

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.17616 of 2016

Uchit K. Modi (Minor)

Rep by his mother and natural Guardian

Vaishali

.. Petitioner

Vs.

1.Union of India

Represented by its Secretary,
Ministry of External Affairs,
New Delhi.

2.The Regional Passport Officer,
Chennai

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the second respondent to issue passport to the petitioner UCHIT K MODI and to pass such further orders.

For Petitioner : Mr.Ravichandran

For Respondents : Dr.D.Simon,
Central Govt. Standing Counsel

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The mother and natural guardian of the petitioner has sworn to the affidavit filed in support of this petition and she would aver among other things that she married one Mr.S.Pradeep and out of wedlock, petitioner was born on 28.11.2004 and there was difference of opinion between her and her husband, which led to the filing of F.C.O.P.No.2104 of 2005 on the file of the First Additional Family Court, Chennai, praying for divorce and the said petition came to be decreed exparte on 05.09.2006, granting her decree for divorce and thereby, the relationship of wife and husband had ceased to exist. It is also stated by the petitioner that the respondent therein, namely Mr.S.Pradeep did not take any steps to set aside the exparte decree and it has become final. The custody of the petitioner continues to be with his mother and he at present studying in Kola Saraswathi Vaishnav Senior Secondary School, Kilpauk, Chennai-600 010. The mother of the petitioner, after getting divorce, married Thiru Ketan N.Modi on 16.02.2010 at

Arya Samaj Prayer Hall, Triplicane, Chennai and the said marriage was registered by the Sub-Registrar Triplicane, Chennai, vide Reg.No.11/2010. The father of the petitioner had also effected Gazette publication in Tamil Nadu Government Gazette dated 30.07.2014 stating that the petitioner shall henceforth be known as UCHIT K MODI. The mother of the petitioner had applied for passport and she has been issued with passport bearing No.L2281169 by the Regional Passport Officer, Chennai, indicating her surname as Ketan Modi (Husband).

3. The learned counsel appearing for the petitioner would submit that the petitioner had applied for passport stating his name as UCHIT MODI, Son of Ketan N.Modi and it was returned for the reason that the mother of the petitioner has to produce consent letter from her Ex-Husband and to produce document with regard to the petitioner's custody and aggrieved by the same, came forward to file this writ petition. The learned counsel appearing for the petitioner would further submit that despite the petitioner producing genuine documents, the respondents had erroneously returned the application and prays for appropriate orders and also relied on the judgment in B.S.Deepa v. The Regional Transport Officer (Madras) [2015 (2) CTC 503].

4. Per contra, Mr.D.Simon, learned Central Government Standing Counsel, who accepts notice on behalf of the respondents, has drawn the attention of this Court to Circular No.VI/401/01/05/2008 dated 05.10.2009 issued by the Ministry of External Affairs, CPV Division, wherein it has been stated that:

"In the event of remarriage after divorce, the name of stepfather/stepmother cannot be written in the passport of children from the previous marriage. The relationship of the child to its biological parents subsists, even after divorce by parents. It is also not possible to leave the column of father or mother blank in the passport in such cases. Therefore, such applicants must write the names of their biological parents in the application form. However, if the stepfather or stepmother is appointed by a Court as legal guardian, the name of such step parent can be written as legal guardian."

and would submit that as per the said Circular, unless and until the said requirement is complied with, the application submitted by the petitioner for issuance of passport may not be considered.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. In B.S.Deepa v. The Regional Transport Officer (Madras) [2015 (2) CTC 503], similar issue arose for consideration and this Court has also considered the scope of the above said Circular dated 05.10.2009 and disposed of the writ petition with the following directions:

"38. In view of the above, the writ petition is disposed of with the following directions:-

(1) The Ministry of External Affairs, Union of India may incorporate suitable provisions in the Passport Manual and incorporate suitable columns in the applications for the issue of passports, to enable the parties to indicate either the names of the biological parents or the names of the adoptive parents or the names of the step parents or all of them, according as the situation demands. It can be left to the will of the parties either to indicate the names of one or more of the biological parents along with the name/ names of the adoptive or step parent/parents or to indicate the names of all.

(2) In so far as the case on hand is concerned, the respondents shall issue a passport to the daughter of the petitioner, by indicating the name of R.Lakshmanan as the stepfather, in the column reserved for filling up the name of the father. The respondents are directed to issue passport within four weeks, upon the petitioner's application bearing File No.MA3067806994714 dated 10.7.2014."

7. In the light of the above facts and circumstances coupled with the above cited judgment, this Court directs the second respondent to entertain the application submitted by the petitioner and take it on file and process the same in accordance with the above cited directions and pass orders as expeditiously as possible and not later than four weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner.

8. This Writ Petition is disposed of accordingly. No costs.

सत्यमेव जयते

Sd/
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.Secretary,
Union of India
Ministry of External Affairs,
New Delhi.

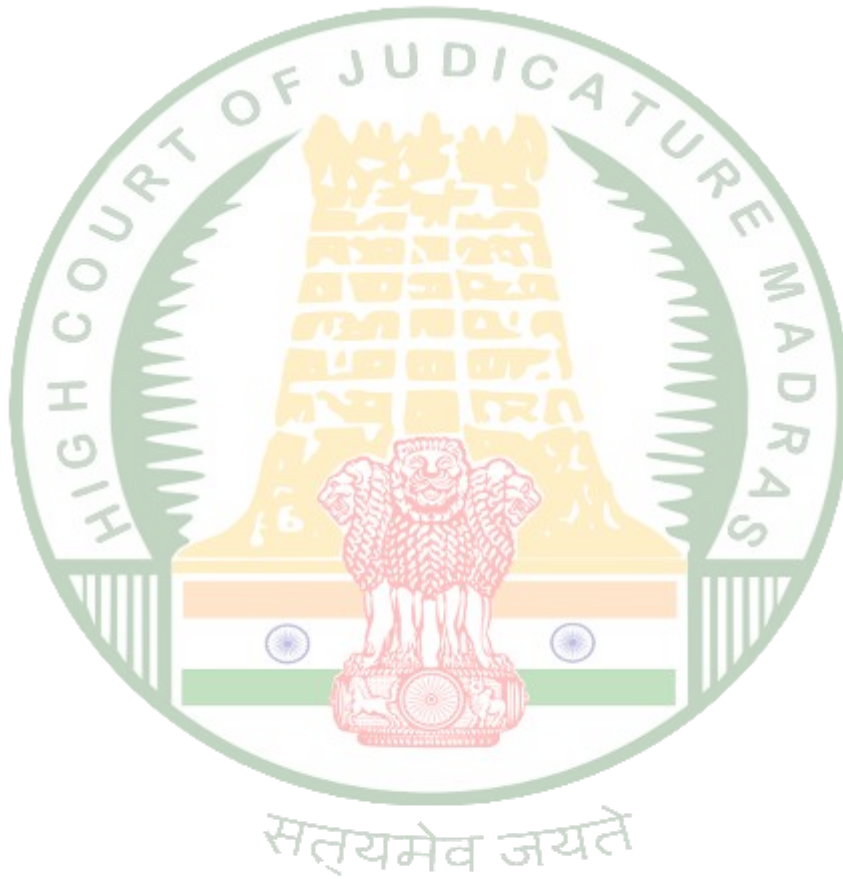
2.The Regional Passport Officer,
Chennai.

+1 cc to Mr.S.Ravichandran, Advocate,SR.35469

+1 cc to Dr.D.Simon, Advocate,SR.35106.

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