



A.Nos.4109 & 4110 of 2024

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in
O.P.No.156 of 2021

Dr.G.JAYACHANDRAN, J.

The Application in A.No.4110 of 2024 is filed to condone the delay of 520 days in filing the Application to set aside the order passed in O.P.No.156 of 2021 dated 09.11.2022.

2.The sum and substance of the dispute in O.P.No.156 of 2021 is regarding guardianship of a minor child viz., S.Samana. The Father is the petitioner in O.P.No.156 of 2021 has made certain allegations against the Mother, the respondent in O.P.No.156 of 2021, regarding her mental compatibility and also the dissolution of marriage as a ground for seeking guardianship of the minor child. Since the respondent did not appear before the Court to contest the petition, this Court has granted guardianship in favour of the Father vide order dated 09.11.2022.

3.The present Application to condone the delay of 520 days in filing the Application to set aside exparte order is on ground that no proper notice was served on the respondent and the reasons stated for disowning the right



A.Nos.4109 & 4110 of 2024

of the Mother having custody are false and misleading and she had been penalised for being emotionally sensitive.

4.Opposing the application for condone the delay as well as to set aside the order of guardianship, the Father has filed counter affidavit stating that the pendency of the guardian OP was very well known to the Mother, when interim custody was ordered by this Court on 26.07.2021 and the copy of the same was served on the Mother, at her residence and the custody of the minor child was taken from her. Though the Mother was fully informed about the pendency of guardian OP, she has not chosen to contest the same and she also did not contest the divorce petition and allowed to pass the exparte decree of divorce. More particularly, pending application to set aside the exparte order and application for condone the delay, the Applicant/Mother has married one Harish on 08.09.2024. This fact is admitted by the Applicant/Mother in her additional affidavit dated 10.11.2024.

5.From the arguments made by the learned counsel appearing for the respective parties and the affidavit filed in support of the Applications, this Court finds that the Applicant/Revathy/Mother of the minor child was aware



A.Nos.4109 & 4110 of 2024

of the proceedings, but for the reasons best known, she did not contest the matter, later the motherly love and affection had forced her to file this application atleast to have visitation right of the daughter.

6.Remarriage is an option and choice of the person, we cannot find fault with the decision taken by the Applicant/Revathy about remarrying and having a fresh lease of life. However, her right of visitation to see her minor daughter cannot be deprived, if she is otherwise not fit to have the visitation right. Yet another reason for the Applicant to file this application, according to this Court is that the allegation about her mental status, which may cause prejudice in her future chosen life.

7.Dehors the other reasons stated by the respective parties, the situation prevails as on date after the change in circumstances is that the minor child viz., Samana, who was born on 13.01.2012 being with her Father and being taken care properly, this Court found that the Father is the best person to have the custody of the minor girl and that will be in the best interest of the minor girl. The said decision has to be reaffirmed again for the additional fact that the Mother had married one Harish and had started a new life. Therefore. this Court finds no reason to condone the delay of 520



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days in filing an application to set aside the order passed by this Court on

09.11.2022. At the same time, as pointed out earlier, the visitation right of the Mother has to be recognised and be preserved for the said purpose. The Father, who is present in this Court, was asked whether he can arrange for the visitation of the Mother to be with the minor child occasionally, the Father agrees that he will arrange for the visitation once in 45 days, subject to the convenience of the parties. The place of visitation shall be in a common place of worship, preferably, on a holiday between 10.30 am to 04.30 pm.

8.In view of the above said observation, A.No.4110 of 2024 is dismissed, consequently, A.No.4109 of 2024 is also dismissed.

11.11.2024

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Dated: 11.11.2024