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O.P.No.331 of 2016 and A.No.1825 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2022

PRONOUNCED ON : 13.04.2022

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

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ORDER

This petition has been filed under Section 7 (1) (b) 25 of the Guardians and Wards Act read with Order XXI of Madras High Court Rules 2 & 3 of the Original Side 1956 read with Clause XVII of the letters patent, praying to grant custody of the minor child Swarakshitha born on 12.08.2010 to the petitioner.

2. The case of the petitioner is that the petitioner married the respondent herein on 15.08.2008 in accordance with Hindu rites and customs and a girl baby was born on 12.08.2010. Thereafter, they settled in Singapore and both the petitioner and the respondent were working in



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Singapore. The mother of the petitioner who was working in central bank of India availed leave with break up for more than 6 months and took care of the baby and at the request of the respondent, the petitioner's mother had also accepted to resign her job to help the petitioner and the respondent to settle their career in Singapore and to take care of the baby without getting affected by both parents working. Since, the mother of the petitioner was given only short term / two months visa, she had to return to India and to wait for one month to get fresh Visa. During the period in between her travels, her father and maternal aunt who were also bank employees were availing leave came to Singapore and took care of the child and the alternate arrangements were carried out taking into account of the child's welfare since the respondent and the petitioner were very keen not to leave the baby grow with housemaid. In these circumstances, the respondent's father and mother visited Singapore in the year 2013 and they stayed for 1 ½ months. During that period, the respondent's parents tutored the respondent and find fault with the petitioner and fought with the petitioner for trivial issues and they continued the same even after they left Singapore. While so, on 03.09.2015, the respondent and the child were not found at home and when the petitioner called the respondent, he did not pick up her call and



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thereafter at about 8 'O' clock the respondent called the petitioner and told that he was leaving Singapore along with the child. Later the petitioner learned from the neighbour and also from school Principal of the minor child that the respondent told them that the petitioner is mentally not stable and so he is taking TC from the school and she should not be informed about the child's details and she should not be given any documents of the child. The petitioner's parents visited the respondent's house and tried to sort out the issues, but all went in vain. The respondent did not respond the petitioner's call. Thereafter, the respondent/husband did not allow the petitioner/wife to see her daughter and not allowed the daughter to meet the petitioner/wife.

3. After completing the pleadings, in order to substantiate the case of the petitioner, the petitioner herself was examined as P.W.1 and marked 6 documents as Exs.P.1 to P6 and no further witness was examined.

4. On the side of the respondent, the respondent was examined as R.W.1 and marked 12 documents as Exs.R1 to R12.



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5. The learned Counsel for the petitioner /mother would submit that the respondent/father had forcibly removed the custody of the child on 03.09.2015, in the middle of the Academic year from Singapore to Chennai without any information to the petitioner/ mother. Even on the said date, when the petitioner had called the respondent for which, he did not respond and later, he informed her that he had left to India with the child. Thereafter, the respondent father did not allow the petitioner/mother to see her daughter and even not allowed the daughter to meet the petitioner/mother. Being a female child, the petitioner/mother would be the best person to have the custody of the child and therefore, the child has to be handed over to the petitioner/mother.

6. The learned counsel for the respondent/father would submit that the respondent/father and his minor daughter could not bear the inhumanitarian attitude of the petitioner/mother and therefore, they left Singapore and came back to India. Now the respondent/father is living with his parents along with his in-laws. Further, the respondent/father after leaving the job in Singapore, has not gone to any other job and he has been spending his entire time with the minor daughter after she returns from



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school and he has been taking care of everything and the parents of the respondent are also taking care of the child. In fact, during the pendency of the petition, the petitioner/ mother had hit the mother of the respondent and the minor child due to which the child sustained injuries. However, the respondent father permitted to have a settlement talk for the interest of the minor daughter. Even during that time, she behaved unruly and also quarrelled with the mother of the respondent/father and hit her and also the child. Ex.R11 would clearly show the injury sustained by the minor child and the petitioner/mother is not at all acting on the interest and welfare of the minor child. Further, when they were in Singapore, the petitioner/mother never spent time either with the respondent or with the minor child and she had never taken care of the minor child and that the mother of the petitioner is the root cause for all these things. Even after the respondent left Singapore, the petitioner continued to work in Singapore till the end of 2016. Even after cancelling the rental agreement and the demand made by the owner of the house at Singapore to vacate the premises, the petitioner continued to reside in Singapore as she was fond of money and she never cared about the child. Only the respondent/father and his parents are taking very much care of the minor child. If the custody of the child is given to the



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petitioner mother, it will not benefit to the child and therefore, the petition has to be dismissed.

7. Heard both sides and perused the records.

8. The marriage invitation which is marked as Ex.P.1 shows that the marriage between the petitioner and the respondent held on 15.08.2008 and Ex.P2 shows that the minor child was born to the petitioner and the respondent on 12.08.2010. The petitioner/mother has made several allegations against the respondent and his parents and sister. After the delivery of the child, they went to Singapore and the child was admitted in a Nursery school in Pre-KG in Singapore. When they were in Singapore, the mother of the petitioner had gone to Singapore for several times. Even the parents of the respondent had also gone there once. Ex.R11 is the photographs of the minor child with injury.

9. According to the petitioner, both the petitioner and the respondent were working at Singapore and since, there was no one to take care of the child, the mother of the petitioner was taking care of the child and the respondent without informing the petitioner, took the child from Singapore to India. Further, the respondent has forced the petitioner to resign her job.



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However, since she did not complete the contract period of one year, she could not resign the job. Since, the child is a female, she needs the care and affection of the petitioner/mother and therefore, the child has to be handed over to the petitioner.

10. The respondent has also made several allegations against the petitioner about her behaviour and also against his mother-in-law. According to the respondent, the petitioner and her mother did not take care of the child and due to the unruly behaviour, the respondent bring the child back to India. However, the petitioner did not turn up immediately and thereafter, she came. However, she immediately left to Singapore and continued working there as she only fond of money and did not care for the child. Even till recently, she was working in Singapore. But the respondent left his Singapore job and taking care of the child along with his parents and that the child is happy and comfortable and she is studying in India in a reputed School. Further, the child does not like the company of the petitioner/mother because of her unruly and inhumanitarian behaviour not only against the respondent and in-laws but also towards the child. According to the respondent, the petitioner continues to claim that she needs her carrier focus



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and want to have carrier growth to make more money. Therefore, the petition has to be dismissed.

11. It is an admitted fact that both the petitioner and the respondent are husband and wife and they have got a female child. After the birth of the child, they settled in Singapore and both the petitioner and the respondent were working in Singapore. In the middle, the respondent along with the child came back to India and till recently, the petitioner was working in Singapore. Even the petitioner has not established that the respondent was acting against the welfare and interest of the child except making some allegations towards the respondent. Admittedly, the child is now with the respondent/father and the respondent is living with his parents and they all taking care of the minor child and she is also studying in a reputed Private School. The respondent has also established that he left the job in Singapore while leaving Singapore and till date, he has not taken any employment only to ensure the comfort of the child and he has also established that the petitioner continued to be in Singapore and came back only 5 months later. But the respondent/father who left from Singapore, even without job and with available source, taking care of the child.



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12. Therefore under these circumstances, this Court is of the opinion that a woman without anybody's help and by staying in Singapore, taking care of a female minor child is very difficult. Further, the petitioner has not established that the respondent is acting against the interest and welfare of the child. Therefore, the petitioner is not entitled to the relief sought for. Since the respondent father is also a natural guardian of the child and he is taking care of the child very well, there is no reason to grant exclusive custody of the child to the petitioner mother. Therefore, the Original Petition is dismissed. Consequently, connected application is closed.

13. However, the petitioner being the mother of the child is at liberty to visit the child as and when she feels, without disturbing the respondent or his parents and family members.

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List of the witness examined on the side of the petitioner;

P.W.1-Swetha Srivatsava

List of Exhibits marked on the side of the petitioner;

<i>Exhibit s</i>	<i>Nature of documents</i>
P1	The Original Marriage Invitation
P2	The computer generated copy of Birth Certificate of Minor Swarakshitha
P3	The true copy of the divorce petition filed by the respondent in H.M.O.P.No.4644 of 2015 before the V Additional Family Court
P4	The certified copy of the Counter filed by petitioner in H.M.O.P.No.4644 of 2015 before the V Additional Family Court.
P5	The true copy (Photo Copy) of the order dated 29.03.2019 made in A.No.2151 of 2016 in O.P.No.331 of 2016.
P6	The certified copy of the order dated 29.03.2019 made in A.No.2151 of 2016 in O.P.No.331 of 2016

List of witness examined on the side of respondent;

R.W.1- S.P.Srivatsava

List of Exhibits marked on the side of the respondent;



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<i>Exhibits</i>	<i>Nature of documents</i>
R1	The photocopies of E Visa and Tickets from the period 2012 to 2015
R2	The original photographs taken in all occasions
R3	The photocopy of email dated 27.02.2014 and photographs
R4	The photocopy of the flight ticket dated 06.06.2015
R5	The original written statement made by the petitioner's mother
R6	The photocopy of email sent by RW1 on 11.09.2015
R7	The photocopy of reply email dated 16.09.2015
R8	The photocopy of the reply email dated 19.09.2015
R9	The photocopy of the email sent by RW1 dated 23.11.2015
R10	The photocopy of email sent by the House owner dated 18.09.2015
R11	The original photographs of the child with injury
R12	The photocopy of email dated 27.05.2017

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**Pre-Delivery Order in
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