

In the High Court of Judicature at Madras

Dated : 21.2.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

CMP.No.7335 of 2018 and WA.SR.No.30966 of 2018

Mrs.Nazimunnisha

...Petitioner/
Appellant

Vs

1.Jaaveeth Syed

2.The Chairperson, Child Welfare
Committee, No.300, Purasaiwakkam
High Road, Kellys, Chennai.

3.The Mottukkal, Good Shepherd
Convent, Nungambakkam, Chennai.

...Respondents/
Respondents

PETITION under Section 151 of the Civil Procedure Code to grant leave to the petitioner to file the writ appeal against the order dated 03.4.2018 in W.P.No.6618 of 2018.

APPEAL under Clause 15 of the Letters Patent against the order dated 03.4.2018 made in W.P.No.6618 of 2018.

For Petitioner/Appellant : Mr.S.Subbiah, SC for Ms.M.Malar
For Respondent-1 : Mr.M.Mubarak Ahmed

Judgment was delivered by T.S.SIVAGNANAM,J

We have heard Mr.S.Subbiah, learned Senior Counsel appearing on behalf of Ms.M.Malar, learned counsel on record for the petitioner/appellant and Mr.M.Mubarak Ahmed, learned counsel for the first respondent.

2. CMP.No.7335 of 2018 has been filed by the petitioner seeking to grant leave to her to file the writ appeal against the order dated 03.4.2018 in W.P.No.6618 of 2018. The writ appeal has been filed challenging the order dated 03.4.2018 in W.P.No.6618 of 2018.

3. The said writ petition was filed by the first respondent herein seeking a direction to the second respondent herein namely the Chairperson, Child Welfare Committee to release the minor child J.Thamanna Syed from the custody of the third respondent home in terms of Section 59 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

4. The learned Single Judge, after considering the facts of the case and after taking note of the report submitted by the Child Welfare Committee, found that the minor girl was anxious to join her father. Accordingly, a direction was issued to the Child Welfare Committee to hand over her custody to the first respondent herein leaving it open to the mother – the petitioner herein to file appropriate proceedings seeking guardianship, if so advised.

5. Admittedly, the petitioner before us is yet to file any petition for guardianship. We are informed that the first respondent herein has filed a

petition for guardianship and in that, notice has been issued. It is stated that the matter has been posted for ex parte evidence. Be that as it may, the child was shifted to the home on account of the fact that a criminal case was registered in Cr.No.61 of 2018 on the file of K3 Aminjikai Police Station against the petitioner herein for offences under Sections 381 and 406 read with 109 of the Indian Penal Code. In the said criminal case, the petitioner was arrayed as the second accused and the allegation is that the petitioner conspired together with the first accused and committed theft of gold coins and jewelery worth about 300 sovereigns, original property documents and watches, etc. Though the petitioner was arrested, she had been granted bail by the Fifth Metropolitan Magistrate in CrI.M.P.No.1536 of 2018 dated 28.3.2018.

6. The petitioner's case is that earlier, there is an order passed by a Division Bench of this Court in HCP.No.797 of 2018 dated 21.6.2018 wherein the petitioner had been granted visitation rights to see the child once in 15 days i.e. on Saturday in the mosque, which is nearer to the residence of the first respondent – father.

7. It appears that after the disposal of the said habeas corpus petition, another petition was filed by the petitioner herein and it is stated that the child was produced in camera before a Division Bench of this Court on 31.7.2017.

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RS

8. In our considered view, the right to guardianship of a minor child has to be decided by the Competent Court. If, according to the petitioner herein, there is any violation of the directions contained in the order passed in H.C.P.No.797 of 2018, then the remedy is elsewhere. Likewise, if the petitioner claims that she is entitled to permanent custody of the minor child, then also, the remedy is elsewhere. Therefore, considering the fact that the welfare of the minor is most paramount, we do not wish to disturb the present position wherein it is stated that the minor child is under the care and custody of the first respondent - father. However, we make it clear that this order will not prevent the petitioner herein to move the appropriate forum to vindicate her rights in a manner known to law.

9. With the above directions, the above miscellaneous petition is disposed of. No costs. Consequently, the above writ appeal is rejected at the SR stage.

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