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C.M.P.No.6783 of 2024 in
O.S.A.No.108 of 2023

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in

O.S.A.No.108 of 2023

S.S.SUNDAR, J

and

MOHAMMED SHAFFIQ, J

(The Order of the Court was made by S.S.Sundar, J)

This petition is filed by the grand-parents of the minor child - A.Nuha Alima (daughter of (late) Abdul Hameed) to modify the order dated 05.03.2024 made in O.S.A.No.108 of 2023, regarding the visitation rights of the minor child.

2. The Appeal in O.S.A.No.108 of 2023 was directed against the order dated 06.06.2023 passed by the learned Single Judge in Application No.2690 of 2023 in O.P.No.188 of 2023, filed by the respondent herein and the said O.P. was filed by them for grant of permanent custody and for appointing them as guardians of the minor child.

3. During the pendency of O.P.No.108 of 2023, there was an interim order dated 06.06.2023 regarding the visitation rights, against which, the respondent herein preferred O.S.A.No.108 of 2023 challenging the order regarding the visitation rights of the child passed on 06.06.2023 in Appln.No.2690 of 2023 in O.P.No.188 of 2023.

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4. This Court, after elaborately considering the rival arguments and after hearing the parties, passed the following order on 05.03.2024 in the O.S.A:

"12. Upon weighing the totality of facts and circumstances of the case, this court is inclined to modify the order of the learned Judge, granting visitation rights to the respondents/grand-parents, by restricting it to once in every month, i.e. the first Saturday from 2.00 pm. to 6.00 p.m. at the Child Care Centre attached to the Family Court in Chennai. The appellant shall personally bring and leave the child for visitation. The parties are at liberty to have amicable settlement between themselves or to approach the learned Judge, for any other relief. All the contentions raised herein are left open to be adjudicated in the pending applications and original petition."

5. However, the present petition is filed by the respondents in the OSA, who are given visitation rights, in respect of the minor child, seeking modification of the order dated 05.03.2024 mainly on the ground available in paragraph 16 of the affidavit filed in support of this petition:

"16. The petitioners/Respondents submits that, in order to ensure the overall development of the



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minor child, proper environment and upbringing of the child and the best interests of the minor child as on date is at the tender age of 2-1/2 years (born on 03.09.2021) by considering the age of the minor child, forcing the minor child to be present in the child care centre will cause physical/mental disturbance to the minor child's natural activities herein and possibility for in need of sleep, and sanitary purpose maintenance also difficult for continuous period of four hours per day."

6. From the above extract, it is clear that the petitioners have stated that proper environment for conversing and upbringing the child, should be provided and the tender age of the child (2-1/2 years) may also be considered. It is further stated that forcing the minor child to be present in the child care study, would cause physical/mental disturbance to the minor child and naturally activities of the child would get affected and therefore, it is submitted that it is difficult to accept the continuance of visitation rights of 4 hours per day. Hence, the prayer is to modify the order by giving visitations rights once in every week from 2 p.m. to 3 p.m. The order passed by this Court is only on interim arrangement, pending O.P.No.188 of 2023. This Court finds no bona-fides.

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7. Further, there is no change of circumstances to modify the impugned order dated 05.03.2024 passed in the Original Side Appeal No.108 of 2023, which was passed only after appreciation of the relevant facts.

8. It is also brought to our notice that before passing the said order dated 06.06.2023 in O.S.A.No.108 of 2023, this Court has also made earnest efforts in finding an agreement between the parties and it was ultimately with the consent of both sides, the said order has been passed in the appeal. This petition is therefore devoid of merits and the same is liable to be dismissed.

9. It is now admitted before this Court that the petitioners herein are unable to see the child on 07.09.2024, as that day happened to be a holiday (Saturday).

10. Therefore, the respondent herein is directed to bring the minor child to the child care centre on 28.09.2024 or on the following Saturday. It is made clear that the petitioners herein shall see the child along with their daughter.

11. With the above observations and direction, this petition is dismissed.

(S.S.S.R.,J) (M.S.Q.,J)
24.09.2024

Office to note: Issue order copy by 03.10.2024

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