

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.01.2016

CORAM

THE HONOURABLE Mr.JUSTICE M.M. SUNDRESH

W.P.No.27626 of 2015

J.K.Bathool Fathima,
D/o.Mr.J.M.Giasudeen,
Plot No.65, Vallal Yusuf Nagar,
Selaiyur - Post,
Chennai 600 073 ...Petitioner

- Vs -

1. Union of India,
Represented by Regional Passport Officer,
Royala Towers, No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai.
2. The Passport Officer
Passport Seva Kendra,
No.1, Bhanumathi Ramakrishna Road,
Saligramam, Chennai.
3. M.Mohamed Sahib
S/o.Mohamed Mustafa
No.9, Thendral Nagar,
High Ground, Maharaja Nagar,
Tirunelveli 627 011 ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of mandamus, directing the 1st and 2nd respondents to re-issue the Passport No. F7482373 to the petitioner's minor son Ashiq Giasudeen AL Haras in pursuance of her application in Reference No.15-1006677115 dated 23-07-2015 in accordance with law .

For Petitioners : Mr.T.Sundaranathan

For Respondents 1 and 2 : MR.D.Sanjayswamy, ACGSC

For Respondent 3 : No Appearance

ORDER

The petitioner has come forward by way of filing this Writ Petition seeking for a direction to the respondents 1 and 2 to re-issue the Passport No.F7482373 to her minor son Ashiq Giasudeen AL Haras in pursuance of her application in Reference No. 15-1006677115 dated 23-07-2015.

2. The petitioner is the mother of the minor child Ashiq Giasudeen AL Haras. It appears that there was a divorce decree passed between the petitioner and her Ex-husband Mohamed Sahib. Pending the divorce petition filed in O.S.No.141 of 2008, the petitioner got an order of interim custody of the child with visitation rights by her Ex-Husband. Thereafter, the petitioner applied for re-issuance of passport for the minor son. It was not considered purportedly on the ground that the consent of the father of the child is required.

3. The learned counsel for the petitioner submitted that the father of the Child did not turn up after getting visitation rights during the pendency of the divorce proceedings. As there is no dispute that the petitioner is the Wife, the Writ Petition has to be allowed.

4. The learned Additional Central Government Standing Counsel appearing for respondents 1 and 2 submitted that Ministry's guidelines in para 41 of Chapter 9 in Passport says about the consent of other parent is necessary if he has got any visitation or other rights on the child as per the Court order. Therefore, the Writ Petition has to be dismissed.

5. The fact that the petitioner is the mother of the child is not in dispute. The notice sent to the Ex-Husband of the petitioner got returned as 'no such Addressee'. The specific case of the petitioner is that the Ex-husband did not evince any interest in seeing the child. Even, in para 7 of the Counter Affidavit filed it is stated that in case where the petitioner is unable to obtain the consent, then it is well open to the authorities to process the passport application and issue the same as per law. Furthermore, the interim order passed in I.A.No.3034 of 2009 dated 28.09.2010 has merged with the final order, which is a divorce decree granted between the parties.

6. Considering the said submission, the second respondent is directed to process the application pertaining to the son of the petitioner by name Ashiq Giasudeen AL Haras in Reference No. 15-1006677115 dated 23-07-2015 and re-issue the passport, within a period of four weeks from the date of receipt of a copy of this order.

The writ petition is disposed of with the above direction.
No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srn
To

1. The Regional Passport Officer,
Union of India,
Royala Towers, No.2 and 3, IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai.
2. The Passport Officer
Passport Seva Kendra,
No.1, Bhanumathi Ramakrishna Road,
Saligramam, Chennai.

+2ccs to M/s. T. Sundaranatha, Advocate, S.R.No.4896
+1cc to M/s. D. Sanjayswamy, Advocate, S.R.No.5226

KGK(CO)
EU(03/02/2016)

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