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C.R.P.No.1801 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1801 of 2024 and
C.M.P.No.9504 of 2024

Dr.Binu Jackson

... Petitioner

Vs.

Dr.Prema Dass

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 29.01.2024 made in I.A.No.1 of 2023 in G.W.O.P.No.352 of 2022 passed by the Principal District Judge, Tiruvallur and allow this civil revision petition.

For Petitioner : Mr.D.Gopinath

For Respondent : Ms.J.Lavanya for Mr.S.Ranjithkumar

ORDER

The respondent herein filed G.W.O.P.No.352 of 2022 against her son-in-law/petitioner herein to appoint her as guardian for person and order for the custody of the minor child Bethelene Ropheka and to permit the respondent to act as guardian of said minor child. During the pendency of the proceedings, the respondent filed interim application in I.A.No.1 of 2023



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in G.W.O.P.No.352 of 2022 seeking interim custody of the minor child on every Saturday and Sunday. The learned Principal District Judge, Tiruvallur *vide* impugned fair and decreetal order, dated 29.01.2024 partly allowed the petition granting interim custody of the minor child on the last Saturday and Sunday of every month with other conditions. Now challenging the same, the petitioner is before this Court.

2.Gist of the case is that the petitioner married the elder daughter of the respondent *viz.*, Dr.Mary Jennifer on 17.10.2013 at CSI, Transfiguration Chapel Chennai. The respondent's daughter was selected for a job in Muscat, Oman but the petitioner was not selected. Out of their wedlock, a female child named Bethelene Ropheka was born on 16.07.2017 at CMC Hosptial, Vellore. The respondent took care of her daughter and granddaughter at the time of pregnancy till the delivery and thereafter to. During the month of August 2020, the petitioner's wife was diagnosed with Malignant Melanoma at the left Buccal Mucosa a rarest form of Skin Cancer and she had undergone surgery on 21.09.2020. It is alleged that the petitioner herein neglected his wife and never took care of her health and well being. It was the respondent who took care of her daughter, paid all



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medical bills and was besides her nursing through and through. The respondent's daughter/petitioner's wife died on 08.05.2022. Thereafter, the respondent's granddaughter was not properly taken care by the petitioner and for that reason, the respondent filed G.W.O.P.No.352 of 2022 and also filed I.A.No.1 of 2023 seeking interim custody of the minor child to visit and stay with the respondent on all Saturday and Sunday of every month till the disposal of the main petition.

3.The learned counsel for the petitioner submitted that the lower Court had wrongly exercised its discretionary power and partly allowed the interim custody of the child who is aged about six years from the father to maternal grandmother and without considering the distance between the petitioner's house and the respondent's house. The petitioner is residing at Ponneri and the respondent is residing at Bethelpuram, Pallipattu Taluk, Tiruvallur. The distance is nearly around 100 kms from the petitioner's house to the respondent's house and it is 200 kms up and down the minor child travel will be odious if the impugned order to be complied. He further submitted that the school where the minor child is studying, is working on all Saturday and it will be difficult for the minor child to cut down classes on Saturday and



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visit the respondent. Hence, the visit may be curtailed to any one Sunday of every month.

4.The learned counsel for the respondent submitted that on enquiry from the school where the minor child is studying, it was ascertained that all second Saturday and Sunday are holiday. Hence, the respondent could pick up the minor child on Saturday morning from the petitioner's house and drop her on Sunday evening by 06.00 p.m. Pick up and drop can be done by the respondent if the petitioner has got any difficulty.

5.In reply, the learned counsel for the petitioner submitted that the petitioner is not averse to send his minor daughter to the respondent but the minor daughter cannot be sent alone with any Driver or any third person. The learned counsel for the respondent submitted that no such situation would arise. The respondent herself can travel in case of any difficulty she will authorize and depute a relative of her to pick up and drop the minor child. In any event the minor child will be stayed with the respondent only.

6.Considering the submissions and on perusal of the materials, it is



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seen that the respondent/maternal grandmother of the minor child is only asking change of week *i.e.*, from last Saturday and Sunday of every month to second Saturday and Sunday of every month to have interim custody of the minor child. Further the respondent undertakes to pick and drop the minor child by herself or through family members.

7.In view of the above, this Court modifies the condition (i) imposed in paragraph No.13 of the impugned order, dated 29.01.2024 to the effect that the petitioner is directed to handover the custody of the minor child *viz.*, Bethelene Ropheka (born on 16.07.2017) to the respondent for her interim custody on second Saturday and Sunday of every month. The respondent or family members of the respondent to pick the minor child on Saturday morning and drop her on Sunday evening at 06.00 p.m in petitioner's house. The other conditions imposed in paragraph No.13 of the impugned order, dated 29.01.2024 shall remain unaltered.

8.With the above modification, this civil revision petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.



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Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

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To

The Principal District Judge,
Tiruvallur.

Note: Issue Order Copy on 08.07.2024.



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M.NIRMAL KUMAR, J.

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