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C.R.P.(PD) No.3897 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD) No.3897 of 2022

and

C.M.P.Nos.20414, 20416 & 20417 of 2022

Mavillapalli Lavanya
D/o.Late M.V.Narasimhachari

.. Petitioner

Vs.

Mavillapalli Siva Aditya
S/o.M.S.Nataraju

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to extend and revise the time lines for expeditious consideration and disposal of G.W.O.P.No.3918 of 2021 on the file of V Additional Family Court, Chennai, with appropriate guidelines.

For Petitioner : Mrs.K.Sumathi

For Respondent : Mr.Sandeep S.Shah
for M/s.Shah and Shah



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ORDER

This Civil Revision Petition on hand has been instituted for a direction to extend and revise the time lines for expeditious consideration and disposal of G.W.O.P.No.3918 of 2021 on the file of V Additional Family Court, Chennai, with appropriate guidelines.

2. The petitioner instituted G.W.O.P.No.3918 of 2021 for appointing her as legal guardian and sole custodian of Minor Mavillapalli Paresa Kedar, born on 06.11.2007 through the wedlock between the petitioner and the respondent. The marriage between the petitioner and the respondent was solemnized in February 2003 and one male child was born through the wedlock and now aged about 15 years. The minor boy is studying tenth standard (SSLC) in a School at Chennai. The incident, which was the cause for several disputes between the parties occurred for about a period of three years without the knowledge of the family members and came to light on 25.04.2021, which prompted the petitioner to institute GWOP seeking guardianship. The said dark incident has been narrated in Paragraph Nos.30 & 31 of the GWOP, which reads as under:

"30) Then on the morning of April 25th, 2021, all the answers came tumbling out that smoldered the petitioner and her son alive. The events that unfolded on 25.04.2021



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and the endeavours subsequent thereto have brought out that the respondent not an 'abused child' that the petitioner construed him to be but a 'child abuser'. The petitioner, her son and the family came to know:

- (i) That the respondent is a depraved paedophile and a child molester. The details of his depravity being indescribable in words.*
- (ii) That he has grave sexual perversions that he could unleash on the vulnerable without hesitation. that he could be a "Monster" not oly in relation to his child but to any being that is vulnerable.*
- (iii) That his crimes are not crimes of passion but premeditated, cold blooded, depraved, habituated, repeat offences that are sheer crimes of opportunity.*
- (iv) For him 'Trust' has been equivalent to 'Naivety'.*
- (v) That right from the choice of target, he has carefully scripted not only his acts but even the repercussions to follow to go his way. He has planned and brought upon a Catch-22 on all the victims.*
- (vi) He groomed everyone around in astute ways for years so as to be able to carry on with his activities in unbridled ways.*
- (vii) His abilities, charisma and the extravagance that he put to good use and the success that he was able to feed from one domain into other (Family <--> Career) that earned him huge laurels and gratitude from well meaning souls had intoxicated him into a sense of invincibility.*
- (viii) He never really cared for anyone except himself in his entire life.*
- (ix) That he knowingly chose actions and modus operandi in such a way that there could be no reprieve for anyone and that the whole family is condemned to permanent hell.*
- (x) That he played out his life as a game of chess masterminding all pieces on either side where he would be the one to 'Check-Mate' at all events.*
- (xi) That the respondent has also staked his marriage and parenthood in such a way that the petitioner and her*



son would be left with no room or choice whatsoever to be able to continue in the marriage with him with any self-respect.

(xii) That he has crafted and played his role to perfection in this regard right up to the time of separation.

(xiii) He not only tore her fabric of marriage but also spike irreversibly the fabric of entire familial relationships of the petitioner.

(xiv) His show of remorse was also farcical, opportunistic and a brazen attempt at bracketing unmindful of the victim.

31) To put in a nutshell, the respondent has butchered so many souls leaving out their shells so much so that the ones that he affected including the petitioner are all dead inside and dying again and again each passing day. There could be no reprieve for them from their agony and the road ahead could be nothing but endless nightmare."

3. The grievance of the revision petitioner is that the Family Court is committing chain of errors in dealing with the G.W.O.P filed by the revision petitioner. The procedures followed in dealing with the G.W.O.P are not in consonance with the principles established. The minor boy was questioned by the Judge and many irrelevant and unwarranted questions were asked with the minor boy and he was pressurised unnecessarily to meet his father. The nature of questions asked by the Family Court with the minor boy would reveal that irrelevant and unwarranted questions were asked and therefore, the revision petitioner states that there is no conducive atmosphere in the Family Court, so as to develop a confidence



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in proceeding with the G.W.O.P. Thus, the petitioner has chosen to approach this Court under Article 227 of the Constitution of India, seeking for a direction to revise the time-lines and for issuing directives.

4. As far as the custody of minor children are concerned, each case has to be decided on its own facts and circumstances. The decision of the Court in each case, must depend on the totality of the facts and circumstances of the case brought before the Court. The factual aspects are required to be tested on the touch stone of the principle of welfare of the minor child. The best interest of the minor is of paramount consideration.

5. In the present case, the minor boy namely Mavillapalli Paresa Kedar is aged about 15 years and studying X Standard (SSLC) in a reputed School at Chennai City. While standing in the Court Hall and observing the arguments of the learned counsels appearing on behalf of the parties, he is capable of understanding and responding to the arguments advanced by the learned counsel for the respondent. In the open Court, when the minor was asked to express his views and wishes, he in a louder voice, started articulating his views and wishes in an unambiguous terms. His flow of thought was clear and his ambitions,



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likes and dislikes were also placed without any hesitation. On an earlier occasion, the minor boy in C.R.P.Nos.804 and 806 of 2022 and before the Family Court, expressed his willingness to live along with his mother and pursue his education. Even the recordings of this Court in the above proceedings are clear that the minor boy is willing to live along with his mother and continue his education. Curiously the minor boy responded to the arguments advanced by the learned counsel for the respondent by stating that his father is not paying the housing loan dues to the Bank intentionally to cause harassment to the him and to his mother. He proceeded by stating that if at all his father is having love and affection towards him, let him meet out his educational expenses and pay the monthly loan dues to the Bank. The spontaneous answers given by the minor boy would show that he is not a mere minor boy, he is a matured boy, but a minor.

6. A distinction is to be drawn regarding taking away a minor person and allowing a minor to accompany with the person. Taking away a minor is an offence, However, allowing a minor to accompany with the person cannot be construed as offensive. In the present case, the minor himself has taken a decision spontaneously to live along with his mother



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and capable of understanding what is good for his life and for his future.

Though the minor boy proceeded to explain about the conduct of his father with reference to the alleged crime, this Court is not inclined to record the same, since the Criminal Case registered is pending. The minor boy has no hesitation in pleading before this Court that he is willing to live with his mother and further said, let his educational expenses and the loan dues are to be paid by the respondent / father. The minor boy is not even interested in talking to his father and as per his statement, certain alleged dark incidents caused injuries in his mind. When the minor boy, who is aged about 15 years is capable of thinking about his life in clear terms and able to articulate his case before the High Court, this Court has no hesitation in arriving a conclusion that no more enquiry is required as far as the custody of the minor boy is concerned. Further enquiry in the G.W.O.P would be a futile exercise and the parties would be unnecessarily harassed to undergo the procedures, which became unnecessary.

7. The minor boy Mavillapalli Paresa Kedar, even on earlier occasion before the High Court and the Family Court expressed his willingness, choice and the decisions in clear terms and which were



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reiterated with more clarity in the present case before this Court. The maturity level of the minor boy shows the intellectual capability of the present day children in taking decisions about their life.

8. In view of the facts and circumstances and considering the emphatic decision taken and expressed by the minor boy before this Court, this Court thought fit to invoke the powers under Article 227 of the Constitution of India and formed an opinion that any further judicial process in the G.W.O.P by the parties would become unnecessary and will be a futile exercise. The interest of the boy and his education has to be protected by this Court. The minor boy is studying X Standard (SSLC), which is crucial for his future career. If he is unnecessarily dragged to undergo the judicial process, which is lengthy on some occasions, undoubtedly, it would affect his education and peace. Therefore, the best interest of the minor boy is to be considered, in view of the expression made by the minor boy before this Court. He is participating in extra-curricular activities. He said that he is doing yoga and involved in other activities and that being the ambition and shrewdness of the minor boy, he need not be forced to undergo unnecessary judicial process, which would cause an impediment for



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continuation of his education and peace of mind.

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9. The learned counsel for the respondent, on instructions, fairly made a submission that the respondent has no idea or intention to cause any harm to the minor boy or to drag on the proceedings. However, the respondent believes that there is a possibility of change of mind in future, and that is to be taken into consideration by this Court. If at all there is a change of mind of the minor boy, the boy himself will talk to his father/respondent or otherwise. Further, he is now aged about 15 years and even on attaining the age of majority or while pursuing higher education, on account of change of mind or otherwise, the minor boy may contact his father and this Court need not express any opinion in this regard at present, since it becomes the wishes of the minor boy. However, the respondent being the father and natural guardian, is duty bound to ensure that the educational expenses, livelihood and place of residence of the minor boy and his mother are protected and it is the duty of the respondent to take all steps to protect the interest of the minor and to ensure that his educational expenses are met out promptly.



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10. The learned counsel for the respondent made a submission that the respondent is facing financial problems, since he left his job and presently unemployed. However, the petitioner states that the respondent is having other considerable sources of income, which all are huge and therefore, his unemployment is no way connected with his income from other sources.

11. Be that as it may, this Court is of the considered opinion that the standard of living, status of the family, place of residence, wherein boy born and brought up with the assistance of his father/respondent, that is to be maintained in respect of the minor boy. The minor boy was all along getting the active support of his father up to the age of 14 years and therefore, he cannot be deprived of his lifestyle, quality education and other facilities, including residence etc., on account of the disputes between the petitioner and the respondent along with the family members. The interest of the minor boy, at no circumstances, be jeopardised. Future interest of minor children have got an impact in the society and therefore, such rights of children are to be protected by the Courts.



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12. Considering the facts and circumstances, this Court is inclined to pass the following orders:

- (i) The petitioner Mavillapalli Lavanya D/o.Late M.V.Narasimhachari is appointed as legal guardian and sole custodian of Minor Mavillapalli Paresa Kedar.
- (ii) The respondent/father is directed to meet out the educational expenses, livelihood of the minor and ensure decent accommodation, enabling the minor to stay along with his mother peacefully and continue his education.
- (iii) In view of the orders passed in the present Civil Revision Petition, further proceedings in G.W.O.P.No.3918 of 2021 on the file of V Additional Family Court, Chennai, stands strike off.

13. Accordingly, the Civil Revision Petition in C.R.P.(PD).No.3897 of 2022 stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.01.2023

Index:Yes

Speaking order

Neutral Citation : Yes

gm/Jeni

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To

The V Additional Family Court,
Chennai.



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S.M.SUBRAMANIAM, J.

gm/Jeni

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