



W.P(MD)No.5652 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5652 of 2022

K.Mohanapriya

... Petitioner

Vs.

1.The Regional Passport Officer,
Regional Passport Office,
Race Course Road,
Madurai – 625 002.

2.The Passport Granting/Issuing Officer,
Passport Seva Kendra, Cleart Plaza,
Melakkal Main Road,
Kochadi, Madurai – 625 016.

3.Mani Prakash
*(R3 is impleaded vide order dated 06.07.2022
in W.M.P.(MD)No.5245 of 2022 in 5652 of
2022 by GRSJ)*

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned communication order dated 24.04.2022 on the file of the 2nd respondent in his proceedings File No.MD1063982457522 and quash the same as illegal and consequently direct the respondents to issue



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the passport to the petitioner's minor son named Prajan Mohanapriya as expeditiously as possible since the period of passport application will be expired on 25.05.2022.

For Petitioner : Mr.T.Chandrasekaran

For Respondents : Mrs.L.Victoria Gowri,
Assistant Solicitor General for R1 & R2
No appearance for R3

ORDER

Heard the learned counsel for the writ petitioner and the learned Assistant Solicitor General for the respondents 1 and 2. Though the biological father of the child had been impleaded as the third respondent and his name has also been printed in the cause list, he has not chosen to enter appearance.

2.The petitioner got married to the third respondent/Mani Prakash on 23.01.2013. A male child was born through the wedlock on 06.08.2016. The child has been named as Prajan.M. The third respondent filed H.M.O.P.No.85 of 2017 before Sub Court, Dindigul for dissolving the marriage. An ex-parte decree was passed. Later, the petitioner is said to have filed a petition for



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restoration. It was also allowed. O.P.No.152 of 2019 was disposed on

12.10.2020 in the following terms:

“In the result, this petition is allowed for Judicial Separation for one year and the petitioner is directed to pay maintenance amount of Rs.5,000/- per month (Rupees five thousand only) to the respondent and to pay Rs.5,000/- per month (Rupees five thousand only) to the minor child Prajan directly before 10th day of every English Calender month from ensuing month of November 2020 onwards. Further, being a father of the minor child, Prajan, the petitioner is entitled to visit his child. Therefore, the respondent should allow to see his minor child Prajan once in a week, on every Sunday morning at 10.00 a.m to 02.00 p.m for one year commencing from November 2020 onwards in a common place which is to be decided by both parties. Considering the nature of case, no order as to costs.”

3.It is seen that the third respondent also filed G.W.O.P.No.53 of 2019 before Principal District Court, Dindigul. But the said G.W.O.P. was dismissed on 12.10.2020.

4.The petitioner's sister is based in USA. The petitioner wants to visit her along with the child. When the petitioner moved the first respondent for



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issuance of passport for her child, the first respondent insisted on obtaining consent from the biological father also. Since the third respondent was not willing to give his consent, the present writ petition came to be filed.

5.The Passport Seva of Ministry of External Affairs, Government of India has issued brochure containing frequently asked questions and answers thereto. Question Nos.4 and 8 are as follows:-

“Q4: Single separated parent

A : In case one married parent has terminated the relationship with the other parent without a formal divorce, declaration in the form of Annexure 'C' may be accepted from the parent having the custody of the child.

Q8: Annexure 'C' and 'D': Their applicability and differentiation:

A : 1.Annexure 'C': This declaration is applicable in cases where for any reason married parent applying for passport for the minor child is not able to obtain the consent of the other parent for obtaining passport for the child. The reasons also include-wilful denial of consent by the estranged parent; desertion; absence of communication between the divorced/not divorced but separated parents, ex-parte divorce proceedings etc., but exclude cases where both the parents are involved in divorce proceedings in which case, the permission of the court or consent of both the parties in Annex 'D' is required.



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6.The official respondents cannot be faulted for insisting on obtaining consent from the third respondent. But the petitioner cannot be left without remedy, when the third respondent does not want to give consent. Now it is for the Court to take a call in the matter. It is seen that the child is with the petitioner. GWOP filed by the third respondent has been dismissed. It is true that the third respondent was given visitation rights. But the period had expired in November 2020 itself. In these circumstances, interest of justice requires that the petitioner's child/Prajan.M is issued with passport. While I am not setting aside the order impugned in the writ petition, I direct the official respondents to issue passport to the petitioner's child namely, Prajan.M by indicating the mother as the single parent of the child within a period of three weeks from the date of receipt of a copy of this order subject to fulfilment of the usual formalities.

7.The writ petition is allowed on these terms. No costs.

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Index : Yes / No
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G.R.SWAMINATHAN, J.

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