



C.M.A.No.1466 of 2023

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AT THE JUDICATURE OF MADRAS HIGH COURT

DATED :20.09.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C . M . A . No . 1466 of 2023

and

C . M . P . No . 15051 of 2023

C.M.Gayathri

... Appellant/Petitioner

-Vs-

D.V.Rakesh

... Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1955, against the fair and decreetal order dated 28.12.2022 made in G.W.O.P.No.3670 of 2019 on the file of the III Additional Principal Family Court, Chennai.

For Appellant : Mr.Prabakaran, Sr. Council
for Mr.P.Chandrasekar
For Respondents : Mr.R.Abdul Mubeen



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J U D G M E N T

(Judgment of the Court is authored by Mrs.R.KALAIMATHI, J.)

This Civil Miscellaneous Appeal is preferred against the order dated 28.12.2022 made in G.W.O.P.No.3670 of 2019 by the learned III Additional Principal Family Court, Chennai.

2.The appellant/wife moved an application under Section 6 of the Hindu Minority and Guardianship Act r/w Section 26 of the Hindu Marriage Act, to hand over the custody of the minor child viz., D.R.Vedanth to the petitioner.

3.Based on the answers given by the child, and on consideration of the testimonies, the petition was dismissed with a direction to the respondent/father to permit his minor child to have talks with the petitioner/mother between 5 p.m., to 6 p.m., on every Sunday through Skype or through Video Call. Against the said order, the petitioner/mother



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has preferred this appeal.

4.The facts set out in the petition has been stated in brief:

The marriage between the petitioner and the respondent was solemnized on 06.12.2009 in Bangalore in the presence of both side relatives and elders. The petitioner is a Doctor by profession. She was employed at Private Dental Clinic, Villivakkam. Now she is residing with her parents. Because of the strained relationship, both the petitioner and the respondent filed a divorce petition in O.P.No.403 of 2019. On mutual consent, order of divorce was passed on 05.04.2019. The petitioner is making arrangements to go abroad and her son Vedanth is left with her husband. When she tried to talk with the respondent, the respondent did not allow to contact the child. The petitioner being the mother has got every right to have custody of the minor son.



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5.The details of the counter is given in brief.

Out of wedlock, they are blessed with two children viz., D.R.Vedanth born on 10.02.2014 and another boy child D.R.Yagnav born on 10.11.2016. The respondent was a caring and dutiful husband and used to spend most of his time in taking care of his children. The petitioner was in the habit of making offensive remarks against the respondent and she subjected the respondent to untold hardship by scolding him in abusive language and harassed him. Finally, they filed O.P for divorce in O.P.No.403 of 2019 for divorce by mutual consent and the same was ordered. In the affidavit filed in the above O.P., both had agreed that the first child viz., D.R.Vedanth would be in the custody of the first petitioner/husband and the second child D.R.Yagnav would be in the custody of the second petitioner/father. The respondent is taking care of his elder son, who is in his custody and providing him good education and good quality of life and sought for dismissal of the said petition.



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6.At trial, the petitioner has examined herself as P.W.1 and 10 documents were marked. On the side of respondent, the respondent has examined himself as R.W.1 and six documents were marked.

7. Upon consideration, the Family Court concluded that the petitioner has failed to prove the allegation made in the petition and chose to dismiss the petition and granted visitation rights to her. Against which, the present appeal is filed by the petitioner/mother.

8.On a careful perusal of the entire records, it appears that on serious misunderstanding, both the petitioner and the respondent filed a petition in O.P.No.403 of 2019 for divorce on mutual consent and based on the mutual understanding, elder son (Vedanth) is with the father and the younger son (Yagnav) is with the mother. These details are not divulged in the petition at all. The main allegation of the petitioner is that the



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respondent got married and he has a child out of the second marriage and her elder son was not shown to her. It is not the case of the petitioner that her son is not comfortable at the hands of the stepmother. No where the petitioner has stated that she rang up to the respondent in order to contact her elder son Vedanth through video call also. The allegation put-forth is that she is not permitted to see her son Vedanth.

9.From thorough perusal of the records it appears that the minor was enquired by the Family Court as to how he is being treated by his stepmother and his feelings about the stepmother and about his life in general and various questions have been posed and for all the questions, he has given positive answers that he is being taking care of by stepmother nicely and he is happy with her, more specifically he likes his sister Niharika, who was born to his father and stepmother. So, it is pellucid that he is being taken care of by the stepmother as well as the father in a



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proper manner and it is his specific answer that he is not interested to stay with his mother. He has also answered that he has talked with his mother.

10.The petitioner/mother is residing in Chennai, whereas the respondent/husband is residing in Bangalore. As the O.P was filed in the year 2019 and the order was passed in the year 2022, we decided to hear the minor child Vedanth and he was enquired by us. He reiterated the same answers that he is being taken care of by both the father and stepmother and he feels very comfortable with the father and stepmother and his sister Nigarika.

11.The law is well settled that the welfare of the child should be the paramount consideration.

12.We also observed that he is very affectionate towards his younger brother Yagnav and still he reiterates the same situation that he feels very



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comfortable to live with his father, stepmother and half-sister Nigarika. We also do understand about the feelings and emotions of the mother on the child. We are very conscious of the fact that though based on the mutual arrangements the elder son is with the father, the mother, who is the natural guardian has got the right to have custody of the child. But the situation is otherwise and not favourable to the petitioner. The Family Court order is also given in a very clear terms. The minor boy has stated that he wants to be with his father and stepmother. Before us also after two years the minor boy has reiterated the same thing.

13.Considering the fact that the petitioner is the mother of the child, who have a sincere wish to meet her son, but considering the answers given by the child, in order to strike a balance, as the mother has filed this petition, granting of visitation rights would meet the ends of justice.



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14. At the time of signing the order, this Court raised certain doubts with regard to the grant of visitation rights to the petitioner/mother. Therefore, the matter was listed under the caption “For clarification” on 10.03.2025, for the purpose of ascertaining the details, pertaining to timings and days for granting visitation rights. After hearing the learned counsel on either side, this Court is inclined to pass the following orders:-

- (i) the petitioner/mother is at liberty to meet her elder son Vedanth, twice in a month (i.e.) on the second and fourth Sunday of every month, between 5.00 p.m. and 7.00 p.m. at the temple near the residence of the respondent.
- (ii) the petitioner/mother is also permitted to talk to her elder son Vedanth on the rest of the Sundays of the month, excluding the second and fourth Sunday, between 5:00 p.m. and 06.00 p.m. through Video Call.

15. With the above mentioned directions, this Civil Miscellaneous Appeal stands partly allowed. No costs. Consequently, connected



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miscellaneous petition is closed.

(J. N. B. J.,) (R. K. M. J.,)

20.09.2024

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NCC:Yes/No

Index:Yes/No

Internet::Yes/No

To

1.The III Additional Principal Family Court,
Chennai.

J. NISHA BANU, J.

and

R. KALAIMATHI, J.

Ns

Judgment made in

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