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O.P.No.28 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2023

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

O.P.No.28 of 2023

Najma Gulam Mohamed

... Petitioner

VS

Mohamad Yousoof

...Respondent

Prayer: Original Petition filed under Sections 3,7,8,9,10 & 25 of Guardians and Wards Act, 1890 r/w Order XXI Rule 2 & 3 of Original Side Rules r/w Clause 17 of Letters Patent praying for

(a) that the petitioner i.e., Najma Gulam Mohamed may be granted permanent custody of the Muslim minor female child, named Nausheen Mohamad born on 15.03.2017 and currently aged about 5 years

(b) that the petitioner be appointed as the Guardian of the person of the Muslim minor female child named-Nausheen Mohamad born on 15.03.2017 and currently aged about 5 years

(c) that this Hon'ble court may pass such further or any orders as this Hon'ble Court may deem fit

For Petitioner : Ms.Rohini Ravikumar

For Respondent : Mr.K.Shankar



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ORDER

The petition is filed by the mother of the minor child for a declaration that she is the sole guardian of the child and also seeking permanent custody.

2. The case of the petitioner is that the petitioner is mother and the respondent is father of the minor child Nausheen Mohamad. The marriage between the petitioner and the respondent was solemnized on 04.01.2014 at Anaikhar Hajee Abdul Shukoor Auditorium, Royapettah, Chennai in accordance with Islamic custom, rites and rituals and the marriage was duly registered with the Office of District Registrar, Chennai Central (Joint 1). Thereafter, they set up their matrimonial home at T-Nagar, Chennai. Out of the wedlock a female child named above was born and at present she is five years old.

3. Due to difference of opinion that arose between the parties they were living separately from 30.09.2019. They have also entered in to a Mubarat Agreement on 12.08.2021 for dissolution of marriage and as per their religious customs the iddat period has also completed and they had applied for a mutual divorce petition before the Family Court Chennai in O.S.No.22/2022 and the same was dissolved on 31.05.2022.

4. It is further submitted that in the Mubarat agreement which they entered the

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petitioner and the respondent have agreed that all expenses regarding the maintenance of the child shall be undertaken by the petitioner and the respondent has no obligation in that regard. Further the respondent has also agreed that the petitioner will be sole guardian and he has also waived of his custody, visitation and other rights. With regard to processing the statutory documents of the child, such as Visa, Passport, Pan Card etc., the petitioner will have rights and for which the respondent has no objection. The petitioner shall also have right to open bank accounts and maintain the day to day accounts, of the child without obtaining prior permission of the respondent. The petitioner further states that the respondent shall not object the petitioner to take the minor outside the country for work, education, medical or for any other purposes.

5. The petitioner has been examined as P.W.1. She has produced the birth certificate of the minor child as Ex.P1. A perusal of Ex.P1 shows the name of the petitioner and respondent as the parents of the child. The Mubarat Nama dated 12.08.2021, entered between the petitioner and the respondent is produced as Ex.P2. The order dated 31.05.2022, granting dissolution of marriage solemnized between the petitioner and the respondent passed in O.S.No.22 of 2022, is produced as Ex.P4. The Learned Counsel for the respondent had submitted that the respondent does not propose to file an counter in this Original petition, and when the evidence was



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recorded there was no representation on behalf of the respondent. The Learned master has also not controverted the documents marked on behalf of the petitioner before this court. Hence, the Learned Master closed the evidence and posted the matter before this court for orders.

6. Considering the facts and circumstances of the case and a perusal of the oral and documentary evidences, this Court is of the opinion that the petitioner/mother is a better person to be a guardian for the minor child as that the respondent has waived of his rights as in the Mubarat Agreement. Therefore, the petitioner is entitled for the relief sought for in this petition.

7. Accordingly this Original Petition is allowed. The petitioner mother is appointed as the sole guardian of the person of the minor female child Nausheen Mohamad. The petitioner is also granted with the permanent custody of the minor child.

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Index :Yes/No

Internet: Yes/ No

Petitioner's witness:

P.W.1 – Mrs.Najma Gulam Mohamed

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<i>Exhibits</i>	<i>Documents</i>
Ex.P1	The photocopy of the birth certificate of Baby Nausheen Mohamad
Ex.P2	The photocopy of the Mubarat Agreement dated 12.08.2021
Ex.P3	The office copy of the plaint in O.S.No.22/2022 on the file of the Family Court, Chennai
Ex.P4	The photocopy of the order dated 31.05.2022 passed in O.S.No.22/2022 by the file of Hon'ble VII Additional Family Court, Chennai
Ex.P5	The photocopy of the petitioner's driving license

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