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Tr.C.M.P.No.1273 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Tr.C.M.P.No.1273 of 2022

and

C.M.P.No.21495 of 2022

Arunambiga

... Petitioner

Vs.

Er.Aswanth Ram

... Respondent

Prayer: Transfer CMP is filed under Section 24 of the Civil Procedure Code, to withdraw and transfer of G.W.O.P. No.214 of 2022, from the file of the Family Court, Karur, to be tried and heard along with HMOP No.459 of 2022, to the file of the Family Court, Salem.

For Petitioner : Mrs.R.Poornima

For Respondent : Mr.K.Ashok Kumar



ORDER

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The marriage between the petitioner and the respondent was solemnised on 26.10.2020 as per the Hindu rites and customs. One female child was born from out of the wedlock between the petitioner and the respondent and now she is one year old. The child is in the custody of the petitioner/mother who is pursuing her higher studies in medical education in the State of Orissa.

2. The respondent filed GWOP No. 214 of 2022 for the custody of her one-year-old child before the Family Court at Karur. The child is residing either along with the grandparents at Salem, or at Orissa along with the petitioner/mother. The GWOP is not entertainable on the file of the Family Court at Karur, in view of Section 9 of the Guardian and Wards Act. More so, the petitioner is pursuing her higher education and is not an earning member. Thus, the child is to be maintained necessarily with the assistance of the maternal grandparents.

3. That apart, the respondent is also gainfully employed and working at Karur. He is working in IT Sector and earning a good monthly income.



While so, it is the duty of the respondent to maintain his own one-year-old daughter. The learned counsel for the petitioner states that as of now, the respondent is not paying any maintenance even for the child and the entire expenses are made out by the petitioner with the help of her parents.

4. Parents are duty bound to maintain their minor children. The one year old child has to be taken care of by the father, who is the natural guardian and an earning member. The petitioner/wife is unemployed and therefore, the respondent/father has to maintain the child.

5. For grant of Interim Maintenance to the minor children, no application is required. Even in the absence of any application, the Courts are bound to consider grant of Interim Maintenance in the interest of the minor children and to protect their livelihood, which is the Fundamental Right to life under Article 21 of the Constitution of India.

6. Remedy of maintenance is the measure of social justice as envisaged under the Constitution to prevent the wife and the children from falling into destitution and vagrancy. Preamble and Article 39 and 15(3) of



the Indian Constitution envisage social justice and positive State action for empowerment of women and children.

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7. Many citizen in our Great Nation, on account of certain matrimonial issues, never think of filing a formal petition for maintenance even to the minor children. In such circumstances, Courts are expected to consider and grant Interim Maintenance to protect the livelihood of the minor children during the pendency of the matrimonial disputes between the husband and wife.

8. Court must act as a custodian of minor children, when such children are neglected by either of the parents. When the mother of the child is unemployed and living along with her parents, mostly is the situation prevailing in our country, Grandparents are burdened with the minor children and the fathers are attempting to escape from the clutches of liability, which cannot be tolerated by the Courts. The father being the natural guardian under the Guardian and Wards Act, is bound to maintain his minor daughter or son by paying maintenance, even in such circumstances, where there is a matrimonial dispute or for visitation right.



Such rights are to be established considering various other facts and circumstances. Whether the father or mother is entitled for a visitation is to be considered based on the facts and circumstances of each case and not allowing the father or mother to have visitation right will not be a ground to deny Interim Maintenance to the minor child during the pendency of the matrimonial disputes.

9. Considering the facts and circumstances, the respondent is directed to pay an interim maintenance of Rupees Ten Thousand only (Rs.10,000/-) per month to the minor child and the petitioner is at liberty to file an appropriate petition for fixing regular maintenance in accordance with the law and by approaching the competent Court. Interim maintenance is granted to protect the livelihood of the child since the mother is not gainfully employed. The respondent, being the father, his duty to pay the interim maintenance which is construed as livelihood ensured under Article 21 of the Constitution of India.

10. The said interim maintenance amount of Rs.10,000/- is to be paid to the petitioner on or before the 7th day of every calendar month, till such time the final maintenance amount is fixed by the competent Court or if the



re-union takes place between the husband and the wife.

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11.The interim maintenance is directed to be paid from December 2022 onwards, towards the petitioner in her account viz.,

Account holder name : Arunambiga

Account. No. : 31280334850

IFSC Code : SBIM0000913

12. As far as the GWOP is concerned, the maintenance of the child is to be placed to institute case, and accordingly, GWOP No.214 of 2022, pending on the file of Family Court, Karur, stands transferred to the Family Court, Salem, to be tried along with HMOP No.459 of 2022.

13. Accordingly, the transfer petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed

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Index : Yes
Internet : Yes
Speaking order



To

1. Family Court, Karur

2. Family Court, Salem

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S.M.SUBRAMANIAM, J.

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