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A.No.223 of 2023
in O.P.No.860 of 2016
& A.No.489 of 2022

K.KUMARESH BABU, J.

Application No.223 of 2023 has been filed by the applicant seeking to appoint a Guardian Ad Litem or in the alternative to admit the child Master Shivdevan to a boarding school permitting the applicant visitation on such dates as this Court may deem fit.

2.When the application came up for hearing on 13.03.2023, this Court had permitted the applicant/father to have a visitation right over the minor child. Thereafter, the application had been listed on various occasions. By order dated 17.04.2023, this Court had directed the applicant/father to have visitation rights and ordered earlier to be continued till the next date of hearing. Thereafter, various complaints have been made against the applicant/father and the respondent/mother as regards the conduct of both the parties.

3.Heard Mr.Perumbulavil Radhakrishnan, learned counsel appearing for Mr.S.P.Vijayaragavan, learned counsel for the applicant and Mr.Kaliyanathan, learned counsel appearing for the respondent.



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4.Learned counsel appearing for the applicant would submit that the respondent mother has disregarded the orders passed by this Court permitting the applicant/ father to have visitation rights. He would further submit that not only the order passed by this Court had been disregarded but also the orders of the Division Bench had been disregarded. He would submit that pursuant to the orders passed by the Division Bench directing payment of maintenance, the applicant as on today had paid a sum of Rs.6,00,000/-. In spite of payment, the respondent/mother is refusing to permit the applicant/father to meet the minor child. He would also submit that in the interest of the minor child, it is better for him to be admitted to a boarding school and the applicant/father be permitted to have a regular visitation rights of the minor child. He would submit that at the instance of the respondent/mother, the minor child is treating the applicant/father as an A.T.M. and only wanted the applicant/father to take the minor child to a particular place to buy a particular thing. He would submit that if the minor child continues to be in the custody of the respondent/mother, it would only be against the interest of the minor child. Therefore, he would pray to this Court to either grant custody of the minor child to him or direct admission of the minor child to a boarding school.



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5. Countering his arguments, learned counsel appearing for the respondent would submit that it is not the respondent/mother who violates the orders of this Court. He would submit that pursuant to the orders of this Court, the respondent/mother has been complying with the directions issued by this Court. He would further submit that it is only the applicant/father who had failed to come to pick up the minor child as permitted by this Court, he cannot turn around to complain that it was the respondent/mother who had failed to give the visitation rights to the applicant/father as directed by this Court.

6. He would also submit that the Division Bench of this Court in O.S.A.Nos.263 & 264 of 2017 filed by the applicant/father had permitted the applicant/father to have a visitation right during Saturdays in every fortnight between 11.00 A.M. and 3.00 P.M. at Phoenix Mall, Velachery. But, however, a condition had been imposed that the appellant shall pay a sum of Rs.35,000/- towards maintenance expenses of the minor child every month and that the payment should be made on or before 7th of every month. However, without complying with the same, the applicant/father had moved a Review Application which has been disposed of on 17.12.2020, the Division Bench had held if the



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applicant/father does not wish to comply with the order that it would mean that he cannot insist for visitation rights. The Division Bench had also directed the Original Petition to be disposed of within a period of four months after disposing of an application which had been filed seeking for a certain amendment. He would submit that the applicant/father had been complied with the terms of the orders passed by this Court and therefore, he had no right to seek for interim custody of the minor child much less even a visitation right as has been held by the Division Bench while disposing of the Review Application filed by the applicant/father. Therefore, he would pray to this Court to dismiss the above application.

7.I have considered the submission made by the respective counsels appearing on either side and perused the materials available on record.

8.In the present application, I do not propose to venture into the arguments made by the learned counsel appearing for the applicant/father. It has been brought to the notice of this Court that a Division Bench of this Court in its order dated 23.07.2018 had passed the following order:



“...5.We are concerned with the interest of the child. The learned single Judge has rejected the case of the appellant in toto. Considering the status of the appellant, we deem it fit to grant visitation right to the appellant, so that the relationship would improve in future. This is subject to the compliance to be made by him. Accordingly, a direction is issued to the respondent to permit the appellant to have the visitation right of the child during Saturday in every fortnight between 11.00 a.m. and 3.00 p.m. The venue is at Phoenix Mall, Velacherry, Chennai, and the child can be accommodated by the respondent. This is subject to the condition that the appellant pays a sum of Rs.35,000/- (Rupees thirty five thousand only) towards the maintenance expenses of the child every month. The said payment shall be made on or before 7th of every month. The appeals stand disposed of. Accordingly, liberty is given to the parties to file appropriate application before the learned single Judge for further directions. No costs.”

9.The said order had been passed in an Intra Court Appeal filed by the applicant/father. He had also taken out a Review Application of the aforesaid order in which the Division Bench of this Court has held as follows:

“...5.In such view of the matter, we do not find any reason to review the order passed in O.S.A.Nos.264 and 263 of 2017 on 23.07.2018. It is needless to state that if the petitioner does not comply with the order, which is meant to be used for the child, he



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cannot insist for the visitation rights. These two factors cannot be separated from each other. We have also noted that what has been ordered by us is only an interim arrangement pending further orders to be passed. Accordingly, these review applications stand closed. However, taking into consideration the pendency of the original petition, the learned single Judge is requested to dispose of O.P.No.860 of 2016 within a period of four months after disposing of the application filed seeking amendment. Consequently, connected civil miscellaneous petitions are also closed.”

10.From reading of the above said orders, it could be seen that the applicant/father had been given visitation rights of the minor child on a condition that he shall pay a Rs.35,000/- per month for the maintenance of the minor child. Admittedly, he had not paid the same from the date of the order. However, learned counsel appearing for the applicant/father would claim that the said condition would only come into effect from the date of the order made in the review which he had filed.

11.A perusal of the review order explicitly held that if the applicant does not comply with the order then, he cannot insist on the visitation rights and that



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two factors cannot be separated from each other. I am afraid that the contention of the learned counsel that the payment could only take effect from the date of the order of the review is without any merit. When this Court ordered for payment of maintenance on a particular date, the order takes effect from that date. In the review filed by the applicant/father, a modification had been made then, it could be from that date such maintenance will take effect from.

12. In the present case, the Division Bench had refused to interfere with the earlier order but had categorically stated that his visitation right will depend upon the applicant/father paying the maintenance charges as ordered by the Division Bench. Even assuming that the contention of the learned counsel appearing for the applicant/father is right, the review order had come to be passed on 17.12.2020. Learned counsel appearing for the applicant had admitted that he had paid Rs.6,00,000/- till date.

13. As per the orders of the Division Bench, Rs.35,000/- has been fixed as maintenance for the minor child from January 2021 to till date i.e. June 2023 (30 months) have gone by and calculating Rs.35,000/- for 30 months it comes to



Rs.10,50,000/-. Admittedly, the applicant/father had paid only Rs.6,00,000/-.

When that be so, I do not find any reasons to take a different view as that has been taken by a Division Bench which is binding upon me and directs the applicant/father even to have a visitation right. In such circumstances, I am having found that the applicant/father had not complying with the orders passed by the Division Bench, I also do not propose to entertain the present application and hence the same is dismissed in limine.

28.06.2023

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