



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA
O.P.No.559 of 2017

C.B.Satishkumar	...	Petitioner
	Vs.	
S.Vijayalakshmi	...	Respondent

PRAYER: Petition filed under Sections 24 & 25 of the Guardians and Wards Act, 1890, r/w Order XXI Rule 2 & 3 of Original Side Rules, to grant the petitioner exclusive and permanent custody of his minor daughter, Preedhiksha born on 09.09.2010.

For Petitioner : Ms.S.P.Arthi

For Respondent : Mr.Nithianandam

ORDER

This Original Petition has been filed seeking permanent custody of the minor daughter, Preedhiksha born on 09.09.2010, to the petitioner.



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2. The petitioner is the father of the minor child Preedhiksha. The respondent is the mother of the minor child. Despite the couple blessed with the child Preedhiksha, their marriage was not successful. The petitioner is employed as a Senior Project Engineer in Abudhabi. From the very beginning of the marriage life, the petitioner has noticed some weirdness in the attitude and behaviour of the respondent. The respondent's behaviour was very abnormal and he could gather from her activities that she is suffering from Obsessive Compulsive Disorder. All the efforts taken by the petitioner for the respondent to make her life comfortable, did not yield any result.

2.1. Initially the respondent did not want the child and perceived it as an additional responsibility. She was persuaded by the petitioner and her family members to have a child and he assured to give his all time support. The baby was delivered on 09.09.2010. From then onwards, the petitioner has extended his incessant support to the respondent in raising up the child. The respondent was not inclined to breast feed the baby and gave some alternative baby food. Since the respondent exhibited odd behavior, the



petitioner referred her to a renowned psychiatrist. Though there are sufficient reasons to have concern for her abnormality, she refused to continue the further sessions with the doctor.

2.2. After the child was delivered at Chennai, the petitioner had come down to Chennai and spent his good time with the child. During January 2011, when he proposed to return to Abudhabi along with the respondent and the child, the respondent refused to join him and continued to stay at her parent's house. After much persuasion, the respondent came to Abudhabi during January 2011. However, she was not able to handle the child and she did not even have the skill for it. Therefore, she went back to Chennai during April 2011 and stayed at the residence of the petitioner at Chennai. She had also mood swings intermittently. The petitioner could establish contact with the child only through virtual mode. Due to the inattentiveness of the respondent, the child went malnourished and weak. Even though the petitioner's mother interfered in the interest of the child, that was resisted by the respondent. On coming to know this, the respondent rushed back to Chennai during September 2011. The child was seen to have developed skin allergies due to improper cleaning and



bathing. However, the respondent was not willing to listen to the advice or instructions.

2.3. The child's habit also became strange as she started to show abnormal behaviour. Just to have a change in the life style of the child, the petitioner joined the child in Shining Star International School by paying a hefty fees. The child started to show some positive signs of growth and development. The family came to Chennai for annual holidays in 2016; when they were about to return to Abudhabi during the end of July, the respondent refused to come back to Abudhabi and wanted to stay back in Chennai with the child. Since the child's physical and mental health started to go weak, the petitioner rushed to Chennai and took the child to Abudhabi on 03.12.2016 after having discussions with the respondent's parents and her family members.

2.4. Thereafter, the petitioner admitted the child in a good school and the child is regaining normalcy. The respondent's behaviour is unpredictable and did not have the patience to be with the child. Since the petitioner has got a better support system and a better place, he can handle



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the child well and do all the needful for the normal growth and development of the child. The petitioner would never prevent the respondent from meeting the child.

3. The respondent has denied the allegations of the petitioner by filing counter. She has stated that the petitioner is falsely attributing psychiatrist illness on her and it is just to get the custody of the child. It is the petitioner who used to behave abnormally by throwing things on her. During November 2014, when the petitioner came to India, a panchayat was convened and as the result, the petitioner took back the child and the respondent. The petitioner harassed the respondent and pressured her to give her consent for divorce. He used to watch porn videos in her presence and teased her. He used to throw food on the respondent's face. The respondent was not able to bear the torture and returned to India for one month summer vacation.

3.1. The child was very happy and healthy and she never wanted to go back with her father. The respondent had filed Domestic Violence Case against the petitioner before Additional Mahila Court, Allikulam, Chennai



in DVC.No.290 of 2016. However during November 2016, the petitioner entered into the respondent's house and forcibly took back the minor child to Abudhabi. Despite the respondent had taken steps by filing various complaints, she is not able to get back the child. While matter stood thus, the petitioner has filed this Original Petition. Therefore, there is no merit in this Original Petition and the same should be dismissed.

4. During the process of recording evidence. the petitioner examined himself as P.W.1 and Exhibits P1 to P3 were marked. On the side of the respondent, no oral or documentary evidence is placed. Ex.P1 is the Birth Certificate of the minor child. Ex.P2 is the copy of the cash bill for the medical prescription given by the Doctor for the respondent. Ex.P3 is the copy of the cash voucher for the medical prescription.

5. The learned counsel for the petitioner and the learned counsel for the respondent made their arguments in the line of their submissions made in the affidavit and the counter.



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6. The petitioner was examined as P.W.1 and he has given his oral evidence by stating that the respondent was not able to handle the child in a proper manner as she was suffering from some mental ailments. The cross examination of P.W.1 does not have anything to sway away his evidence in chief. Despite the respondent has alleged mental and physical cruelty against the petitioner, they were not substantiated and neither the respondent subjected herself for examination. As of now, the child is under the custody of the father and there is no complaints from the respondent that the child has some discomfort to grow with the father. The petitioner is employed in Abudhabi and he had admitted the child in an international type of School in order to give best education and exposure for the child.

7. Even though the matter was contested, at some point, it was submitted by the learned counsel for the respondent that if the Court chooses to give the permanent custody of the child with the father, the mother's company should not be deprived to the child and she should be allowed to come and spend holidays and vacation with the mother.



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8. Whatever may be the misunderstanding between the couple, the child needs both the parents. As there is no denial that the child is better placed and cared now under the custody of the father, I feel it is not appropriate to disturb the custody with her father and present well being. Even though the petitioner and the respondent are at loggerheads, their marriage is still in force and hence, it is always possible for the petitioner and the child to come to India and the child can interact with her mother whenever they visit her mother's place or the respondent can also go to the petitioner's mother's place at Chennai and interact with the child if the child comes to India to spend the holidays or school vacations. Since this arrangement can serve the best interest of the child and also the parents of the child, I feel the relief sought by the petitioner can be granted without any hesitation. Hence I prefer to allow this Petition, in the interest of the welfare of the child.

9. In view of the above stated reasons, this Original Petition is allowed and the petitioner is granted with the permanent custody of the child with a condition that he should make it possible to visit India during



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holidays and other school vacations of the child in order to have a healthy interaction with the respondent and establish a good relationship between the child and the mother.

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