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A.Nos.3449 & 3450 of 2024

in

O.P.No.105 of 2020

C.V.KARTHIKEYAN, J.

These Applications have been filed to recall PW-1 for the purpose of cross-examining him and to reopen the evidence of PW-1 for that purpose and also to let in further evidence on behalf of the respondent.

2.In the affidavit filed in support of these two applications, it had been stated that the counsel had instructed his junior counsel to get an adjournment for cross-examination, but the junior counsel was held up in another Court. Therefore, since there was delay in filing these applications, the applicant had to change her counsel. She was also not well. It is under those circumstances that these applications have been filed.

3.A counter affidavit had been filed on behalf of the respondent / petitioner in the Original Petition wherein, it had been alleged that the applicant has been changing her counsel often. It had also been stated that there was an order permitting him to visit the child on every Saturday and Sunday and also during the birthdays and also his grandparents / parents were also permitted to visit the child. It had been stated that however, the applicant had refused such permission.



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4.The learned counsel for the respondent stated that the Master had given more than sufficient opportunity for cross-examining the witness and since the applicant had not appeared, after being quite frustrated, the evidence had been closed. The learned counsel further stated that the applicant has no bonafide and that she is deliberately screening away the child during visitation.

5.I have heard the learned counsel on both sides.

6.The main Original Petition has been filed by the father seeking guardianship and custody of a minor child who was born on 25.10.2015. This would mean that he is now aged about 8 ½ years old and touching nine years. This petition had been filed in the year 2020 when the child was just around 3 ½ years old. The matter has not yet come to a conclusion. The trauma which the child would be undergoing can never be imagined by this Court.

7.Even when comprehensive orders were passed by a learned Single Judge relating to visitation rights, the learned Judge had observed that both the mother and father should not indulge in arguments for any of their personal issues and should not create drama before the child, since the child would be emotionally affected. Even though that observation was made on 12.08.2022, there seems to be no development in the attitude of both the petitioner and the respondent.



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8.Once trial starts, the Original Petition is converted as an adversarial litigation and during the course of such adversarial litigation, the petitioner and the respondent would only be levelling allegations against each other rather than giving a plan or vision for the welfare of the child. That is hardly done by any party and therefore, levelling allegations would not further the cause for grant of guardianship or of custody of the child to the one who so levels such allegations.

9.The evidence of the petitioner is already on record. He is to be now cross-examined. Cross-examination is done as is always done only on the allegations made against the respondent in the Original Petition. It is never done keeping the welfare of the child in the mind.

10.Taking into consideration all factors, I would allow these two Applications, but under these conditions,

(i) the petitioner in the original petition to appear before the learned Master on 05.08.2024. The witness must be cross-examined on 05.08.2024 and if required, once again on 07.08.2024. The cross-examination must be completed on both those dates. The learned Master should not give any further time for cross-examination.



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(ii) the respondent must tender evidence in chief on 14.08.2024 and must be cross-examined on 19.08.2024 and again on 21.08.2024. No further time must be granted for cross-examination of the respondent.

11.The evidence already on record should alone be taken into consideration and no further evidence is permitted by either side, particularly by the petitioner.

12.After recording the evidence, in accordance with the schedule as stated above, the matter may be listed before this Court on 28.08.2024.

23.07.2024

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