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OSA No.134 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Original Side Appeal No.134 of 2023
and
C.M.P.Nos.16438 & 19013 of 2023

Mr.Susin .. Appellant

Versus

Mrs.Sowmya .. Respondent

Original Side Appeal filed under Order XXXVI Rule 1 of the Original Side Rules read with Order XXXVI Rule 1 of the Original Side Rules r/w Clause 15 of the Letters Patent against the fair and decreetal order dated 17.07.2023 in Application No.3547 of 2023 in Original Petition No.386 of 2023.

For Appellant : Mr.S.Sathyaraj

For Respondent : Mr.K.Sukumaran

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J)

According to the appellant/father, he was married to the respondent on 27.10.2017 and out of the said wedlock, a male child by name Vikram Krishna, was born on 18.08.2020. This is the second marriage of the respondent and she



OSA No.134 of 2023

previously married to one Vishal Krishna and got divorce from him in the year 2017; and that, out of the first marriage, she has one male child by name Adithya, who is studying in Ooty convent. It is further stated that due to various disputes between the parties, their matrimonial life got strained and on 26.01.2023, the appellant has forcibly taken the child from the house of the respondent. Consequent to the same, the respondent / mother preferred a petition in O.P.No.386 of 2023 to appoint her as the sole, permanent and exclusive custodian as well as guardian of the minor child, besides filing an application in A.No.3547 of 2023 seeking interim custody. By order dated 17.07.2023, the learned Judge has passed an order of interim custody, in the following terms:

'The respondent is directed to bring the child to the house of the petitioner at 10 a.m. on every Saturday and take him back at 5.00 p.m. on every Sunday. If the child sleeps or undergoes any other inconvenience, during the evening hours of Sunday as mentioned above, the respondent shall wait until the child becomes comfortable and take him back to his house.'

Aggrieved by the aforesaid order, the appellant / father has preferred this original side appeal.

2.Though various grounds have been raised, assailing the order impugned herein, the learned counsel for the appellant / father submitted that considering the welfare of the child, the appellant has decided to grant custody of the child to the respondent / mother, reserving his visitation rights once in a month. In this regard, a detailed affidavit dated 25.09.2023 has been filed by the appellant and the relevant portion of the same is extracted below for ready reference:



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"5. I state that, considering the said facts, I decided to give the custody of the child to the respondent and I may be permitted to visit the child once in a month. **The respondent shall bring the child at 10 a.m. on any one of the Saturday in a month and handover to me at D' Wayfarer Inn Resort Erode (Luxury Villa Resorts) Near Shree Lakshmi Duraisamy Mahaal, Naal Road, Villarasampatti, Erode, Tamil Nadu - 638 012 and take back the child at 6 pm on the same day at the same place. (i.e., D' Wayfarer Inn Resort Erode (Luxury Villa Resorts) Near Shree Lakshmi Duraisamy Mahaal, Naal Road, Villarasampatti, Erode, Tamil Nadu - 638 012).**

6. I state that I will inform to the respondent at 8 a.m. on the day when I am visiting the child by way of Whatsapp. Text message or by way of phone call to the respondent and in the same manner if there is any inconvenience to the respondent to bring the child for my visitation, the respondent shall communicate to me at 8 a.m. by way of Whatsapp, Text message or by way of phone call to me (Appellant).

7. I further state that the respondent shall ensure the safe custody and well being of the child and there shall not be any threat to the life of the child. If I find the child is not under proper care and custody of the respondent and if any threat is being caused to the life of the child or if there is any endanger to the life of the child, I have a liberty to proceed according to law and get custody of the child from the respondent."

3. In response, the learned counsel appearing for the respondent / mother submitted that the respondent has no objection in relation to the visitation rights of the appellant and agreed to the timings of visitation as proposed by him, in his affidavit dated 25.09.2023 as referred to above. She has also given an undertaking that the child will be taken care of with utmost love and affection and that, the interest and welfare of the child will never be jeopardized by her. An affidavit dated 28.09.2023 has been filed by the respondent to that effect.



OSA No.134 of 2023

parties are not inclined to pursue A.No.3547 of 2023 and Contempt Petition No.1756 of 2023 pending before the learned Judge. An endorsement has also been made to that effect in the court bundle.

5.Having regard to the consensus so arrived at between the appellant / father and the respondent / mother with regard to the custody of the minor child by name Vikram Krishna, coupled with the averments made in their respective affidavits dated 25.09.2023 and 28.09.2023, and also taking note of the fact that the welfare of the child is paramount consideration, this original side appeal is disposed of, in the following terms:

(i)The appellant shall hand over the custody of the child to the respondent forthwith, however, he reserves his right to visit his child once in a month;

(ii) The respondent shall bring the child on any one of the Saturdays in a month and hand over him to the appellant at 10.00 am in D' Wayfarer Inn Resort Erode (Luxury Villa Resorts) Near Shree Lakshmi Duraisamy Mahaal, Naal Road, Villarasampatti, Erode, Tamil Nadu - 638 012 and thereafter, take back the child at 6.00 pm on the same day at the same place.

(iii)Both the parties shall exchange the communication in relation to visitation rights, well in advance, by using WhatsApp, text message or phone calls.

(iv)It is open to the parties to approach this court for modification / clarification of the arrangement so made, if required.

(v)The affidavits dated 25.09.2023 and 28.09.2023, filed by the parties, shall

form part of this order

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OSA No.134 of 2023

WEB COPY

(vi)Recording the submission and the endorsement made by the learned counsel appearing for the parties, liberty is given to withdraw the application in A.No.3547 of 2023 and Cont.Petn.No.1756 of 2023, pending before the court concerned.

No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
18.10.2023

Index: Yes / No
Speaking order / Non-speaking order
Neutral Citation:Yes /No

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Copy to: The Sub Assistant Registrar, (Original Side),
Madras High Court, Chennai.



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OSA No.134 of 2023

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Original Side Appeal No.134 of 2023

18.10.2023