



O.P.No. 771 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.P.No. 771 of 2023

And

A.No. 6295 of 2023

And

O.A.No. 1007 of 2023

A.S.Bilal

... Petitioner

Vs.

A.Raisa Nasrin

... Respondent

PRAYER: Original Petition filed under Section 25 of Guardian and Wards Act 1890 and under Order XXI Rules 2, 3, and 11 of the Original Side Rules read with Caluse 17 of the Letters Patent Act 1865, to grant the custody of the Minor Girl Child Aisha Imaya aged about 12 years to the father / petitioner.

For Petitioner : Mr. R.Karunakaran

For Respondent : Mr.M.Eghambaram

ORDER



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This petition has been filed by the father of the minor child B.Aisha Imaya, born on 07.10.2010 seeking guardianship of the said child and permanent custody.

2. The marriage between the petitioner and the respondent had taken place on 27.09.2009 as per Muslim Rites and Customs at New College Hall, Raoyapettah, Chennai. The child was born on 27.10.2010. Owing to various issues between the petitioner and the respondent, the marriage was dissolved by a decree of divorce passed by the Judicial Magistrate at Ilayangudi on 21.06.2017. It is stated that the petitioner had earlier filed G.W.O.P.No. 1 of 2016 and the same was dismissed and C.M.A.(MD).No. 390 of 2021 was also dismissed and SLP No. 6598 of 2022 was also dismissed.

3. It is contended by the petitioner that the child is studying in a School at Ilayangudi under the custody of the respondent. The child is a hyper active child. It is contended that she requires counselling. It is also stated that subsequently, the respondent had contracted another marriage in February 2024.

4. The petitioner, the respondent and the child had come over to



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the Chamber on an earlier occasion on 24.06.2024. I had an interaction with the petitioner, the respondent and also with the child. The respondent is also working as a teacher in a school at Illayangudi in Sivagangai District. She had now conceived again.

5. In view of the interventions made by senior members of the family particularly the paternal uncle of the respondent Mr.A.E. Naina Mohamed and the paternal aunt Mrs. Meelad John, and the father of the petitioner, Mr.A.K.S.Tahir, a memo had been filed on behalf of the respondent that in view of the changed circumstances in her life owing to her contracting a second marriage, an conceiving again, guardianship of the child and custody of the child could be handed over to the petitioner.

6. Today, the petitioner and the child are present in the chamber. The respondent is not able to physically present owing to her pregnancy. The paternal uncle and paternal aunt, Mr.A.E.Naina Mohamed and Mrs.Meelad John, had brought the child from Illayangudi to Chennai. When enquired, the child expressed her intention to go with her father / the petitioner herein.

7. This Court had placed a condition that the petitioner should



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permit the child to converse with her mother at regular intervals and for this limited purpose, it would only be appropriate that the petitioner provides the child with a phone for such purpose. The child is also interested in various extracurricular activities including singing and it would be the duty of the petitioner to ensure that her interests are furthered by joining her in classes in singing in any reputed institution.

8. The child also stated that she is interested in learning the Holy Quoran and I am confident that the petitioner would make necessary arrangements in that regard also.

9. It would also be advisable that the child is also counselled by an expert and in this connection, the assistance of Dr.Poorna Chandririka, Director, Institute of Mental Health, Kilpauk, Chennai – 600010 can be availed and the petitioner may get an appointment with the learned Doctor for counselling the child. The petitioner may also attend the said counselling session as this will given him more focus as to how to bring up the child in the later stages of her life.



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10. The said counselling may also be helpful for the petitioner to identify the nature of school and education where the child could be admitted.

11. The respondent had also filed an affidavit which had been presented before the Court. In the said affidavit, she had stated as follows:-

“6. I submit that after I got divorced, I re-married another person in the month of February 2024 and now I am conceived. Due to my health condition, doctor advised me not to get long travel. I further submit that my father also a senior citizen aged 68 years and he is a Heart Patient now he has fixed pace maker. So, that he cannot travel with me or with minor B.Aisha Imaya. Therefore, I came to conclusion that due to my poor health condition and financial situation. I am giving consent for hand over the minor B.Aisha Imaya to petitioner.

7. I submit that minor B.Aisha Imaya is also willing to go to her father ie., the petitioner herein. Now the petitioner is responsible for the



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minor B.Aisha Imaya, and the petitioner has to bear minor B.Aisha Imaya's Educational expenditure, Medical expenditure and also her future marriage expenses etc.,

8. I submit that the petitioner will be the whole guardian and responsible for her future life. Hence, I send minor B.Aisha Imaya along with my close relative my grandfather and grandmother by name Mr.A.E.Naina Mohamed and Mrs. Meelad John. They will bring the minor B.Aisha Imaya before this Hon'ble Court to hand over to the petitioner.

9. I submit that I will hand over all the original relevant documents such as Medical Reports, Educational Certificates from the year 2014 with original Adhar card and all other relevant documents over the minor B.Aisha Imaya as requested by the petitioner/and the petitioner may acknowledge the same at the time of receiving the minor B.Aisha Imaya."

12. In view of the specific stand of the respondent and in view of the fact that the petitioner is also willing to take the responsibility of being



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the guardian of the child and to take permanent custody of the child with equal responsibility to provide her with good education and foster her interests in extracurricular activities and also taking into consideration the opinion of the child, this Petition stands allowed as prayed for. Consequently, connected Applications are closed.

13. Incidentally, during the interaction in the chamber, the father of the petitioner Mr.A.K.S.Tahir was also present and I am confident that as a senior and respected member of the family, he would guide the petitioner in bringing up the child and providing her with proper and good education.

14. In the presence of the Court, the medical reports and school certificates and the Aadhar Card of the child had been handed over to the petitioner.

23.07.2024

vsg
Index:Yes/No
Neutral Citation:Yes/No
Speaking order : Yes/No

C.V.KARTHIKEYAN, J.

vsg



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