

Reserved on : 05.02.2021

Pronounced on : 09.02.2021

A.No.223 of 2021
in O.P.No.598 of 2018

R.PONGIAPPAN, J.

Heard Mrs.K.Sumathi, learned counsel appearing for the applicant/father of the minor child and Mr.R.Sankarasubbu, learned counsel appearing for the respondent/mother of the minor child.

2. The contention raised by the learned counsel appearing for the applicant is that the applicant being the father of the minor child, would stay in India only upto April 2021. She would further submit that earlier, by order dated 18.12.2020, this Court permitted the applicant, to visit the minor child once in a week, as long as, he stays in India and the applicant/father is permitted to have the custody of the child from 10.00am to 3.00pm, on every Saturdays. Now, for the purpose of developing the bondage between the applicant and the minor child, the applicant seeks the relief to take the minor child viz., Swetha Sethuraman, born on 24.12.2012, for visitation,

from 10.00am on every Saturday and hand over her back to the respondent till 6.00pm on every Sunday. Only for such modification, the applicant is before this Court.

3. Opposing the claim made by the applicant, Mr.R.Sankarasubbu, learned counsel appearing for the respondent would contend that since already the applicant was granted with visitation rights, no such modification is necessary. He would specifically submit that at any event, the child should not be handed over to the applicant during night hours. He would further submit that during enquiry by this Court, the minor child refused to go with the applicant and therefore, against the wish of the minor child, granting permission as prayed for by the applicant, is unwarranted.

4. The further submission of the respondent's counsel is that till the disposal of main Original Petition, the respondent is not ready to give the child for night visits. Particularly, he made allegation against the applicant that the applicant is not having any knowledge about the

sensitivity of the minor child and therefore, allowing this application would affect the paramount interest of the minor child. Accordingly, he prayed to dismiss this application.

5. The submissions made by the learned counsel appearing on either side, are considered.

6. It is an admitted fact that before filing this application, the applicant herein has filed so many applications before this Court, only for the purpose of getting visitation rights and every application filed for the purpose of visitation has been allowed in his favour. In that course, while at the time of hearing the Original Petition, on 28.03.2019, this Court has passed the following orders:

“The father is permitted to take the child at 9.00am in the morning on Saturday 30.03.2019, near the TTD Temple at Venkatnarayana Road, T.Nagar. After visiting the tutulor deity, the child shall be restored to the mother on Sunday 31.03.2019 before 9.00pm, at the same venue.”

7. Therefore, the said order shows that already the minor child was handed over to the applicant for two days i.e from 09.00am on 30.03.2019 till 9.00pm of 31.03.2019. Therefore, it cannot be said that the

child is not accommodative with her father during night hours.

8. In respect to the willingness having by the child for going along with her father, this Court directed the respondent to produce the minor child on 04.02.2021. During the time of interaction, though the minor child refused to go along with her father/applicant, at the time when the applicant handed over a presentation, the child received the same eagerly with a smiling face, which shows that the child is having some bondage with her father. More than that, now the minor child is 8 years old and so she is capable of understanding things which are happening in and around her. Further, it is apparent that the applicant herein, after returning from UK, has made several attempts by way of filing so many applications only with a view to get the custody of minor child.

9. At this juncture, it is necessary to follow the law that custody should be decided on basis of responsibilities of parents rather than rights of parents. In a judgment in ***S.Anand @ Akash Vs. Vanitha Vijaya Kumar***

and another, reported in **2011 (2) CTC 736**, this Court has held as follows:

“31. It is quite unfortunate that the Courts still dabble with the age old concepts of custody and visitation rights. These terms emanate from a rights regime rather than a responsibilities regime. Today the emphasis has shifted from the regime where we were concerned with the rights of the parents over the child, to a regime where we should be concerned about the responsibilities of the parents towards the child. After the advent of the Children Act, 1989 in U.K., the old terminology of "custody", "guardianship" and "custodianship orders", have gone {see Cheshire and North's Private International Law-Thirteenth Edition-Lexis Nexis Butterworths Publication (page 857)}. Instead, Section 8 of the Act, uses the terms "residence" and "contact" (or access). Taking the law from the rights regime to the responsibilities regime, the Hague Conference concluded a Convention in 1996 known as "Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility for the Protection of Children". The provisions of this Convention lay emphasis on parental responsibility and it requires that the child should be treated as an individual and not simply as an appendage of its parents.”

10. In the same judgment, it is held that the attitude of the child in stubbornly refusing to go with the mother, would not constitute “intelligent preference”.

11. Herein also, by following the said procedure, this Court holds that the minor child is not having any stubborn attitude against her father and it shows the minor child is also having the willingness to go along with her father. Therefore, allowing this application is necessary to develop the bondage between the applicant and the minor child. More than that, the applicant himself admitted that he would stay in India only upto April 2021. Therefore, considering all the said circumstances, this Court is inclined to pass the following orders.

“(i) The child shall be handed over to the applicant on every Saturday at 10.00am at TTD Temple at Venkatnarayana Road, T.Nagar.

(ii). The applicant is permitted to take the child out and

the child shall be restored to the respondent/mother at the same place by 4.00pm on every Sunday.

(iii). If the child feels uncomfortable in the mean time, the applicant/father shall restore the child to the respondent/mother, forthwith.

12. The application is ordered, accordingly.

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09.02.2021

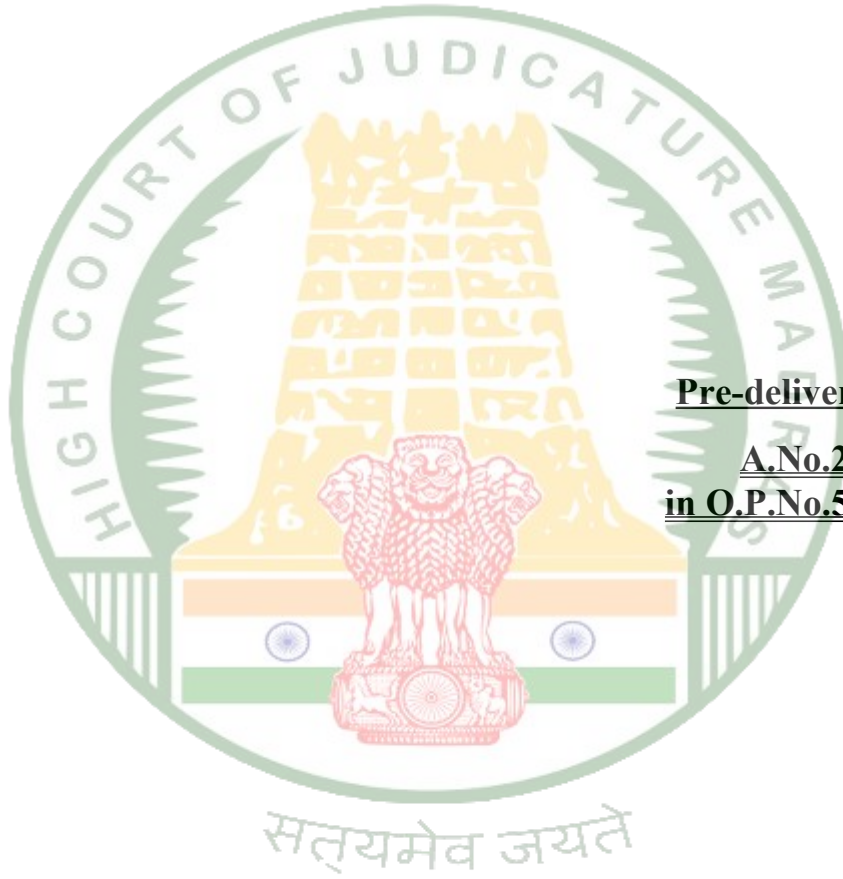


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Pre-delivery order in
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