

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2020

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

Application No.1306 of 2020
in
O.P.No.321 of 2020

Ashwini Jayakumar
D/o. Supa Jayakumar,
aged 35 years
Door No.10 Plot No.35,
Mageshwari Road, Devi Nagar,
Annanur, Railway Carshed Complex,
Thiruvallur, Tamil Nadu-600 109.

presently residing
at 2124-2699,
Battleford RD,
Mississauga, ON,
L5N3R9 ONTARIO,
CANADA

सत्यमेव जयते.. Applicant

Vs.

Arun Mozhi Selvan,
S/o.Sithu,
Aged 40 years,
No.53, Arun Cottage,
Pachaiamm Street, Devi nagar,
Thirumullaivayal Village, RCC Post,
Chennai-600 109.

.. Respondent

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Application filed by applicant seeking to grant interim custody of her minor daughter child Nipuna, aged about 10 years born on 22nd October 2009 pending disposal of main OP and pass such further or other orders as this Hon'ble Court may deem fit and proper in the interest of justice.

For Applicant : Ms.Raj Genevive Veena

For Respondent : Ms.Malarvizhi Udayakumar

ORDER

Main 'Original Petition' (hereinafter 'OP' for brevity) has been filed inter-alia under Sections 3, 7 to 10 and 25 of 'The Guardians and Wards Act, 1890' (hereinafter 'GAWA' for brevity) with inter-alia prayers for appointment as guardian and custody of a minor child.

2 In this web hearing today on a video conferencing platform, Ms.Raj Genevive Veena, learned counsel for applicant/petitioner and Ms.Malarvizhi Udayakumar, learned counsel for respondent are before this Court.

3 At the outset, on jurisdiction, learned counsel for applicant/petitioner placed reliance on an order dated 08.03.2019 made

by another Hon'ble Single Judge of this Court in S.Annapoorni Vs. K.Vijay in A.Nos.5445 and 5446 of 2018 in O.P.No.599 of 2018. My attention was drawn to the relevant paragraph which reads as follows :

'27. As already pointed out the Hon'ble Division Benches of this Court in The Rajah of Vizianagaram and Pamela Williams, referred to supra, have very categorically concluded that the jurisdiction of this Court under Clause 17 of the Letters Patent read with Section 3 of the Guardian and Wards Act, would extend even to minors who are ordinarily residents outside its jurisdiction. I am therefore, of the considered opinion that this Original Petition is maintainable in this Court and the same cannot be rejected on the ground of want of jurisdiction. Therefore, the preliminary objection raised by the learned counsel for the respondent is over ruled. There shall be no order as to costs.'

(Underlining and double underlining made by this Court to supply emphasis / highlight)

4 S.Annapoorni case supra is one where parents were in Conoor and custody application was moved in Chennai. For the limited purpose of disposal of instant interim application, S.Annapoorni principle is being applied.

5 Applicant/Petitioner herein is mother and respondent is father of the minor child whose guardianship and custody is sought. Ms.Nipuna is the name of the minor and she shall hereinafter be referred to as 'said minor' for the sake of convenience and clarity.

6 Short facts as can be culled out from the case file before this Court are that marriage of applicant/petitioner and respondent was on 10.11.2008 according to Hindu rites / customs in Chennai, that said minor was born from the wedlock on 22.10.2009 and that said minor is now 10 years old.

7 It is submitted that the marriage between applicant/petitioner and respondent ran into rough weather, applicant/petitioner initiated proceedings for divorce vide H.M.O.P.No.92 of 2014 on the file of Sub Court, Poonamallee and an ex parte order of divorce was passed in the same on 15.7.2014. It is submitted that this order has become final.

8 It is the case of the applicant/petitioner that she went abroad, i.e., migrated to U.S.A first and then moved to Canada. It is the further

case of the applicant/petitioner that she is now working in Canada and said minor is doing her schooling in Canada.

9 In the light of the very fair stand that has been taken by both learned counsel before me, it may not be necessary to dilate further on facts in this interim order now. Suffice to say that it is the case of the applicant/petitioner that she applied for a permanent resident certificate in Canada, that the Canadian State authorities concerned have sought an order of custody qua said minor. Adverting to communication from Canadian authorities, it is submitted that such an order has to be produced on or before 21.06.2020 and it is also submitted that if that not be so, mother, i.e., applicant herein and said minor may run the risk of being deported.

10 It is under the aforesaid circumstances that instant application has been taken out as an emergent / urgent matter.

11 What is of significance is, for the purpose of this interim application, applicant/petitioner has filed a memo dated 01.06.2020, withdrawing allegations made against the respondent.

12 The memo reads as follows:

'MEMO FILED BY THE PETITIONER

The Petitioner humbly states in the above application no 1306 of 2020 she withdraws all allegations against the Respondent as the above application was filed by the Petitioner only to grant her sole custody of her daughter NIPUNA 10 years and protection of the person and property of her daughter Nipuna aged 10 years till the disposal of the main OP No 321 of 2020 on the basis of the application pending before the Canadian immigration for PERMANENT RESIDENCE STATUS AND ALL DOCUMENTS SUPPORTIVE OF IT IS SUBMITTED . Therefore the Petitioner (Miss, ASHWINI JAYAKUMAR) prays that this Hon'ble court in the best interest and welfare of her minor daughter Nipuna 10 years maybe pleased to grant the Petitioner the interim sole custody and protection of the person and property of her daughter Nipuna aged 10 years till the disposal of the main OP No 321 of 2020.
Dated at Canada signed by the Petitioner on this 1ST day JUNE 2020.'

13 Likewise, respondent has taken a very fair stand stating that he does not intend to get married and that welfare of said minor, i.e., his daughter is paramount. This is articulated in paragraph 10 of the counter affidavit which reads as follows :

'10.It is humbly submitted that I am 40 years old and presently stationed at Chennai living with my aged parents and have no intention of getting married and only pray for the welfare of my only daughter and her happiness. I will never cause any hindrance to my daughter's livelihood of a better and brighter future. At the same time I am forced to pray to this Hon'ble Court to permit me to talk to my daughter atleast once a week or fortnight through any means of telecommunication. And also pray to grant the right to visit my minor daughter during her visits to India. Being the biological father I should not be deprived or denied of the love and affection of my only daughter. This is a lawful right and I cannot be deprived of the same and pray for justice.'

14 It is agreed between applicant / petitioner and respondent that all other questions including (but not limited to) visitation rights, communication with said minor are left open to be decided in the main O.P. or in further interlocutory applications if taken out. This submission made by both sides is recorded for the purpose of clarity in future.

15 Prayer in instant application, i.e., A.No.1306 of 2020 reads as follows :

'26.I therefore pray that this honourable court may be pleased to grant interim custody of my minor daughter child Nipuna, aged about 10 years born on 22nd Oct 2009 to me

pending disposal of the main OP and pass such further or other orders as this Honourable court may deem fit and proper in the interest of justice.'

16 In the light of narrative / discussion thus far and owing to the trajectory this hearing has taken, above prayer in A.No.1306 of 2020 {instant application} is acceded to leaving open all questions (as indicated above) to be decided in the main O.P or in other interlocutory application/s that may be taken out by either of the parties.

17 Instant application, i.e., A.No.1306 of 2020 is ordered on above terms. There shall be no order as to costs.

09.06.2020

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M.SUNDAR, J.

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