

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

C.M.A.No.2310 of 2015

M.Alauddin Batcha Appellant / Petitioner

Vs.

Rahmathunisa Respondent / Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, against the Order and Decretal Order, dated 13.08.2015 made in G.W.O.P.No.827 of 2013 on the file of the Principal Family Court, Coimbatore.

For Appellant : Mr.N.Ishtiaq Ahmed

For Respondent : Mr.R.Kannan

JUDGMENT

(Judgement of the Court was delivered by P.KALAIYARASAN, J)

This Civil Miscellaneous Appeal has been filed by the husband / father challenging the order, dated 13.08.2015 of the Principal Family Court, Coimbatore, rejecting the plea for permanent custody of the ward in G.W.O.P.No.827 of 2013 to the appellant / father.

2. The appellant / husband as petitioner filed G.W.O.P, seeking custody of his son Mohammed Ashfaq, aged about 7 years by appointing him as legal guardian. It is averred in the petition that he married the respondent Rahamthunisa on 11.05.2005 as per Muslim religious rites and customs and they were blessed with a male child, Mohammed Ashfaq born on 12.06.2007. The respondent developed misunderstanding without any reason and deserted the appellant / husband abruptly and left for her parental house in Narasimha Naickenpalayam, Coimbatore with the minor son. The appellant's attempt for joint living was of no use. The ward enters the age of 7 years as on 12.06.2013 and the appellant / petitioner is having a legal right as a father of his male child. The petitioner has taken

insurance in the name of his son and he is also depositing periodical amount in the account of City Union Bank, Coimbatore for the welfare of his son. The respondent deprives the petitioner of his right to have the custody and to look after the studies and welfare of his son.

3. The respondent in her counter contends that she was ill-treated by the appellant / petitioner and in-laws. The appellant / petitioner used third degree torture, pulled respondent's hair and used to hit her head on the wall. The appellant / petitioner dropped three times the respondent and her son at the parents house of the respondent. The respondent is looking after her son well by getting admission in Camford International School, Coimbatore. She paid yearly school fee of Rs.2 lakhs for the second standard and her parents are also feeding her son in a royal way. The petitioner has no chance of giving better education to the ward like that of the respondent. The appellant / petitioner did not even call the respondent or his son through telephone or mobile phone.

4. The learned trial Judge after considering the divergent contentions of both parties rejected the plea of relief of permanent custody and granted custody of the minor on two days in a month on Sunday from 10 a.m to 1 p.m.

5. The learned counsel appearing for the appellant contends that the appellant being father is entitled to the custody as the ward has attained the age of 7 years and the appellant can look after the welfare of the child better than the respondent and therefore, permanent custody of the ward is to be granted to the appellant.

6. The learned counsel appearing for the respondent per contra contends that mere deposit of the amount in Bank account in the name of the minor without contributing for the development of the child is of no use and the respondent has been looking after the ward well by giving him good education and therefore the appeal is liable to be dismissed.

7. There is no dispute that the appellant / petitioner married the respondent and the child Mohammed Ashfaq was born to them out of the wedlock.

8. It is pertinent to note that the appellant stooped to the level of making allegation even denying the paternity of the child and making of such allegation when brought to the notice of the appellant during cross-examination, he did not deny. As rightly pointed out by the learned counsel appearing for the respondent any amount of deposit in the name of the minor without contributing for his development at present does not lead to infer that the appellant is helping for the welfare of the child at present. It is also pertinent to note that there is absolutely no evidence that he contributed any amount towards

the education of the child or for his food and clothing. The respondent is educating the ward by putting him in the reputed school and spending huge amount of Rs.54,000/- per year towards school fee.

9. This Court also directed the respondent to produce the ward (minor) and the ward was also produced before this Court. This Court enquired the child and the child who is now aged about 11 years expressed his desire to be with her mother instead of going with his father.

10. In granting custody, the paramount consideration is the welfare of the child. Considering the entire facts and circumstances of the case and the wishes of the child, this Court is of the view that the custody of the child is to be with the respondent / mother in the interest of the welfare of the child. The trial Court also granted visiting right of two days in a month on Sunday from 10 a.m to 1 p.m. This Court does not find any error or illegality to interfere with the order of the trial Court and therefore the Civil Miscellaneous Appeal is liable to be dismissed.

In fine this Civil Miscellaneous Appeal is dismissed, confirming the order, dated 13.08.2015 made in G.W.O.P.No.827 of 2013 on the file of the Principal Family Court, Coimbatore. No costs.

Sd/-

Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

tsvn

To

1.The Principal Judge
Family Court,
Coimbatore.

2.The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.Ishtiaq Ahmed, Advocate SR.No.1186

+1cc to Mr.R.Kannan, Advocate SR.No.1215

C.M.A.No.2310 of 2015

GMR(CO)
GN(01/02/2018)