

**O.P.No. 744 of 2019**

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C.V.KARTHIKEYAN, J.

This order is to be read in conjunction with the earlier observation of the Court dated 06.09.2022.

2. The petition has been filed by the mother of Kushagra Rai, who was born on 11.09.2005 taking advantage of Sections 3, 7 to 10 and 25 of the Guardian and Wards Act VIII of 1890 read with the relevant provisions of the Original Side Rules of the Madras High Court, seeking custody of her son, Kushagra Rai.

3. As a matter of fact, the petition had been filed with respect to the elder son Rushat Rai, who was born on 27.11.2002 but pending the petition, he had attained the age of majority and consequently, capable of taking decision by himself. This Petition does not survive with respect to the elder son.

4. The respondent is the father and though served had taken a conscious decision not to appear before this Court. Taking note of such absence and after giving more sufficient opportunity for presence, the petitioner was invited to adduce evidence to



substantiate her case seeking permanent custody of her minor son. She adduced evidence as PW-1 and marked Ex.P-3 the birth certificate of her son. She had also filed her proof affidavit. It may not be relevant to point out the issues over which the petitioner and the respondent had discords in their marital life. The focus of this Court is more to find out whether the petitioner would be able to take care of the custody of her other son on permanent basis and whether she could be appointed as his guardian. The said decision has to be taken only with respect to the credentials of the mother and not with respect to any negative aspect touching the father or attitude of the father.

5. I am deeply conscious that the minor son has now crossed 17 years and custody if granted, would work on paper only for the next one year and after that, Kushagra Rai would be in a position to take decisions for himself. I am confident that when such decisions are taken, he would give due credit not only to his mother but also to the father and forge a healthy relationship as every son do with his father.

6. I am also confident that issues between his parents would not be perceived as a reflection of their attitude towards him.



7. I am equally confident that his elder brother would also be of the same opinion. This Court should ensure that a family remains a family and though there may be differences in the fundamental relationships between parents/children is not affected.

8. When the matter came up on 06.09.2022, the Court had examined the arguments advanced by the learned counsel Ms.K.Sumathi on behalf of the petitioners. It was urged by the learned counsel that the father /respondent was not in communication for the past nearly one year and more particularly from November 2021 when Kushagra Rai had to come over to Chennai to be with his mother. The boy had sent messages to the petitioner herein who had taken efforts to bring him back to Chennai and he has remained with the petitioner for last one year. He is continuing with his education in Chennai.

9. Let me not enter into a detailed discussion about the various aspects which had been stated in the proof affidavit. Let me confine myself to examine the suitability of the petitioner to be appointed as guardian of Kushagra Rai. To come to a more definite



conclusion of that particular aspect, I had requested that both of them to come over to the Court. They had presented themselves along with Ms. K.Sumathi learned counsel in the Chambers and the discussion took place for the better part of half an hour.

10. Even on the previous occasion, it had been informed that Kushagra Rai was interested in playing football. He stated that he had suffered a knee injuries which is now on the way to recovery and once again he can play football if he is fully recovered. He hopes that opportunities would be given for that avocation on completion of his school studies. He aim to do his graduation in Engineering in any of the Universities in United States of America. He stated that he was more interested in Mechanical Engineering and in Aeronautics Science. The Court sincerely wishes that his aim is achieved.

11. It must therefore be examined whether in the next one crucial year, the mother would be in a position to guide him towards fulfilling that aim. That was the focus of the discussion in the Chambers.



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12. In the discussions which I had my impressions were that the boy is very focused as any normal child of his age and as a matter of fact is conscious of the fact that the admissions to the Universities have now opened. The petitioner/mother had occasion to work in General Electricals in the USA. She is now in Chennai. I am confident that she could bear the financial requirements for the boy's further studies.

13. I also enquired about the injury which he had suffered and the petitioner /mother was able to explain that in detail. That showed her concern and interest in the well being of the boy.

14. There are no reasons to compel me to hold otherwise than to direct the petition to be allowed.

15. Unfortunately the father has abstained and has made an exit from the family. It is hoped that at some time he would make a quiet entry. The boy stated that he has not been in communication with the father /respondent from November 2019 when he came over to Chennai. He is however in touch with his elder brother, who is now in Hong Kong for his higher studies.



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C.V.KARTHIKEYAN, J.

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16. I would therefore allow the petition and grant custody rights to the petitioner herein for her younger son Kushagra Rai and also appoint her as his guardian till he attains the age of majority.

17. Accordingly, this Original Petition is allowed.

19.09.2022

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