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Application No.4474 of 2023

and

O.P.No.606 of 2021

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Date of Reserving the Order	Date of Pronouncing the Order
28.10.2024	16.12.2024

RMT.TEEKAA RAMAN, J.

ORDER

For the sake of convenience, the parties are referred to as the “father”, “mother” and “minor children”.

2. The mother has filed this application under Order XIV Rule 8 of the Original Side Rules read with Section 5 of Limitation act, 1963 and under Order XXI Rule 11 of the Original Side Rules seeking to condone the delay of 482 days in filing the application to restore G.W.O.P.No.606 of 2021, which was dismissed by this Court on 28.04.2022.

3. The mother filed G.W.O.P.No.606 of 2021 under Sections 3, 7,



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10 and 25 of the Guardians and Wards Act, 1890 read with Order XXI Rules 2, 3 and 11 of the Original Side Rules, seeking to appoint her as the guardian of the minor children, namely, Rebekah Deepika Solomon, Nina Roshni Solomon, Meira Divya Solomon and Joel Avner Solomon and to grant permanent custody of the very same minors.

4. The date of marriage between the parties and the birth of quadruplets on 13.12.2007 are not in dispute.

5. Mr.M.K.Kabir, learned Senior Counsel appearing for the applicant / mother would submit that the respondent / father has designed a methodology to send both the mother and the minor children out of USA and thereafter, while they were in India, he prevented the minor children from entering the USA, however, he had chosen to file a habeas corpus petition in H.C.P.No.2274 of 2022 alleging that the minor children are illegally detained by their mother and the said habeas corpus petition was dismissed as withdrawn on 09.09.2024 with a direction to the father to agitate the matter before this Court. In the meanwhile, G.W.O.P.No.606 of 2021 was dismissed



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for non-prosecution on 28.04.2022.

6. The learned Senior Counsel appearing for the mother would further contend that taking advantage of the absence of the mother, the father has moved the Court in USA for divorce and also for custody of the minor children by filing a false affidavit of service by one Ms.Raju Paswan. Based upon the said affidavit of service, the divorce proceedings were ended in the *ex parte* decree of divorce, while the mother was in India for supporting her mother, who was taking treatment for cancer and in the absence of the mother, the father, on the strength of the *ex parte* decree has re-married another lady in USA and also effected change of name in the property records. Since the minor children are in India, the mother seeks to condone the delay in filing the restoration application to contest the main Guardian Wards Original Petition on merits.

7. Mr.G.Rajagopalan, learned Senior Counsel appearing for the father would refute the allegations made by the mother and he would contend that there is a valid decree passed by the Court in USA and therefore, reviving



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the guardian wards original petition is of no use.

8. In reply, learned Senior Counsel appearing for the mother would contend that there is an allegation by the mother that during her absence in USA, based upon a false affidavit of service, the USA Court has granted *ex parte* decree of divorce and *ex parte* order of custody in favour of the father and the same are in violation of the principles of natural justice and hence, the same are not binding upon the Court in India.

9. This Court finds some force in the above said contention of the learned Senior Counsel appearing for the mother.

10. Admittedly, the minor quadruplets are in India. The final decree appears to have been passed by the District Court, 468th Judicial District, Collin County, Texas, on 05.08.2022. Service of notice in the said case is under dispute. Therefore, whether the principles of natural justice, as observed by the Court in USA, has to be necessarily gone into to determine the



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binding effect of the said decree upon the parties.

11(a). The allegations and counter allegations with regard to the amount spent towards the minor children and the amount spent by the mother are not related in the custody petition.

11(b). It is specifically alleged by the mother that even during her stay in India, the father was having extramarital relationship with one Ella Tadjally. The mother came to know that the father had changed certain details about the house, which they jointly owned in the USA. Thereafter only, the mother realized that the father had removed her name from the records. Consequently, the father along with the said Ella Tadjally, her mother Halima, Khamidova and her children are residing in the house now owned by the father. On enquiry, it was revealed that the husband of the said Ella Tadjally had instituted a divorce proceedings against her on 08.07.2021, just one month before the father sent the mother and the minor children to India.

11(C). Coincidentally, both the said Ella Tadjally and the father



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engaged the services of the same counsel in the USA. Therefore, it is clear that both of them were having an extramarital relationship, which came to light and that was the reason the said Tadjally instituted the petitioner for divorce. She involved in the said relationship even while the mother and the minor children were living in USA. It is the reason for the father seems to have consented for the children to go to India, so that the process of obtaining an *ex parte* decree for divorce and custody of the minor children would be easier.

12. Since it is a matter of condoning the delay, I am not inclined to go into the allegations and counter allegations of the parties. The minor children are in India. The well-being of the minor children is the paramount consideration for this Court.

13. The minor children came to India with the consent of their father. Habeas corpus petition filed by the father was dismissed as withdrawn on 09.09.2024. The minor children are graduates and they have to proceed further and therefore, taking into consideration the fact that welfare of the



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minor children is paramount consideration in determination of the guardian and custody matters and they will turn to the age of 17 years on 13.12.2024 and since the matter is involved custody of the minor children, opportunity has to be given to the mother to contest the guardian wards original petition. The reasons assigned by the mother for condoning the delay of 482 days in filing the application to restore the main guardian and wards original petition, which was dismissed on 28.04.2022 are found to be satisfied.

14. Accordingly,

- (i) This application is allowed.
- (ii) The delay of 482 days in filing the application for restoration of G.W.O.P.No.606 of 2021 is condoned.
- (iii) The *ex parte* order of dismissal, dated 28.04.2022, passed in G.W.O.P.No.606 of 2021 is hereby set aside.
- (iv) G.W.O.P.No.606 of 2021 is restored to file.



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- (v) Registry is directed to post G.W.O.P.No.606
of 2021 before the roster Court for hearing
on 17.01.2025.

16.12.2024

NCC : Yes / No

Index : Yes / No

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RMT.TEEKAA RAMAN, J.

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PRE-DELIVERY ORDER
IN
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and
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16.12.2024