

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.03.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. No. 33002 of 2014

Salha Beevi @ Rinosa

... Petitioner

Vs.

1. The Regional Passport Officer
Regional Passport Office
Mount Road, Chennai.

2. Abdul Razack

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue Writ of mandamus to direct the first respondent to process petitioner's son's passport file No.M.A.0821055018314 who is minor namely Rohail Ahamed, aged about one year old and to issue passport to him.

For Petitioner : Mr.T.Elumalai

For Respondents : No appearance - R1
Mr.R.Muralidharan - R2

O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2.Heard Mr.T.Elumalai, learned Counsel appearing for the petitioner and Mr.R.Muralidharan, learned counsel appearing for the second respondent.

3.Petitioner is the wife of the second respondent and she has filed this Writ Petition to direct the first respondent to issue passport for her minor son, who is aged about one year.

4.There is a difference of opinion between the petitioner and the second respondent and it is stated that the petitioner has filed a Petition for restitution of conjugal rights and the same is pending in O.S.No. 112 of 2014, on the file of District Judge,Cuddalore and

she has also filed a Petition under 'Domestic Violence Act' before the Additional Mahila Court, Cuddalore. Therefore, it is submitted by the learned counsel appearing for the second respondent that since the cases filed by the petitioner are pending and in the interregnum, if the petitioner obtains a passport for the minor child who is less than one year, the likelihood of the second respondent to see his son is very remote. It is further stated that the alleged reason given by the petitioner that she wants to visit her sister in Malesia, is only with an intention to harass the second respondent from seeing his son.

5. Admittedly, there is no allegation against the petitioner by the Passport authority. Furthermore, there is no cases filed against the petitioner either before the Criminal Court or before the Civil forum by the husband. It is the petitioner who has filed two cases, which are pending. Even if the petitioner fails to attend before the concerned Court, then both the cases are liable to be dismissed for non-prosecution. Therefore, on that ground, the request of the petitioner for grant of passport for a minor son cannot be denied and there is no other allegation or adverse report, preventing the petitioner from getting passport for her minor son.

6. The petitioner only propose to visit her sister along with her one year old child. In such circumstances, the pendency of the cases filed by the petitioner against her husband/second respondent cannot be a bar for consideration of issuance of passport to her minor son.

7. Accordingly, there will be a direction to the first respondent to consider the petitioner's application for grant of passport for her minor son, without insisting upon any production of certificate from the second respondent, within a period of three weeks from the date of receipt of a copy of this order. The matrimonial dispute is between the petitioner and the second respondent. However, this will not prejudice the rights of the second respondent claim for visitation rights of the child before the competent Court.

The Writ Petition is disposed of accordingly. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

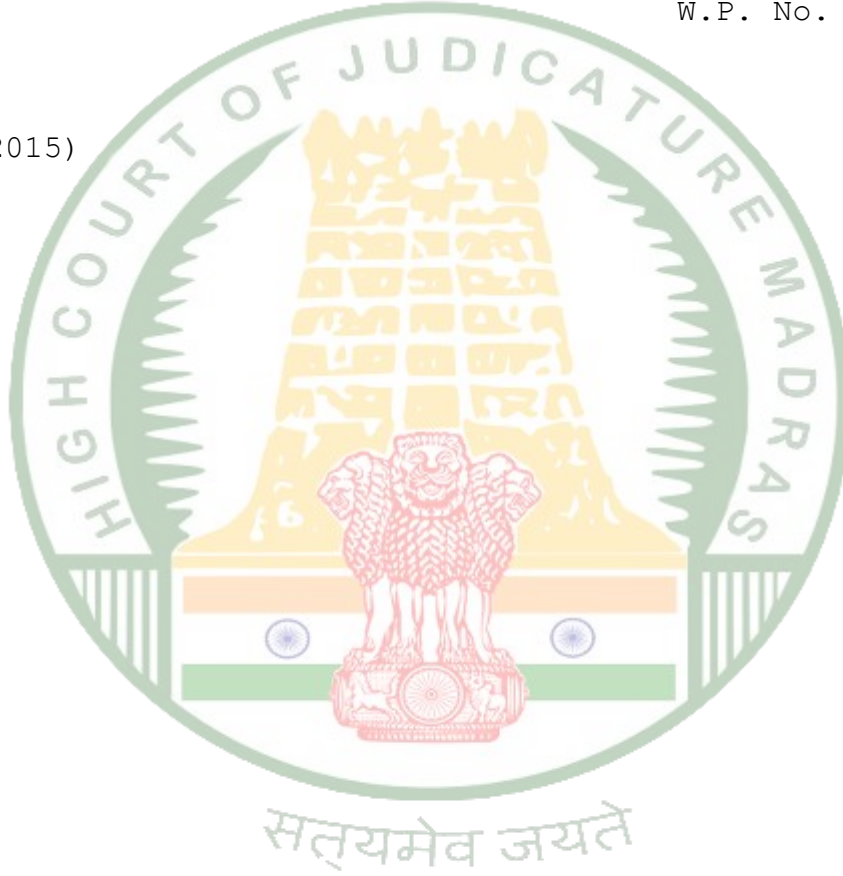
To

1. The Regional Passport Officer
Regional Passport Office
Mount Road, Chennai.

+1cc to Mr.R.Muralidharan, Advocate, S.R.No.12519
+1cc to Mr.T.Elumalai, Advocate, S.R.No.12661

W.P. No. 33002 of 2014

RJ(CO)
CA(16/03/2015)



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