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C.M.A.No.2914 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2914 of 2022

and

C.M.P.No.22549 of 2022

D.P. Nandakumar

... Appellant

Vs

Arunadevi

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 47(a) of Guardians and Wards Act, to set aside the fair and decreetal order dated 26.08.2022 passed in G.W.O.P.No.6 of 2018 on the file of the Principal District Judge, Namakkal.

For Appellant : Mrs.S.Suseela Devi

For Respondent : Mr.J.V.Sakthi Balakrishnan
for M/S.V.Kamalakannan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the father of the child, aggrieved by the dismissal of the G.W.O.P.No.6 of 2018 filed to appoint him as guardian of the female minor child.



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2. The brief facts leading to the filing of the above appeal

are as follows:-

(a) The appellant and respondent got married on 24.10.2007. Out of the wedlock, a female child was born to them viz., Hemavarshini on 19.05.2010. Difference of opinion arose between the appellant's family members and the respondent in 2013. The appellant and respondent set up a separate matrimonial home on 01.01.2014. Thereafter, on 10.08.2016, the respondent left the matrimonial home and went to her parental home on account of matrimonial discord. The appellant filed a petition for restitution of conjugal rights in H.M.O.P.No.7/2018 before the Sub Court, Tiruchengode. Thereafter, the appellant had also filed divorce petition, after exploring the possibility of reconciliation.

(b) The respondent filed counter denying the averments in the petition and stated that the minor child is living with her for a long time. She is taking care of the educational expenses and other expenses of the minor child and that the appellant had filed a petition only to harass the respondent.

(c) Before the Principle District Judge, Namakkal, the appellant, examined himself as P.W.1 and examined two other witnesses as P.W.2 and



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P.W.3 and marked Exhibits P1 to P9. The respondent examined herself as

R.W.1 and marked Exhibits R1 to R5. The minor child was also examined as Court witness C.W.1 by the learned Judge.

(d) The learned Judge, on examination of the materials on record and after interacting with the minor child held that in the interest and welfare of the minor child, the custody should remain with the respondent and dismissed the petition.

3. Aggrieved over the dismissal of G.W.O.P.No.6 of 2018 the appellant has filed the present appeal.

4. The learned counsel for the appellant submitted that it is the respondent who had left the matrimonial home without any reason. The appellant is willing to take care of his minor child. It would be in the best interest of the minor child, if the custody of the minor child is handed over to him, as he is having sufficient income and he is the natural guardian. Learned counsel further submitted that in any case, the appellant is entitled to visitation rights which has also been denied by the respondent and prayed for allowing the appeal.



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5. Per contra, the learned counsel for the respondent submitted that the respondent is working as a teacher in a reputed school and the child is also studying in the same school. The child is living comfortably with the respondent and had also expressed her willingness to be in the care and custody of the respondent. Therefore, the Tribunal rightly dismissed the petition and submitted that no interference is called for in the said order.

6. This Court finds that the petition before the learned Principal District Judge was filed for appointment of appellant as Guardian and for custody of the minor child. Admittedly, the minor child is in the custody of the respondent ever since the appellant and the respondent got separated. It is also stated that a divorce petition is also pending between the parties before same Court. It is trite that in custody matters, the welfare of the minor child has to be the paramount consideration. It is seen from the records that the minor child was also examined by the learned Judge and the child had also expressed her willingness to stay with the respondent. The respondent has been taking care of the minor child, providing education and



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other amenities for the benefit of the child. Considering all the above facts, this Court is of the view that it would be in the best interest of the minor girl child to be in the custody of the respondent especially when she also had expressed her willingness to stay with the respondent. Hence, no interference is called for in the finding of the lower Court.

7. However, this Court is also of the view that the appellant being father is entitled for visitation rights. The learned counsel for the respondent on instructions would submit that the respondent has no objection for the father to visit the child. The learned counsel submitted that the child herself was not willing to meet her father. However, that cannot be a reason for denying the appellant's visitation rights. Both the learned counsel on instructions submitted that the father can visit the child once in a fortnight. Therefore, the appellant is permitted to visit the child on the first and third Saturday of every month between 4 pm and 7 pm at the residence of the respondent. It is also made clear that if either of the parties have any difficulty in complying with the above arrangement with regard to visitation rights, it is open for them to approach the District Court concerned for any modification, as required.



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8. With the above observation, this Civil Miscellaneous Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/No
Neutral Citation: Yes/No
AT

Note: Issue order copy on 07.08.2023

To
1.The District Judge, Namakkal.

2. The Section Officer,
VR Section,
High Court, Madras.



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SUNDER MOHAN, J.

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