



WEB COPY

A.No.5394 of 20



A.No.5394 of 2022
in
O.P.No.423 of 2020

C.V.KARTHIKEYAN,J..

The Hon'ble Division Bench of this Court had passed Judgment on 13.06.2022 in O.S.A.No.152/2022, which was filed, challenging the dismissal order passed by a learned Single Judge of this Court in the present Original Petition dated 26.04.2022. The petitioner in the Original Petition was the appellant in O.S.A.No.152/2022.

2. The Hon'ble Division Bench, after allowing the said Original Side Appeal, had stated that the matter should be remitted back to the Single Judge, to decide the matter afresh, after affording the parties to let it oral and documentary evidence. It was also stated that the Single Judge should dispose of the Original Petition as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of the Judgment.

3. This Judgment had been filed before this Court at least on 18.08.2022. On 18.08.2022, my learned predecessor had directed the parties to appear before the learned Master on 05.09.2022, for recording of evidence.



4. Taking umbrage of the fact that the petitioner in the Original Petition had not come forward to tender evidence, the respondent/mother had filed the present application No.5394/2022 seeking to close the evidence on the side of the petitioner in the Original Petition and pass final orders.

5. But, that may not be possible without granting permission to both the petitioner and the respondent to tender evidence.

6. Therefore, since the Original Petition has been filed seeking custody and guardianship, and the respondent claims that law recognises her to be the guardian of the minor children, since the petitioner had not come forward to tender evidence in spite of several opportunities granted by the learned Master, and the time frame fixed by the Hon'ble Division Bench has also lapsed, which time frame was fixed on an appeal filed by the petitioner in the Original Petition, I would direct the respondent herein to let in evidence in chief before the learned Master. The petitioner in the Original Petition may cross examine the respondent and thereafter, if further evidence is required, the petitioner may tender evidence and can subject himself for cross examination.

7. This is a round about way, but if the welfare of the child is to be examined and to give a quick quietus to the entire issue this procedure is



adopted. The Original Petition is not an adversarial litigation but, an examination to determine who is the best between the petitioner and the respondent to be appointed as guardian and to whom permanent custody of the child can be granted.

8. The respondent in the Original Petition is therefore directed to be present before the learned Master on 07.12.2022. The learned Master may devote specific attention to the progress of this case since there is a direction by the Hon'ble Division Bench to dispose the case within a specified period. Evidence may be recorded on a day to day basis and even if that is not possible, a maximum of five working days alone can be granted in between two adjournments.

9. If that procedure is followed, the trial can be controlled by the learned Master and would come to a conclusion at the earliest.

10. With the said observations, the application stands disposed of. The Original Petition to be listed before the learned Master on 07.12.2022.

29.11.2022

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