



O.P.No.187 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07.07.2023**

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

O.P.No. 187 of 2016

Mohanbabu.D

... Petitioner

Vs.

Deepthi Saxsena

... Respondent

Original Petition is filed under Section 7-10 & 25 of the Guardian and Wards Act of 1890 read with Order XXI, Rule 2 & 3 of Original Side Rules:

- i) to appoint the petitioner as the legal guardian of the person of his minor daughter by name Lavina (1 year);
- ii) to grant custody of the Minor child Lavina and
- iii) award cost of the petitioner against the respondent.

For Petitioner : Mr.P.Uma

For Respondent : Mr.T.Kamalakannan

ORDER

This petition has been filed for seeking custody of the minor child Lavina by appointing the petitioner as the legal guardian.



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2. The facts of the case in brief:

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The petitioner and the respondent are the father and mother of the minor child.. The marriage between the petitioner and the respondent took place on 14.05.2013 and out of their wedlock a female child by name Lavina was born on 04.12.2014. After marriage, the couple started to live together at Chennai. As there was misunderstanding between the couple, they did not lead a happy married life. The respondent wife delivered the baby at Bhopal where she joined for a course on German language. During the month of February, 2015 the respondent came back to Chennai and lived with her parents and went back to Bhopal. Again she came back to Chennai during the month of May 2015 and started to live with the parents. Suddenly in the month of August, 2015, the respondent sent a Court notice for divorce by stating that the petitioner is having the child. The minor daughter is now in the custody of the respondent at Chennai. Whenever the petitioner tries to visit the child, the respondent prevented the petitioner from seeing the minor daughter. Due to which the petitioner suffered serious mental and psychological upset. The petitioner is a well educated and responsible person and he is financially capable to maintain the minor daughter. Hence he is willing to be the guardian of the minor daughter and filed this petition.



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3. The petitioner was examined as P.W.1 and had stated that the respondent never allowed him to visit the child. He further submitted that the respondent was earlier working at Mumbai and now shifted to Delhi and she is not living with the child. He has further stated that the petitioner is earning Rs.4,00,000/- per year and he can maintain the child well if the custody of the child is handed over to him.

4. Though the respondent appeared through counsel, she did not participate in the trial.

5. The learned counsel for the respondent submitted that the respondent is working at Delhi and the child who is 9 years old is now in the custody of the grandmother at Bhopal. It is further stated that the child is going to school; there is strong marital dispute between the couple and the respondent wife have filed an application for divorce before the Family Court, Bhopal.

6. Even from the evidence of the petitioner it is seen that the child is in the custody of the mother from her birth. Even though the respondent happened to work at several places, the child continues to stay with her



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grandmother at Bhopal, however under the custody of her mother. The 9 year old child who continues to live with her mother and grandmother cannot find it comfortable to shift to her father's place at Chennai all of a sudden and to live with him by losing the company and comfort of her mother.

7. Even though the petitioner is a person who is capable of maintaining the daughter, in the interest of the child and considering her age and circumstances, it will not be appropriate to hand over her custody to the petitioner. However the petitioner can have visitation rights depending upon the involvement of the child.

8. The petitioner is permitted to visit the child once in a month preferably during Saturday or Sunday of second week of every month between 10.00 a.m. and 01.00 p.m. at the residence of the respondent after giving prior notice of his visit to the respondent. However the said date and time depends upon the convenience of the parties and the child. If the child is reluctant and feels uncomfortable to meet the petitioner, the petitioner has to be patient and try to develop interaction with the child slowly by understanding the psychology of the child. The parties are at liberty to seek



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any modification if the present arrangement does not go well.

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9. With the above observations, this Original Petition is disposed of.

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bkn

Internet :Yes/No

Speaking: Non speaking



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R.N.MANJULA, J.

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