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W.P.No.34859 of 2015 &
M.P.No.1 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.34859 of 2015 &
M.P.No.1 of 2015

Shringar Mascarenhas

... Petitioner

Vs

1.The Regional Passport Officer,
Rayala Towers 2 & 3 - IV Floor,
Old No.785, New No.158, Anna Salai,
Chennai - 600 002.

2.The Chief Immigration Officer,
Ministry of External Affairs,
Sasthri Bhavan, No.26, Haddows Road,
Chennai - 600 006.

3.The Asst. Commissioner of Police,
SRMC Range, Chennai - 600 116.

4.Gayathri Muthu Vaidyanathan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Mandamus, directing the respondents 1 to 3 to take action in respect of Passport No.L8010287 - file No.MA1077567864314 of minor Tania Mascarenhas under the provisions of the Passports Act.



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For Petitioner : Mr.D.Krishnamoorthy

For Respondents : Mr.R.P.Pragadish
Central Government Standing Counsel
- R1 & R2

Mr.Veda Bagath Singh
Special Government Pleader - R3

Mr.S.S.Rajesh - R4

ORDER

This writ petition has been filed seeking a mandamus directing the Regional Passport Officer/R1, the Chief Immigration Officer/R2 and the Assistant Commissioner of Police/R3 respectively to take action in respect of Passport No.L8010287 - File No.MA1077567864314 relating to minor Tania Mascarenhas under the provisions of the Passports Act, 1967.

2.Having heard learned counsel, I am of the considered view that nothing survives as on date. The petitioner and R4 were married and proceedings were filed in O.P.No.4379 of 2010 seeking a decree of divorce by mutual consent. The Original Petition was allowed by the Family Court, Chennai on 09.08.2011. The terms of mutual consent, interalia, included that custody of minor daughter born on 03.03.2008 would be with R4. Visitation rights were provided to the petitioner.



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3. Various allegations are setting out in the present writ petition which appear to indicate an attempt by the petitioner for a modification of the terms of consent. In any event, the allegations bear no relevance as on date, in light of an order having been passed by this Court in C.R.P.Nos.699 and 700 of 2018 challenging order dated 31.08.2017 passed by the V Additional Family Court, Chennai. Vide order dated 11.07.2018, this Court has captured the history of the litigation inter se the parties in the family court, dismissing the Revision Petition in the following terms:

“5. Heard the rival submissions made on both sides and perused the available records.

6. It is not in dispute that the petitioner and respondent filed OP for consent divorce and obtained a consent decree. On a perusal of the order it reveals that the custody right has been given to the respondent and visitation right has been given to the petitioner. Now the main grievance of the revision petitioner is that before leaving abroad with the child, the respondent has to obtain written consent from the petitioner. Whereas, the respondent was posted at Singapore, she took the child with her without obtaining any permission from the petitioner before taking the child to Singapore, knowing fully well she was staying at Singapore for quite long period. Due to the act of the respondent in taking the child to Singapore for long period will affect the visitation rights given to the petitioner in the consent decree for divorce.

7. The trial Court dismissed the applications, considering the evidence given by the revision petitioner in the applications. The petitioner was examined as PW1 and Exs.P1 to P13 were marked on the side of the petitioner and



Exs.R1 to R3 were marked on the side of the respondent. The trial Court rightly pointed out that the revision petitioner admitted that the respondent is going to take the child to the Singapore along with her. Since, the child being a female child, the custody of the child is given to the respondent, in the consent decree also it is clearly stated that the respondent can take the child to abroad by getting written consent from the petitioner. According to the respondent, once the petitioner visited Singapore, during his visit the Singapore police took cognizance of his unruly behaviour and threatening attitude and warned the petitioner, the Indian Embassy intervened and advised the petitioner not to intimidate the child and the respondent. It is no doubt, the parties got mutual consent divorce, one of the conditions is that the respondent while going to abroad she can take the child with her. Certainly, the visitation right will be affected, the petitioner being the father of the child, if he wants to see the child, he can go to the place where the child is residing with the respondent. The petitioner in his evidence clearly stated that the respondent/wife informed that she is going to Singapore along with the child, now he cannot take a different stand that no written consent was obtained from him by the respondent for taking the child to Singapore.

8. Even as per the consent decree, being a female child, the custody of the child remains with the respondent/mother. The petitioner being a father of the child can go to the place and visit the child where she resides. Therefore, there is no disobedience of the decree on the part of the respondent in taking the child to the Singapore along with her. The trial Court rightly discussed the oral and documentary evidences and given valid reasons for dismissing the petitions filed by the petitioner.

9. The custody of the child was given to the respondent, there is no impediment to the petitioner to go to Singapore for visiting his daughter. In consent decree also it is mentioned during the entire length of assignment the respondent can take the child with her, the petitioner has



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also agreed to give his written consent. In the cross examination also PW1/petitioner deposed that his wife allowed to see the minor child by creating a Skype ID for his daughter for video chat, which shows that the petitioner is chatting with his daughter.

10. The learned counsel for the petitioner vehemently contended that by creating Skype ID for video chat is not visitation right, the visitation should be in physical and not through the video, taking advantage of the technological developments the visitation right can be exercised through Skype ID also, if the child is in the foreign countries. If at all, the petitioner is not satisfied and if he wants to exercise physical visitation of his daughter, he can very well go to Singapore and visit the child. There is no necessity arises to modify the consent decree for divorce. Furthermore, the mutual consent decree cannot be modified unilaterally. Now the respondent is at Singapore due to her avocation and age of the minor child is more than 10 years at this age, in the interest and welfare of the minor child custody of the female child should be with the mother until any material to show that the mother is acting against the interest and welfare of the minor child. Admittedly, in this case there is no allegation against the respondent, she is acting against the interest and welfare of the child and no materials has been placed before the Family Court in that aspects. Under the said circumstances, this Court finds there is no illegality or infirmity in the order passed by the Family Court and the orders passed by the Family Court does not warrant any interference and finds no merits in the revisions filed by the petitioner.

11. In the result, the both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

4. The above order has attained finality. Counter affidavits have been filed by R1 & R3 which reveal the position that, as on date of those



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affidavits, the minor daughter was in Singapore with R4. They also refer to a recent application for renewal of the passport of the minor that has been processed and granted by the official respondent in light of Gazette Notification No.G.S.R.1171(E) dated 23.12.2016. Learned counsel for R4 orally states in the course of the hearing that the child and mother are presently residing in Bengaluru.

5.In light of the discussion as set out above, mandamus as sought for is not liable to be granted and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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11.01.2023

Index : Yes / No
Speaking Order

To

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Dr.ANITA SUMANTH, J.

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