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A.No.3076 of 2023
in O.P.Nos.280 & 434 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2023

PRONOUNCED ON : 29.08.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

A.No.3076 of 2023
in O.P.Nos.280 & 434 of 2023

Venkatasubramanian Ravichandran ... Applicant / Petitioner

versus

A.Nithya ... Respondent / Respondent

PRAYER: Application filed under Order XIV Rule 8 of Original Side Rules read with Section 12 of the Guardian and Wards Act, praying to grant interim custody of the applicant's daughter, Varsha Venkat, aged about 12 years and his son, Raghav Venkat aged about 2 years who are now under the custody of the respondent by directing the respondent to hand over custody to his children to him.

For Applicant : M/s.Thenkodi Annam Nelson

For Respondent : M/s.Rohini Ravikumar



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ORDER

Application No.3076 of 2023 has been filed by the applicant / petitioner, who is the father of the minor child seeking permission to grant interim custody of the minor children Varsha Venkat aged 12 years and Raghav Venkat aged 2 years. He has filed the Original Petition seeking permanent custody and guardianship of the children.

2. Heard the learned counsels for the applicant and the respondent and perused the materials available on record.

Application in brief:-

3. The applicant / petitioner is the father of the children and the respondent is their mother; the marriage between the petitioner and the respondent is a love cum arranged marriage and at the time of marriage, the couples were living at U.S.A.; a female child namely Varsha Venkat and another child Raghav Venkat were born to the couples on 13.05.2011 and 18.01.2021 respectively in U.S.A; since there were some misunderstanding between the couples, they got separated.



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3.1. The brother of the respondent intervened and suggested the couples to get separated for one year and understand where their relationship goes; as per the understanding the petitioner would travel to India and see the children; the respondent along with the children left to India on 13.06.2022; the petitioner suffered loneliness and he could converse with the children only through whatsapp; the minor daughter Varsha was admitted in International School at Sholinganallur and the petitioner was making frequent visits to India to see the children: the minor child Varsha was not comfortable as how she was before with the petitioner. In the best interest of the children they should be sent back to United States with the father. The children by their birth all U.S. citizens and hence they can have all the benefits extended to the U.S. citizens in education and their future will be great if they are allowed to be studied there.

Counter in brief:-

4. The respondent has filed the counter for the main Petition and submitted to treat the same as the counter for the Application also and the brief of it is as below:-



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4.1. The respondent is residing at Chennai along with her two children and she is employed as a Consultant at Deloitte, India from November 2022; as she is working from home she is spending quality time with the children; the respondent had opted to resolve the issues between herself and the petitioner by taking counselling; however the petitioner suddenly changed his mind and wants to shift to U.S.A. with the children; since the children have settled down well in India a suggestion was made to the petitioner that he could also shift to Chennai; his aged parents, wife and children are residing in India but he refused to shift to India; the attitude of the petitioner would only show that he did not have any welfare of the children in his mind.

4.2. The respondent has no interest in settling at U.S.A. but she had applied for green card only considering the future aspects; the respondent was suffering from thyroid cancer and that was the major drawback of her life; however she subsequently recovered and the petitioner demanded even the treatment expenses from her parents; the respondent threatened the petitioner to leave house with the children; the petitioner continuously abused the respondent to leave the house and the respondent alone holds the



family together for the past 12 years at the costs of her emotional and physical health; the respondent's quality of life in Chennai is much better as she can get lot of collateral support.

4.3. The petitioner would make himself absent during important occasions of the children like their birthdays and school programmes; during that time the petitioner would go to play cricket and any other places of his choice; the petitioner used to feed the minor daughter with junk food which is detrimental to her health; the concerns of the respondent is only the welfare of the child and that was misunderstood by the petitioner who is egoistic; the petitioner instead of praying any visitation rights as an interim relief has sought a final relief in the interim application; it is false to state that the respondent had taken away the children during video calls with his parents; it is not true that the petitioner had taken full care of the minor children at any point of time; the respondent was going through immense distress due to the matrimonial discord; but was very particular about the health of the children and was keen in providing healthy and nutritious food to her children; she is also keen on deterring her children from being addicted to unhealthy lifestyle and junk food.



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4.4. Despite the petitioner expected to get separated from the respondent he was not willing to provide any maintenance to her and the children; after a discussion with the help of the brother of the respondent and friends, the petitioner had agreed to pay \$4000 USD per month; from April 2023 he has stopped making any payment for the respondent or for the children towards their maintenance; the respondent has requested the petitioner to seek a transfer and move to India, but the petitioner did not show any interest; he used to visit India once in every 60 days and take the children for 10 to 15 days to his parent's house and return them and for that the respondent never objected; both the children long for each other's company and hence they cannot be separated.

4.5. The petitioner had filed the petition by twisting the facts; the respondent had paid Rs.6 lakhs out of her own funds to secure admission in a upscale International Board School at Chennai; the minor son is 2 years and is suffering from speech disabilities; the minor daughter has been performing well in School; however the petitioner went to talk to the school authorities and informed them about the marital issues between himself and



the respondent; the petitioner can rejoice all the moments with the minor children provided that he rejoins the society of the respondent in Chennai.

4.6. It is not true that only United States provides better opportunities for the children; the minor daughter is fond of Indian atmosphere and has made significant efforts in making friends and socialising; she also feels a sense of belonging in her school which is an International type of School in Chennai; the petitioner only makes her to feel uncomfortable by frequently interfering, constantly talking with her teachers and being harsh to the children during video calls; the respondent wishes that the children should grow in an environment and in a company of demographically similar individuals and elders, which is healthier for the children.

4.7. The child needs a consistent support system, love, hope and encouragement from both the parents; the petitioner's cunningness and illicit intention of moving the minor children away from the jurisdiction should not be encouraged; the respondent never denied the petitioner's right to access to the children; it is not true to state that the children has been



brainwashed and tutored by the respondent; the minor girl is 12 years and will soon hit puberty and during this phase of her life, it is always good for her to be with her mother.

4.8. Apart from studies, the minor daughter goes for music, basketball and dance classes and she had adapted well. The petitioner is in touring job and he has to depend on some one to take care of the children; the parents of the petitioner cannot stay long in U.S.A. as they are also old; their daughter in Mumbai is also dependant on them; it can not be a feasible arrangement to send the minor daughter along with the petitioner to U.S.A. and hence the application should be dismissed.

Submissions of the applicant:-

5. The learned counsel for the applicant / petitioner submitted that the children would get good education at U.S.A. and in the welfare of the children and their better future, the applicant had filed this application to get the temporary interim custody of the children. It is further submitted by the learned counsel for the applicant that the applicant had arranged a seat for this academic year at U.S.A. and the minor daughter Varsha would find it



comfortable to study at U.S.A. by being under the father's custody. It is suggested by the applicant that the mother can interact with the children through video conference and she can also visit the children whenever she comes to U.S.A. or bring the children to India whenever possible. It is further submitted that the petitioner is willing to share the parental responsibility and hence the daughter atleast should be sent with him.

Submissions of the respondent:-

6. The learned counsel for the respondent submitted that the minor daughter Varsha is placed in a good International School and her studies can not be spoilt in the middle of the year. The minor son Raghav is very young and he is in need of medical treatment and the personal care of the mother is very much needed. And the siblings have a good bond between themselves and separating them will affect both of them emotionally and psychologically. The applicant can not get the ultimate relief claimed by him in the main petition as an interim relief without undergoing the process of trial.



Discussions:-

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7. After hearing the learned counsels appearing on either side, this Court had some interaction with the children who were present on 07.08.2023. The children are already in India on an understanding that the petitioner would support their maintenance by being in United States. The interaction with the children has immensely helped to assess how the children are placed in India with their mother and how they feel about their life here.

8. The minor child Varsha appears to be mature enough to her age, though the minor child Raghav is little and playful. Varsha is a pleasant child who does not have any hatred towards either of her parents. Her stay in India did not affect her affection towards her father and she considers the involvement of both the parents is good for her future. She is seen to be bonded well with her little brother Raghav and Raghav also listens to Varsha.

9. Regarding her immediate shift to U.S.A. for getting herself admitted in the School at U.S.A. as requested by the father, Varsha told that



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she is already placed in an International School in Chennai and her studies are very good. She has further stated that she had friends at her School and the Teachers pay personal attention to her studies. She even requested that she should be allowed to continue her School education in India and she would prefer to go to U.S.A. or any place for her higher studies. She also felt that the father is in touch with them thorough video conference and he often visits them in India and that can be continued and her father need not get offended.

10. The parties were also given a personal hearing. But they only insisted their respective submissions made before the Court. The petitioner submitted that he will be happy if the daughter alone is sent with him, because the son is too small and he needs the company of his mother. Though the petitioner sought to have interim custody of the children, he later chose to have the daughter's custody rather than the son by stating that the son has to be given with speech therapy and other medical attention and the daughter would be fine with him as he is working from home. The respondent also an I.T. Professional. With the strong physical and emotional



support system in India, she manages to bring up both the children by attending her job as well. According to her, the daughter being a girl in her adolescent age and the son being a toddler, her direct involvement with the children are inevitable. The petitioner did not object to let Raghav under the custody of the respondent.

11. Though the parties are seen to be strongly putting forth their respective claim, at some point they stated that the convenience and options of Varsha can also be considered. Varsha is studying in an International School and she is getting a quality education. She is also capable of making her own decisions and telling her options and wishes without any influence or outside pressure. When Varsha is well settled in her school and started liking everything around her and also performing well, I don't find it is fair or reasonable to disturb and transplant her to America. The petitioner's participation in parenting by way of extending financial and emotional support, by being abroad is always welcome by the respondent. The children are not averse towards him. If the petitioner does not choose to come back



to India and be off shore, it is upto him to explore the ways and means of supporting his children from distance and still be their loving dad.

12. Shifting the minor children all of a sudden in the name of interim custody would cause disequilibrium to the life and convenience being enjoyed by the children in India. It is found that the children are quite comfortable with their mother. And the elder child has started to like her school, faculties and her friends and well adapted to the life style in India. Though Varsha was at United States for some time there is no longing in her mind that she should return to United States immediately. Since the welfare of children are the paramount consideration in deciding their custody, this Court is unable to accommodate the prayer made by the petitioner.

13. Further, the petitioner can not be allowed to get the relief claimed by him in the Main Petition itself as an interim relief without undergoing the process of trial. Since the petitioner has got no difficulty to meet the children whenever he comes to India and the children also do not suffer from any parental alienation as against the petitioner, there is no need



to disturb the balance now. The immediate arrangement now claimed by the application does not serve the best interest of the children in the given circumstances where the family and the children are placed. Hence, the interim relief as claimed by the petitioner can not be granted.

In view of the reasons stated above, the application in A.No.3076 of 2023 is dismissed.

29.08.2023

Speaking order

Index : Yes

Neutral Citation : Yes

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R.N.MANJULA, J.

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Pre-Delivery Order made in
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