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O.A.No.195 of 2024

O.A.No.195 of 2024
and
A.Nos.2786, 2787 & 2788 of 2024
in
O.P.No.169 of 2024

Date of Reserving the Order	Date of Pronouncing the Order
09.09.2024 & 13.10.2024	06.12.2024

RMT.TEEKAA RAMAN, J.

ORDER

For the sake of convenience, the parties are referred to as the “father”, “mother” and “minor daughter”.

2. The father and mother filed applications / petitions against each other as stated hereunder:

- (i) O.P.No.169 of 2024 – on the file of High Court, Madras - by mother – against father – for custody of the minor daughter Miss.Tanishka (D.O.B. 21.11.2014).



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- (ii) O.P.No.127 of 2023 – on the file of Family Court, Chennai – by father – against mother – for custody of minor daughter – dismissed as withdrawn on 20.06.2024.
- (iii) H.M.O.P.No.356 of 2023 – on the file of Family Court, Chennai – by father – against mother – for restitution of conjugal rights – dismissed as withdrawn on 20.06.2024.
- (iv) H.M.O.P.No.1107 of 2024 – on the file of Family Court, Chennai – by mother – against father – for divorce on the ground of cruelty.
- (v) H.M.O.P.No.2640 of 2024 – on the file of Family Court, Chennai – joint application by father and mother – dissolution of marriage on mutual consent – presented on 24.06.2024 – posted on 24.12.2024 for



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passing orders.

- (vi) O.A.195 of 2024 – on the file of High Court, Madras – by mother – against father – for interim injunction restraining the father from disturbing the custody and sole responsibility of the minor daughter in any manner from the mother until the disposal of O.P.No.169 of 2024.
- (vii) A.Nos.2786, 2787 & 2788 of 2024 – on the file of High Court, Madras – by father – against mother – for taking minor daughter during holidays and visitation rights and for permission talk with the minor daughter on video call.

3. One Dr.Chandara Gandhimathi married Dr.Anand on 07.11.2013. The marriage certificate has also been marked. They begotten a female child, by name, Tanishka on 21.11.2014. Subsequently, due to matrimonial discard, they got separated. There are allegations by the mother



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against the father of physical violence. Photographs have been filed. Father filed O.P.No.127 of 2023 and H.M.O.P.No.356 of 2023 before the Family Court, Chennai, against the mother seeking custody of the minor daughter and seeking restitution of conjugal rights respectively and both the petitions were dismissed as withdrawn on 20.06.2024.

4. The present original petition in O.P.No.169 of 2024 is filed by the mother against the father under Section 25 of the Guardian and Wards Act, 1980 read with Order XXI Rules 2 & 3 of the Original Side Rules read with Clause 17 of the Letters Patent of this Court seeking her to be appointed as a permanent guardian of the minor daughter.

5. The father filed counter statement. Both the averments in the affidavit filed in support of the original petition and the counter statement are discussed infra.

6. Pending the above original petition, the mother filed O.A.No.195 of 2024 against the father seeking interim injunction restraining the father not to disturb the custody and sole responsibility of the minor



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7(a). Initially, by order dated 19.03.2024, this Court, considering the fact that the minor child is all along with the custody of the mother for more than two years and studying under the care of the mother, who is having the sole responsibility of the minor child, directed the father not to disturb the minor child. Subsequently, when the minor daughter along with her mother visited India, this Court, by order dated 25.04.2024, directed the minor daughter to be within the territorial jurisdiction of this Court and not to leave the shores of this country without getting permission of this Court. The adjudication papers further reveals that on 20.08.2024, this Court has recorded the fact that as against the order passed by this Court on 25.04.2024 in O.A.No.195 of 2024, an appeal has been preferred in O.S.A.No.86 of 2024 by the mother and no interim order has been granted and therefore, by passage of time, nothing survives for consideration therein.

7(b). On that day i.e. 20.08.2024, learned counsel appearing for the mother mentioned that the father has withdrawn the petitions filed for custody of the minor daughter and restitution of conjugal rights, filed before



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the Family Court, Chennai, since the parties arrived at a compromise and the mother wishes to purchase peace and to put quietus to the ongoing litigation inasmuch as both the mother and the minor child are pursuing their educational prospects in United Kingdom and in view of the order dated 25.04.2024, the education of the minor child is at jeopardy and they came to India during the month of April and they were unable to rejoin the course in view of the order dated 25.04.2024 passed by this Court.

7(c). The minor daughter has to redo her course of Grade-IV in London, U.K., and the mother, who was doing Post Graduation in the field of medicine in one of the reputed college at London in U.K., has to continue her education and therefore, the mother and father filed a divorce petition by mutual consent under Section 13(B) of the Hindu Marriage Act, 1955 and the same was filed before the Family Court, Chennai, in H.M.O.P.No.2640 of 2024 and it stands adjourned to 24.12.2024 for passing orders.

8. Mr.N.Murali Kumaran, learned Senior Counsel, appearing for the mother would contend that in view of the subsequent development, for divorce on mutual agreement by the parties, since the mother wants to



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purchase peace and to continue the education of the minor child at U.K., the parties arrived at a settlement and filed a petition in H.M.O.P.No.2640 of 2024 for divorce on mutual consent and the same is coming up for orders on the expiry of the statutory period of six months as contemplated under Section 13(B) of the Hindu Marriage Act, 1955.

9(a). When the matter was posted for hearing on 04.09.2024, the original counsel appearing for the father had withdrawn his appearance and a some other counsel undertook to argue the case.

9(b). When the case was again posted on 20.08.2024, a new counsel entered appearance for the father and undertook to file a fresh vakalat and sought time to file rejoinder and on that day, since the minor child was brought to the Court, I had an occasion to interact with her in my Chambers for about 30 minutes. The interaction had by me along with the minor child is discussed infra.

9(c). After conclusion of arguments in in-camera proceeding, the learned counsel appearing for the father submitted that he argued only for the



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application and not for the main original petition. Such attitude of the learned counsel is hereby deprecated, since the case has undergone a change after filing.

9(d). At the risk of repetition, for the sake of convenience, after the original petition in O.P.No.169 of 2024 is filed for custody of the minor child and counter affidavit was filed, original Application No.195 of 2024 was taken and interim order was passed. Subsequently, amended as stated above. In the meanwhile, Application Nos.2786, 2787 and 2788 of 2024 came to be filed by the father seeking to interact with the minor child, for visitation rights and for taking the minor child during vacations.

10(a). Now, after completion of arguments, taking note of the subsequent development that the custody application filed by the father was withdrawn by him and the petition for restitution of conjugal rights filed by the father against the mother was also dismissed as withdrawn, this Court put a specific question as to the contention of the learned counsel for the father after completion of arguments in the main original petition.



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10(b). Learned counsel, who appeared on that day for the father, was unable to answer the question put to him, rather, he was evading the question by saying that he is only a representing counsel sent by the counsel on record and he left my Chambers and hence, the matter was posted for orders on 09.09.2024.

11. On 09.09.2024, when the case was called in the Open Court, learned Senior Counsel was present for the mother. However, there was no representation for the father and yet another new counsel appeared for the husband contended that orders may be passed based on the available records. Accordingly, orders were reserved on 09.09.2024.

12(a). As this Court has entertained certain doubts with regard to the pendency of the cases pending between the parties and the latest position of the petition for divorce by mutual consent between the parties, again the matter was posted before the Court on 13.10.2024.

12(b). On that day, learned Senior Counsel appeared for the mother. For the reasons best known, again neither the old counsel nor the



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new counsel or any representing counsel appeared for the father and the matter was passed over for two times. Thereafter, another representing counsel came and represented that the petition for divorce on mutual consent is coming up for hearing during the last week of December, 2024 and orders may be passed based on the available records.

12(c). Accordingly, orders have been reserved.

13(a). The original petition in O.P.No.169 of 2024 is filed by the mother seeking custody of the minor daughter on the ground that her husband, who is the father of the minor daughter, has committed physical violence both on her as well as on the minor daughter.

13(b). At the outset, the various allegations levelled by the petitioner – mother against the respondent – father that are related to matrimonial relationship against them are not touched in this proceedings. Only the allegations made by the petitioner - mother against the respondent – father with reference to the minor daughter and her welfare alone are



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discussed hereunder.

14(a). The main original petition has been filed by the mother against the father, on the grounds that:

- (i) The respondent has an illicit affair with two named lady Doctors.
- (ii) The respondent has physically abused her.
- (iii) The respondent has mentally abused her.
- (iv) The respondent has mentally abused and traumatized the minor girl child.
- (v) The respondent is a chronic alcoholic with severe anger issues.
- (vi) The mother is not able to cope up with the respondent abuses has left for her higher studies and job in London along with the minor girl child and the minor child at present is feeling very comfortable in the new atmosphere at London, U.K., without any trauma.
- (vii) The respondent has not mended his ways in



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spite of several opportunities given.

- (viii) The minor child is only 9 years old and as a female child of such tender age needs the company of the applicant that is the mother compared to the father.
- (ix) The mother can provide complete love and affection to the minor child and on the contrary the respondent cannot provide so.
- (x) The mother can provide a secure and safe environment for the minor child especially of such tender age and the sensitive age too.
- (xi) The minor child is not willing to even talk to her father and that is because of the trauma and fear inculcated in her mind by the acts, commissions, omissions and behaviour of the respondent.

14(b). The counter filed by the respondent - father is one of total denial. The sum and substance of the averments made by the father in the



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counter filed by him in the interim custody petition as well as in the affidavit filed in support of the petition for visitation rights shows that he has indulged in making accusation against his wife that is not germane to be heard in the guardianship petition. Furthermore, in respect of the acts and instances by the father with reference to the minor daughter, his reply was vague and without any substance.

15(a). The father has already withdrawn the petitions for custody of the minor daughter and for restitution of conjugal rights and the father and mother both of them have filed a petition for divorce on mutual consent, wherein orders are to be passed in the month of December, 2024.

15(b). From the interaction I had with the minor daughter and the typed set of papers filed before this Court, I find that the minor daughter has made video call communications to the father, which details are available in the typed set of papers and receipts of school fees for the minor daughter paid by the mother on 02.03.2022, 18.04.2023, 15.05.2023, 16.07.2024, 24.07.2024 and 24.08.2024 are available in the typed set of papers. Higher



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education seat allotment study course in UK for the mother is also enclosed in the typed set of papers. The medical certificate issued by Dr.M.Shyamala Devi, Behavioural and Development Pediatrician, dated 04.09.2023 and UK Visa, UK resident permit of the mother and the identity card issued by Queen Mary University of London to the mother and copy of e-mail from the immigration office to the mother are perused.

16(a). On perusal of the records, I find that the marriage between the applicant and the respondent was solemnized on 07.11.2013 according to the Hindu rites and customs at Oppiliappan Temple at Kumbakonam. Tanishka was born on 21.11.2014.

16(b). In the year 2017, the father the applicant herein started a medical pharmaceutical company “Chandra Medical Mission” with the respondent and the applicant as directors. Her father provided the respondent herein with a luxury house, expensive cars, watches to satisfy all his demands, believing that all these acts would help the applicant and the respondent to improve their relationship. During a trip to Singapore in



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October, 2019, for the respondent's birthday, a trip was planned by the applicant herein in order to change the respondent and to hold on to the marriage, the respondent – father was on the phone with Dr.Baraniya (alleged paramour) throughout the day. The applicant was a witness to all their conversations and chats on WhatsApp. Not able to accept the situation of betrayal, in spite of efforts and sacrifices the applicant had made, and the same caused stress induced palpitations and made the applicant grow pale thinking of her future with the then 5 year old daughter. The acts and instances of the father with reference to the minor child are discussed infra.

17(a). Further, it is the specific case of the mother that after their return from Singapore, her husband continued to have late night long conversations with the said lady Dr.Baraniya and when the applicant started questioning about the relationship, disputes arose, wherein the respondent again started off with his violent abusive behaviour and when things got heated up, he, during one such incident, had lost his temper and with the television being the closest object, he took it off the wall and slammed it against the applicant's head in front of their minor daughter.



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17(b). Their daughter being traumatized due to his aggressive behaviour, had brooded over this incident in her school, PSBB, and she was called by the Headmistress for a meeting as she was an alumna of the said School. Later, even the respondent was called by the Principal and was advised not to behave so in front of the kid being a paediatrician by profession.

17(c). To her surprise, through common friends, the applicant had gained knowledge that the respondent was in a live in relationship with the said Dr.Baraniya.

18(a). There was a mediation by a common family friend Advocate Mr.Infant Dinesh. Subsequently, the applicant came to know that on 23.06.2022, which was Baraniya's birthday and the respondent having known that he had another affair with his colleague lady (Dr.Illampirai), the respondent stalked and followed up on her whereabouts and took videos of her being out with him and circulated the same to the professors of SRMC and created some chaos between friends and family.



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18(b). The applicant was shocked to know that the respondent had stalked Ms.Baraniya in spite of the promise and assurance given by him and his family, when lady Dr.Illampirai approached and informed the applicant about the respondent's behaviour, she was stunned and taken back.

18(c). When the applicant's daughter turned to age of 7, she had observed certain behaviours of her father, where she had pondered over situations and started questioning about his conduct and behaviour at home for which, the applicant had to lie to her daughter about her father's action in order to keep her emotional well-being at peace. By the end of July, when the issues once again increased, the applicant suffered a bout of palpitation being stressed de to the respondent's continuous mis behaviour and betrayal. In fact, the applicant was admitted in Sooriya Hospital, where the respondent was least bothered to care for and did not visit her in the hospital nor did he care about the minor daughter.

18(d). In such circumstances, the mother has noticed that her minor daughter's education gets disturbed and all her friends and teachers were aware of her emotional trauma, which she was going through. The minor



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daughter had a nightmare and fell down from the bed and sustained bone fracture on her right arm and she was admitted in SIMS Hospital at Vadapalani, wherein the father came and created a fuss.

19(a). Another round of mediation talks was on at the instance of Dr.James, Ex.Dean of PIMS Hospital, Pondicherry. Dr.James could make to some headway in the dispute. In a meeting arranged by the said Dr.James, wherein the applicant's father-in-law, her husband and her father were participated and after discussions, it was decided that the applicant, respondent and their daughter would move to UK to start a new life, thinking that a new environment is essential for the minor daughter and start living a life without the disturbance of any other bad influence. Subsequently, as planned to move abroad and study in UK, the applicant started with the process and planned for education and availed the aid of IDP educational services.

19(b). The applicant – mother was contacted by Dr.Baraniya and was informed that the respondent – father was taking all efforts to bring her to



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UK. During the same week, when the respondent – father visited the home for lunch, in the absence of the parents of the applicant, he had quarrelled with their family driver Riyaz and had physically abused him in front of their minor daughter. In spite of the minor daughter pleading him to stop his violent behaviour, which fell into deaf ears and he had continued his aggressive and abusive behaviour which gave a blow on the minor daughter's mental health, where she did not agree to move to UK along with her father due to her past experiences, which affected her health and the applicant had to take her to Behavioural and Development Paediatrician and after few sessions, on 04.09.2023, the applicant was advised by the Doctor to move into a new environment, where she would feel free and secure for her to cope up with the emotional trauma and to lead a normal life.

19(c). A week later, the respondent made efforts to meet the minor daughter at her new school Sandipani Vidhyala, after school hours. The minor daughter had firmly rejected to her teacher that she is not willing to meet the respondent and would return home only if he leaves the school premises. Subsequently, after sometime, the applicant was informed by the class teacher about the respondent's doings to meet their daughter and also



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explained on how she had reacted and had advised her to care more about the minor daughter's emotional health and future.

20(a). In the meanwhile, the applicant wanted to pursue her higher education and moved over to Queen Mary University of London on 04.10.2023 and also obtained residence permit for staying in UK as student. On receiving the residence permit, she had applied for a dependent Visa on 14.10.2023 for her daughter to stay along in UK.

20(b). The UK Visa Department vide e-mail dated 31.10.2023, sought for additional document for processing the dependent visa for the minor and informed that child applicant's parents must each be either applying at the same time as the applicant or have permission to be in UK (other than as visitor) unless the parent with permission as a student is the sole surviving parent or has sole responsibility for the child's upbringing. Vide email dated 31.10.2023, from the UK Visa Department, the applicant was given to understand that until she has a legal custody of the minor child, she won't be able to get a dependent visa for her, which would not allow her to get her admitted in one of the schools in London.



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20(c). After coming to UK, the applicant is able to see plenty of opportunities which would help her daughter to pursue her dreams and education as the new environment helped them to relieve from the emotional trauma which they had to undergo. After knowing that they would have a peaceful and trouble free life in UK, the applicant had discussed with the respondent regarding the current situation through an email dated 03.12.2023 requested him to give a sole responsibility certificate in order to get the minor daughter admitted in a school. Even after repeated requests to give sole responsibility certificate only in order for minor's better future and healthy environment, the respondent kept threatening them with his repeated phone calls from various numbers and tried distrusting their peace, however, did not reply to her e-mail dated 03.12.2023. The visa of the minor daughter got expired and the applicant made efforts to extend the same, assumes significance. The statement of income and fixed deposits of the petitioner – mother in the Bank by way of an affidavit dated 05.09.2024 demonstrates her financial capacity to render education for her minor daughter in London, U.K.

21. From the interaction I had with the minor daughter on the above said date, I find that the mother has given her best support to the



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minor daughter and opportunity for the minor daughter to grow as a better person both emotionally and knowledge wise. She has been attending the online class and has also engaged herself in various extra-curricular activities, as she had conveyed the same to me during the personal interaction.

22. Keeping in mind about the future endeavours of the minor daughter, the learned counsel for the mother sought for the permanent custody of the minor daughter so as to enable to continue her education in United Kingdom. During my interaction with the minor daughter in my Chambers on the above said date, I found that her facial expression and education at London School is clear exhibition of her inner happiness for the child aged about ten years. Further, the education at London School appears to have helped the minor child to pursue her dreams and education and the new environment has impacted her so much, which had relieved the minor from the emotional trauma, which she had underwent. Besides, I found that her emotional and physical well-being were totally exhibited and she shown her academic excellence in Science subject, especially in the subject of Zoology and she also recollected her nice memories and best interaction, which she had with her friends at the said School. The impact of UK based education



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has created a good development opportunity for the minor daughter as she exhibited her excellence in understanding the subject and application of science, besides she was well grown in the environment provided in the School at London.

23(a). After taking note of the entire circumstances, I find that in the matter regarding custody of minors, welfare of the minor child is the paramount consideration. After going through the documents filed and also taking note of certain allegations against illicit relationship by the father, since the same is not a subject matter of this case, I am not expressing any opinion. The father and mother of the minor have decided to get separated by mutual consent and filed a necessary application before the Family Court. I confine myself regarding welfare of the minor daughter.

23(b). For the reasons stated supra, moreso, the acts and instances of the father, as discussed in paragraph Nos.17(a), 17(b), 18(d), 19(b), 19(c) and 20(c) in particular, I find that the mother is a suitable person for handing over the custody of the minor daughter to her and also her education be at the choice of the minor daughter at London in U.K., and for



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which, the mother has to be given authorization to sign as a guardian for the sole responsibility of the minor. Hence, I am of the considered view that the original application in O.A.No.195 of 2024 is liable to be allowed.

24. That apart, the attitude of the father by engaging different counsels for all different hearings is hereby deprecated. After perusing the counter affidavit, it is seen that he has not appeared before this Court and different counsels appeared for each and every hearing dates. Furthermore, after perusing the affidavit and after I had interaction with the minor child, I find that Application Nos.2786, 2787 and 2788 of 2024 lacks bona fide, however, smacks with the mala fide. His intention is to curb the mother from continuing her education in U.K., and to curtail the education of the minor daughter, by one way or the other and not allowing neither the mother nor the daughter to pursue their education by filing a petition after petition and changing counsels for one hearing to next hearing assumes significance.

25. The mother is given the custody of the minor daughter and the mother can act as a guardian of the minor daughter for the purpose of signing the documents before the immigration authorities and the minor daughter can continue her school education in Grade-IV in the very same



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school or any other school, which she could get at the belated time. The mother will have the custody of the minor daughter. The father is granted visitation rights to visit the minor daughter once in four months and he is at liberty to intimate the same to the mother and during the scheduled time, the mother has to bring the child to Chennai for a period of one week. This Court is not expressing any opinion about the matrimonial dispute between the parties, which will be concluded in the petition for divorce on mutual consent.

26. Accordingly,

- (a) O.A.No.195 of 2024 is hereby allowed.
- (b) Application Nos.2786, 2787 and 2788 of 2024 are disposed of on the above lines.
- (c) It is hereby clarified that the order dated 25.04.2024 made in O.A.No.195 of 2024 hereby stands vacated.
- (d) Sole responsibility of the minor daughter is granted to the petitioner – mother Dr.Chandara Gandhimathi.

06.12.2024

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NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Note to Office:

Forward a copy of this order to the Deputy High Commissioner for U.K., for reference.

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RMT.TEEKAA RAMAN, J.

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PRE-DELIVERY ORDER
IN
O.A.No.195 of 2024
and
A.Nos.2786, 2787 & 2788 of 2024
in
O.P.No.169 of 2024

06.12.2024

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