. The fact also cannot be ignored that though there was an Order passed by the Family Court, the mother has not complied with the Order, and the end result is that

was unable to meet his father and his siblings. The mother may need protection as, in view of past experiences, she has avoided travelling back to India.

25. Thus, it will also be necessary to protect the mother, who is expected to travel to India only to enable the father to meet . In view of the aforesaid facts and circumstances, we do not find any reason for imposing any conditions on the mother as submitted by the learned counsel for the father.

26. When we direct the mother to come to India with . so that he can meet his father, the visit of the mother, as per the orders of the Court, will be only for the welfare of . Thus, the father is expected not to create any obstacle in the way of the mother returning with . In such an event, if the mother is not allowed to go back safely, it will do all harm to as his educational career in Thailand will be destroyed. Considering the past incidents, it is necessary that this important aspect is borne in mind by the State and Central Agencies. It is necessary that these agencies note that the mother – , would come to India under the order of this Court only for the sake of , and therefore she must go back with safely.

27. Hence, the following order is passed:

- a) The mother, _____, is directed to file a duly sworn affidavit-cum-undertaking by herself in this Court on/or before 17th April 2023, thereby intimating the dates of her visit to India along with _____ for a period of ten days as per the dates convenient to _____. The affidavit-cum-undertaking shall also indicate the time and place convenient for _____ to meet his father, elder siblings, and paternal grandmother.
- b) During the visit to India, the mother, _____, will reside at her residence at _____.
- c) The father, _____, is directed to file a duly sworn affidavit-cum-undertaking in this Court on/or before 17th April 2023, thereby stating that he shall not initiate any complaint or trigger any action for the arrest/detention of _____ and _____. The affidavit-cum-undertaking shall also state that he will not create any obstacle in the way of _____ and _____ during their visit to India and their travel back to Thailand.

- d) The concerned State Agencies and Central Agencies shall ensure that in view of the directions issued by the Hon'ble Supreme Court in an Order dated 14th February 2022 in Miscellaneous Application No. 238 of 2022, the mother, _____ and _____ shall not be obstructed in any manner during their visit to India for the purpose of granting access to the father _____ to meet _____ and no hurdle is created to enable them to safely go back to Thailand.
- e) The mother, _____ is at liberty to submit a copy of this order before the concerned State Agencies and Central Agencies to seek necessary protection for safe travel to India and back to Thailand.
- f) Office is directed to list this matter on 21st April 2023 for recording compliance and further directions. To be listed high on board.

(GAURI GODSE, J.)

(R. D. DHANUKA, J.)