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C.R.P.No.5 of 2021 &  
C.M.P.No.51 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.03.2023

CORAM

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P.No.5 of 2021  
C.M.P.No.51 of 2021

Zulfia Sulthana

... Petitioner

Vs.

1. A.Thousif Ahamed  
2. Roshini  
[2<sup>nd</sup> respondent impleaded  
vide order in C.M.P.  
No.2434 of 2021 dated  
by VBSJ]

... Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 07.10.2020 in I.A.No.4 of 2019 in G.W.O.P.No.109 of 2019 passed by the Family court, Erode.

For Petitioner : Mr.A.Thiyagarajan

For Respondents : Mrs.H.Yasmeen Ali



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## ORDER

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The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 07.10.2020 in I.A.No.4 of 2019 in G.W.O.P.No.109 of 2019 passed by the Family Court, Erode.

### 2. The brief facts of the case are as follows:-

The petitioner, who is the maternal grand mother of child, namely, Tisha has filed G.W.O.P.No.109 of 2019 against the respondent/father of the Child to appoint her as a guardian to the said minor child. Pending the said petition, I.A.No.4 of 2019 was filed by the petitioner seeking to restore the custody of Minor child Tisha to her. Subsequently, the petitioner has preferred CRP(PD) No.1497 of 2020 seeking to dispose of the said I.A.No.4 of 2019 and this Court vide order dated 25.08.2020 directed the Family Court, Erode to dispose of the I.A.No.4 of 2019 within a period of six weeks from the date of resumption of physial hearing of the courts. The court below in I.A.No.4 of 2019 granted interim custody of minor Tisha on 1<sup>st</sup> saturday of every month from 10.00 a.m., to 4.00 p.m., in the house of the petitioner and the petitioner shall take care of the minor child and send her back safely to the custody of the respondent on the same day after 4.00 p.m and the parties were directed to comply with the condition till the



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disposal of the main O.P. As against the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that instead of granting interim custody of the minor child to the petitioner, as per Muslim Sunni Law, the court below has passed orders only for visitation right that too for 6 hours (10.00 a.m. To 04.00 p.m.) once in a month of the minor child.

4. The learned counsel for the petitioner also submits that the court below has failed to consider that only because of the tortures of the 1<sup>st</sup> respondent, the mother of the minor child has committed suicide. Since her demise, the minor child Tisha was under the absolute care and custody of the petitioner. The minor child was joined in Indian Public School at Erode and continued her studies. While she grown up comfortably and happily, the 1<sup>st</sup> respondent forcefully removed the child disturbing her education and comfort. The court below failed to take notice of the 2<sup>nd</sup> marriage of the 1<sup>st</sup> respondent with the 2<sup>nd</sup> respondent on 28.06.2019 and that the respondents may not be able to exercise proper care on the minor child, which will affect the welfare and interests of the minor child. The



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minor child will not definitely get the love and affection of the petitioner from the step mother.

5. The learned counsel for the petitioner also contends that the court below ought to have considered that the Sunni Law lists a number of relations who one after another may replace the mother in the matter of child custody, if mother of the child is dead and among them, only the maternal grand mother is listed as no.1, without considering any of the above facts, the court below has passed an order and hence the same needs to be interfered. Further, the petitioner already had the custody of the minor child and the 1<sup>st</sup> respondent on a pretext of visitation removed the minor child from the custody of the petitioner, thereby sought to set aside the order passed in I.A.No.4 of 2019 in G.W.O.P.No.109 of 2019.

6. On the other hand, the learned counsel for the respondent / father of the child submits that the respondent loved his wife so much and he fulfilled all her aspirations and he even allowed her to study further and never illtreated her at any point of time, either by words or in deeds. Further, the respondent never tasted liquor during his life time. After death of the 1<sup>st</sup> respondent's wife, the petitioner lodged a complaint and it was



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registered as Crime No.984 of 2018 under Section 174 Cr.P.C., with the Saibaba Colony Police, Coimbatore on 18.12.2018 wherein the true facts would reveal that the 1<sup>st</sup> respondent has nothing to do with the crime and suppressing the said fact, the petitioner has filed the present petition.

7. The learned counsel for the respondent also submits that the child was admitted in Pre.K.G., at RKS little pallikoodam School, Coimbatore when she was aged about 2 ½ year and she studied there till the death of her mother. Since the minor child was crying and the visit of the mourners made it worse, the minor child was allowed to stay in Erode, in the house of the petitioner, for a few months, only with a good intention and she was admitted in the Indian Public School, Erode and the 1<sup>st</sup> respondent signed the school admission papers and even at the time of the admission, the school authorities were informed that she will be transferred to the Coimbatore Branch within a couple of months.

8. It is also represented on behalf of the respondent that the petitioner was married to one Ahamed Batcha through whom the respondent's wife was born and after the death of Ahamed Batcha, the petitioner married one Aejaaz Ahamed through whom a son was born and



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therefore, it is not safe to allow the minor in the custody of the petitioner.

The 1<sup>st</sup> respondent is educated, rich and running a shop at R.S.Puram and earns good income and the 2<sup>nd</sup> respondent is the second wife of the 1<sup>st</sup> respondent. As per shariat law, the 1<sup>st</sup> respondent is the guardian for the minor and there is no ground to dislodge the 1<sup>st</sup> respondent as guardian and put the minor in the custody of the petitioner.

9. Heard the learned counsels on either side and perused the documents placed on record.

10. It is the contention of the petitioner that she has lost her daughter, since she has committed suicide and she has no other daughter, hence she prays for interim custody of the minor child, as per Mohammedan Law. On the contrary, the 1<sup>st</sup> respondent denied the grant of custody of minor to the petitioner stating that as per Shariat Law, the 1<sup>st</sup> respondent has right of custody over his child and further stated that the petitioner was married to one Azes Ahamed, who is the step father for the petitioner's daughter and that the 1<sup>st</sup> respondent is richer than the petitioner and can afford good studies to the minor.



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11. Earlier, vide orders dated 08.01.2021 and 12.02.2021, this Court upon considering the submissions of the learned counsel for the petitioner had directed the 1<sup>st</sup> respondent to handover interim custody of the minor child Tisha on 1<sup>st</sup> Saturday at 10.00 a.m., to Sunday 5.00 p.m., of every month till the disposal of the present Revision Petition and thereafter, the said arrangement was directed to be continued.

12. Subsequently, on 28.02.2023, when the matter was taken up at regular court, the learned counsels, the minor child, namely, Tisha, petitioner and the respondents were present. Hence the case was passed over and taken up at 2.15 p.m., in chambers. Thereafter, this Court interacted with the minor child, Tisha, the petitioner and the respondents in length and their version for uplifting the child was also dealt with in length.

13. The petitioner-in-person submitted that her daughter committed suicide and the minor child was under the care and custody of her and it is the 1<sup>st</sup> respondent, who took the minor child with him, therefore, requests the custody of the minor child Tisha. That apart, she would also submit though she has a son born through her second husband, she would take care of the child well and further, the minor child is not happy with her



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father/1<sup>st</sup> respondent and his second wife / 2<sup>nd</sup> respondent and she will be happy only with the petitioner.

13. The Minor child, namely, Tisha was calm and intelligent to answer the questions put before her and she states that she is happy with her father, 1<sup>st</sup> respondent and mother [step], Roshini / 2<sup>nd</sup> respondent, who is showing affection and she loves to spend time with her half brother, Ivan, aged 10 months. She is also willing to stay in petitioner's house for quite some time in a month. The minor child is not having any apprehension or any doubt regarding the motherly affection shown by the step mother, Roshini, who seem to be well educated. The father / 1<sup>st</sup> respondent is very liberal in allowing his wife and daughter to move freely in public.

14. The 1<sup>st</sup> and 2<sup>nd</sup> respondents state that minor Child Tisha should be under care and custody of the respondents, who are father and mother [step] and they are ready and willing to take care of Tisha. The 2<sup>nd</sup> respondent expressed that only after the child Tisha got close to her, they had a baby, namely, Ivan. Ivan, at present 10 months old and there is a very happy bondage between Tisha and Ivan. It is the petitioner, who is teaching the Minor Child Tisha that Ivan is not her brother and that the 2<sup>nd</sup>



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respondent, Roshini is also not her mother. The 2<sup>nd</sup> respondent also stated that since the petitioner had lost her daughter and that the minor child Tisha should not be prevented from obtaining the love and affection of her grand mother, hence, interim custody of the minor shall be granted only for a shorter period and pleaded not to grant interim custody of the minor child Tisha to the petitioner permanently.

15. When the said statement of the 2<sup>nd</sup> respondent was questioned with the minor child Tisha, she accepts the same. She once again expressed her willingness to stay with the respondents and baby Ivan and also to stay with the petitioner for a quite some days in a month.

16. Considering the submissions of the learned counsel on either side and the petitioner and respondents in-person as well as the minor child Tisha and taking note of the fact that since the minor child, Tisha is a school going girl and very happy to stay with the respondents and her brother Ivan and also not a grievance, but found that the petitioner / grandmother is forcing her to eat more and trying to insert the fact that her daughter whom she loved is no more and she needs the affection of grand daughter in her absence and from the FIR it could be seen that the 1<sup>st</sup>



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respondent is not the cause of the death of his wife and further, the child's paramount interest has to be considered by this Court, wherein the child is willing to stay with her father and mother, this Court is of the view that the order passed by the court below in I.A.No.4 of 2019 dated 07.10.2020 in G.W.O.P.No.109 of 2019 is perfectly valid in the eye of law.

In view of the above, the present Revision Petition is dismissed. The order passed in I.A.No.4 of 2019 dated 07.10.2020 with regard to the visit of the minor child Tisha alone is modified as two days in a month, i.e., the petitioner is permitted to take the child from the house of the father, viz., 1<sup>st</sup> respondent on 1<sup>st</sup> Saturday [10.00 a.m.] of every month and the 1<sup>st</sup> respondent, viz., father of child is also permitted to take the child on 1<sup>st</sup> Sunday [4.00 p.m.] from the house of the petitioner and the same shall continue till the disposal of G.W.O.P.No.109 of 2019. Consequently, connected miscellaneous petition is closed. No costs.

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Index : Yes/No  
Internet : Yes/No  
Speaking /Non-Speaking Order



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**V.BHAVANI SUBBAROYAN, J.,**

ssd

To

The Family court, Erode.

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