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Application No.5243 of 2024 in
O.P.No.188 of 2023

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V. LAKSHMINARAYANAN, J.

This application seeks for a direction to the respondent/wife to bring and leave the child namely A.Nuha Aalima, at the time of performance of Fathiah for her father, to be held on any one of the days from 06.10.2024 to 10.10.2024 between 10 am and 5 pm at the applicants' residence situated at No.1 Bajanai Kovil Street, Royapuram, Chennai – 13.

2. The applicants are the mother and father of one Abdul Hameed. Abdul Hameed married the respondent on 02.09.2020. From the wedlock, a female child, A.Nuha Aalima, was born on 03.09.2021. Unfortunately, Abdul Hameed developed Dengue fever and succumbed to it on 21.10.2022. Thereafter, due to disputes and differences arose, the parties separated.

3. Pleading that the respondent is not acting as per an agreement entered into between the parties on 03.11.2022, O.P.No.188 of 2023 was filed seeking guardianship of the minor child.



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4. Pending disposal of the original petition, three applications were taken out by the applicants herein. They were

- (i) to grant visitation rights to see their grandchild,
- (ii) to grant interim custody of the child and
- (iii) for a direction to the respondent/wife to comply with the agreement dated 03.11.2022.

5. A learned Single Judge, on 06.06.2023, passed a common order in the applications, granting visitation rights to the grandparents.

6. Aggrieved by the same, the respondent/wife preferred an appeal in O.S.A.No.108 of 2023. The appeal was disposed of by an order of the Division Bench on 05.03.2024 granting visitation rights to the grandparents once every month on first Saturday between 2 pm and 6 pm at the Child Care Centre attached to the Family Court at Chennai. This order was sought to be modified in CMP.No.6783 of 2024. Finding that there is no change in



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circumstances, the petition came to be dismissed on 24.09.2024. This is the background for the present application.

7. The applicants, who are the grandparents of the minor A.Nuha Aalima and the parents of the deceased Abdul Hameed, wants to perform Fathiah ceremony for their departed son. They plead that due to the circumstances which were prevailing soon after the death, the Fathiah ceremony could not be performed in a satisfactory manner. Hence, this application.

8. Mr.N.Poovanalingam appearing for the respondent/wife would submit that taking the child to the residence of the applicants would not be conducive on account of the criminal cases that are pending between the parties.

9. As an alternative Mr.G.Anandaraj suggested that the child be taken to the marriage hall owned by the applicants for the purpose of conducting the Fathiah Ceremony.



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10. I have carefully considered the submissions of Mr.G.Anandaraj and Mr.N.Poovanalingam.

11. The relationship and the situation prevailing between the parties as of today constrain me from giving a direction to the wife to hand over the child to the grandparents for the performance of Fathiah ceremony, as sought for in the application. At the same time, in the matters of custody, I have to take into consideration the sentiments of both the parties as well as the interest of the minor. The minor is aged about three years, the grandparents feel that her presence while performing the Fathiah ceremony for her father, would be conducive for her growth. This fact cannot be disputed by Mr.N.Poovanalingam, since the relationship between the parties is not in dispute. Therefore, I suggested both the counsel to come up with a common place in which Fathiah ceremony can be performed.

12. Mr.G.Anandaraj suggested that the Fathiah ceremony can be



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performed in the precincts of Mount Road Durga – Makkah Masjid. Being a public place and the religious institution, the possibility of any skirmishes between the parties would not arise.

13. Mr.N.Poovanalingam has taken instruction from his client and reports that his client will take the child along with her father to Makkah Masjid.

14. In the light of the above agreement between the parties on the place where Fathiah can be performed, I am inclined to give the following directions:

(a) The Fathiah will be performed within the precincts of Makkah Masjid-Mound Road Durga on 10.10.2024 between 4 pm and 7 pm;

(b) the respondent shall take the child along with her father to the said premises and participate in the Fathiah ceremony.

(c) Both the applicants and the respondent, taking into consideration the solemn occasion of the death anniversary of Abdul Hameed, shall behave in the manner appropriate to the function which is being conducted.



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15. With the above directions, the application stands disposed of. No costs.

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