



O.P.No. 785 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM

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

O.P.No. 785 of 2023

And

A.No. 6419 of 2023

S.Praveen Ganesh

... Petitioner

Vs.

Lakshmidheepa Arjunamoorthy

... Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 & 25 of Guardians and Wards Act, 1890 read with Order XXI Rules 2 and 3 of the Original Side Rules, to appoint the petitioner as the guardian of the person of the minor child Pradhaya Amura Praveen and also grant permanent custody of the minor child Pradhaya Amura Praveen to the petitioner herein.

For Petitioner : Mr. Arun C.Mohan for
Mr. S.V.Pravin Rathinam

For Respondent : Mr. V.Balu



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ORDER

The petition has been filed by the father of his minor child Pradhaya Amura Praveen, born on 14.06.2011, seeking to appoint him as the guardian of the person of the said child and also grant permanent custody.

2. The child is today in the custody of the respondent. The marriage between the petitioner and the respondent was solemnised on 17.06.2007. The child was born on 14.06.2011. Various aspects which interfered with the happy marital life between the petitioner and the respondent had been stated in the petition. The marriage slowly broke down irretrievably.

3. In April 2016, the petitioner and the respondent filed O.P.No. 1540 of 2016 seeking dissolution of marriage by mutual consent under Section 13B of the Hindu Marriage Act, 1972. This petition came up for consideration before the Principal Family Court at Chennai. The petitioner had also filed G.W.O.P.No. 1685 of 2016 again before the said Court seeking



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guardianship of the minor child. The petitioner had consented that the respondent could be the guardian of the child but sought visitation rights to be put in place so that he could foster a healthy relationship with the child in the years to come. It was also stated that a memorandum of compromise had been entered into between him and the respondent. He had agreed to pay as maintenance for a sum of Rs.1,00,000/- per month for a period of five years after the divorce. It was agreed that he could visit the child at a public place in the presence of the respondent or an alternative representative on every other Saturday between 11.00 a.m., and 06.00 p.m.

4. This arrangement was actually put in place but the petitioner was not able to interact with much freedom with the child and he found behavioural changes in her. It was stated that therefore, he raised an apprehension that the respondent was not encouraging the child to have healthy interaction with him. The petitioner had also filed Interlocutory Applications in G.W.O.P.No. 1685 of 2017 and thereafter also sought to permanent custody of the child.

5. An Advocate Commissioner had also been appointed but that



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led to further animosity between the parties. It was under those circumstances that though the marriage had been dissolved by an order of Court, since no effective order has been passed with respect to either guardianship of the child or for custody of the child, the present application has been filed before this Court.

6. A Counter affidavit had been filed on behalf of the respondent wherein the facts which could not be denied had not been denied particularly relating to the marriage and the birth of the child. However, the issues relating to the marriage or the reasons for the breakdown for marriage were contested and disputed. It was stated that divorce was granted in O.P.No. 1540 of 2016 in April 2016 itself. It was also stated that the school fees were due to be paid for the child and the petitioner had not discharged his responsibility in that end. It was also stated that the petitioner for a number of years, for some reason avoided meeting the child. It was stated that when the child was suddenly exposed to him, she found it difficulty to accept to his presence. It was also stated that the petitioner had re-married and had a child was also born and it was stated that therefore, the relationship further strained and could not be restored.



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7. It was further stated that the respondent is a single mother taking care of the child and therefore, it had been stated that she may be recognised as the guardian of the child and permanent custody should also be granted to her.

8. In view of the stands taken by both the parties, particularly relating to the larger issue of guardianship and custody, the parties were directed to tender evidence.

9. To avoid the Original Petition to be converted as an adversarial litigation, this Court had directed only the petitioner to tender evidence and to restrict such evidence to the nature of visitation rights which could be given to him and also express about his willingness or otherwise to be appointed as guardianship of the child and to have permanent custody of the child.

10. Accordingly, the petitioner was examined as PW-1. He filed his proof affidavit wherein he stated the facts as stated in the petition. He



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stated that he is not disputing the guardianship of the child but would only insist on effective visitation rights being put in place by the Court. He was also cross examined on behalf of the respondent wherein he put forward his stand about his consent for the respondent to be recognised as guardian of the child and to have permanent custody. He only stated that he wanted to exercise his visitation rights so that an effective bondage could be brought between him and the child.

11. Appreciating the nature of evidence adduced, since a decision had to be taken with respect to the visitation rights, both the petitioner and the respondent were requested to file separate affidavits indicating their preferences about the manner in which such arrangement could be made.

12. Accordingly, the petitioner has filed an affidavit wherein he had expressed that the child should visit him for a period of 5 hours every week at his parents place and if that is not possible, on any other day as suggested by the respondent. He also stated that he would like to participate in the events of the child like school annual day or sports day and also spend time with the child during religious holidays and festivals and on important



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days like birthdays of himself and his parents and the child. He also stated that the Court can appoint an Advocate Commissioner to be present at the time of such visits. He also stated that he would take the child from the home of the respondent and take her to his parent's house where she could spend quality time. With respect to maintenance, he stated that he would continue to pay her school fees as he did till 2022. The learned counsel for the petitioner stated that the petitioner would also pay a sum of Rs.1,00,000/- every month towards the expenses of the child and for any other requirement of the respondent in relation to the needs of the child.

13. The respondent also filed an affidavit wherein she stated that a compromise memo was filed in the year 2016 and also stated that she does not have any objection for the child to foster a relationship with the petitioner, but urged the Court to take into consideration the fact that the child is aged just about 14 years and is in a position to express her views, to challenge opinions expressed by others and at an age where she would like to break free rather than being confined to a particular routine week after week. She also stated that frequent visitation might affect the education of the child and her focus on her career. She stated that a neutral location may be



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determined by the Court wherein the child could have interaction with the petitioner. She also stated that either she or her mother could be permitted to accompany the child and stated that they would stay at a much safe distance and would not interfere with the personal interactions with the child. She had stated that the petitioner should refrain from sending over any third party to ensure that this arrangement is put into place.

14. Heard arguments advanced by Mr.Arun C. Mohan, learned counsel for the petitioner and Mr.V.Balu, learned counsel for the respondent.

15. I must place on record that the point to be determined had narrowed down considerably since the petitioner had restricted his rights to seeking visitation rights for the child and had not insisted on being appointed as guardian or to be granted permanent custody of the child. The reasons need not be gone into at this stage as both the petitioner and the respondent have also taken an independent decision to take their lives forward in the manner they now feel would be in their best interest.

16. Mr. Arun C.Mohan, learned counsel reiterated the commitment



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of the petitioner to pay maintenance of Rs.1,00,000/- every month and also stated that any other expense relating to the education or co-curricular or extracurricular activities of the child would also be borne by the petitioner. The learned counsel stated that the Court may take a decision about the visitation of the child with the petitioner and stated that this could be once in a week for a period of 4 hours at his parents' place and also stated that if required, the Court can also seek the assistance of an Advocate Commissioner to ensure that visits are done keeping in mind that the mental health of the child is not affected by the frequent visitations.

17. Mr. V.Balu, learned counsel for the respondent pointed out the enormous responsibility which is now thrust on the respondent since she now has to act as guardian and also have permanent custody of the child. As a single mother, she will have difficulties in discharging these duties. The learned counsel pointed out that the child is at a very crucial age wherein her interests are growing outwards and therefore sufficient leverage must be given to her. She must be exposed to all strata of society. It was also pointed out that she is also very much into sports and extracurricular activities and caution should be taken that such interests are not hindered by any



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arrangement. The learned counsel also stated that quite apart from the monthly maintenance which the petitioner has come forward to pay, an obligation must also be thrust on the petitioner to pay necessary education expenses for the child.

18. I have carefully considered the arguments advanced and perused the materials available on records.

19. In view of the stand taken by the parties, the points which arises for determination are:-

(1) the arrangements to be made with respect to the visitation of the child and interaction of the child with the petitioner herein, and

(2) the arrangements to be made with respect to the monthly maintenance of the child and for educational and other expenses of the child;

Point No.1:

20. The petition has been filed by the father seeking permanent



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custody of his minor child Pradhaya Amura Praveen was born on 14.06.2011. The child is now under the custody of the respondent. The marriage between the petitioner and the respondent had been dissolved by an order of Court. The petitioner had remarried and has a child. In view of this circumstance, the petitioner had restricted this petition to seeking visitation rights and stated that the guardianship of the child could be vested with the mother/respondent, who can also have permanent custody of the child.

21. The Court had the benefit of interactions with the child and also with the petitioner and the respondent. I had an interaction with the three of them together and with the child independently. As on date, the petitioner has been seeing the child sporadically. It is only necessary that some effective arrangement is put in place which would not affect the studies of the child and does not shift her focus on her extracurricular or co-curricular activities in the school. The child is aged around 14 years as on date. At this age, like any other child, she would like to be heard rather than views being thrust on her. She would also like to challenge any view thrust on her and also be in a position to express her views on every issue.



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22. It is only natural that she expresses herself. During the interaction, she had very clearly stated that she would like to stay with her mother/respondent in the petition. It is only appropriate therefore that the issue of guardianship is settled before entering into any discussion of visitation rights. Though the petition had been filed seeking guardianship and permanent custody, those reliefs are not granted to the petitioner. Let me very clearly state that it is the respondent who is appointed as guardian of the child, Pradhaya Amura Praveen till the child attains the age of 18 years. The respondent can continue to have permanent custody of the child till she attains the age of 18 years.

23. However, the fact is that the petitioner is the father of the child. Naturally, the child must also have, as she as with her friends and other persons across the school or otherwise, a healthy relationship with own father. They must not be strangers in front of others. Their relationship is one where the child can so to seek guidance on any issue. The petitioner must also be able to advise the child whenever she requires solace. It is also imperative that the child foster a healthy relationship with her grandparents.



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Viewed from their angle, she is a continuation of their generation. They see a bit of themselves in her. The child must also in bond with her grandparents. All these aspects are required to be put in place.

24. It must also be kept in mind that extreme familiarity would only lead to frustration and tend to move the relationship in an alternate course. Therefore, a balance will have to be maintained taking into consideration the age of the child, the interest of the child, the necessity of the child to have weekends for herself, the manner in which she would like to spend the weekends and at the same time, balance all these factors with the interests which the petitioner has over the child and his interest in forging a healthy relationship with her and in introducing her to his relatives and particularly his parents.

25. The petitioner had sought that every week the child could spend atleast 4 to 5 hours with him. But in this world as we to understand, every weekend is also packed with activities relating to the school, relating to extracurricular activities, activities relating to tuition or co-curricular activities. Forcing a child at the age of 14 years, to a strict regime week after a week would not be healthy, when viewed from the angle of both the child



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and the petitioner herein. Some leverage must be given for her to attend to her wishes, to her commitments, to spend time with her friends, to spend time in places of interest which she would like to visit during the weekends. Therefore, instead of placing an arrangement for every week, let me place an arrangement once every three Sundays. After a gap of three weeks, the petitioner and the child will have lots to talk about their experiences in those three weeks. That conversation would be more healthy and towards end of the second turn, they would both be looking forward for that particular meeting. Any meeting which is arranged should be one which is looked forward, to which both parties go with enthusiasm and not as a burden or as a duty to discharge. There must be some space between any two meetings and therefore, I am of the firm opinion that once every third week, taking into consideration the age of the child and her interests in life, would be the best possible arrangement. In that particular meeting, let not the petitioner exhibit luxury, but let him extend a personal touch and advise and guide the child. Let him not provide any outside food items or any other delicacy to the child. Naturally, in those 3 or 4 hours, the child must spend quality time and also interact with the grandparents. The child may be taken over to the grandparents' place once every three weeks and the petitioner can



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have some quality time with the child.

26. If in any one of the weekend, the child has any other commitment or the petitioner has any other commitment, then they can meet the following weekend and thereafter once again after three weeks. This space is required. Both the petitioner and the child will understand that this space is only to bring a more healthy relationship between two of them.

27. The respondent may handover the child to the grandparent's place of residence. Let the grandparents' have a healthy relationship with their granddaughter. I am confident that the family members of the petitioner would understand the sensitivity of the entire issue and the meeting could be in the privacy of the granddaughter and grandparents and non else.

28. Quite apart from the visitation on every third Sunday, there will also be a day when the petitioner can also interact with the child during her annual day, sports day or on any other special occasion and also on their birthdays or on any other festival holidays. There must be healthy communication between the petitioner or his counsel with the respondent or



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her counsel to ensure that the arrangement is not frustrated.

29. The conversations through phone or video need not be regularised by the Court and that could be done at the wishes of the petitioner and the child.

30. Let these arrangements continue and if any modification is required, either party is at liberty to file necessary application.

Point No.2:

31. The petitioner and his learned counsel have expressed a commitment that the petitioner would pay a sum of Rs.1,00,000/- every month towards the expenses of the child to the respondent directly. Let this amount be directly deposited in the account of the respondent within the first three days of successive every English calendar month. Let there not be any delay in such payment. Quite apart from that, if any tuition fees or extracurricular fees or co-curricular activities fees or any other education or other expenses are required for the child, I am confident that the petitioner



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would be only too glad to bear them. The respondent may communicate with the petitioner or with the learned counsel for the petitioner, either by herself or through her counsel and give the details of such fees payable and the petitioner may honour such commitment within three days from which he was put on notice of such requirement to pay the amounts.

32. In view of the above reasons, this Petition stands dismissed, however, at the same time, reiterating the visitation rights as stated above and the commitment of the petitioner to pay school fees and fees for any other educational or co-curricular activity. Consequently, connected application stands closed.

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Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No



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