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A.Nos.6102, 6103, 6104, 6105 of 2023 and 1568 of 2024

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in
O.P.No.736 of 2023

C.V.KARTHIKEYAN, J.,

All these applications have been filed by the petitioner in O.P and the father of two minor children. These applications have been filed seeking interim orders granting custody of two minor children to him on every Saturday, interim custody between 23rd December 2023 and 2nd January 2024, permission to speak to the children through Facetime and telephone and interim custody for a period of four weeks during the summer holidays between 20th April 2024 to 20th May 2024.

2. Before examining these applications, it would only be appropriate to say that O.P.No.736 of 2023 has been filed by the petitioner/father seeking guardianship and custody of two minor children, both daughters, one born on 28.05.2017 and the other born on 06.12.2018. At this formative age, the presence of the mother is very important for the development of the children. The two children are now in the custody of respondent/mother. My learned predecessor had an occasion to speak to the parents and children and in the order dated 19.03.2024, he had



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recorded as follows:

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'The petitioner and the respondent along with their minor children were present before this Court. This Court interacted with the parties. It is agreed between the parties that they are willing to go for mutual divorce on certain agreement to be entered between them.

2. The learned counsel for the petitioner would submit that the petitioner is willing to pay the annual maintenance for both the children to the tune of Rs.12 lakhs on or before 5th of every January and the petitioner also undertakes to meet all the educational expenses of both the children, even up to the post graduates. It is also submitted that the petitioner is satisfied with the visitation rights of the children once in every week preferably, Sunday from 09.00 am to 06.00 pm and during the long vacation and some during the birthday of children. Such statements are recorded.

3. The learned counsel for the respondent submit that from the last six months, maintenance has not been paid. In response, the learned counsel for the petitioner submitted that for this year also, maintenance will be deposited. Such statement is also recorded.

4. For filing compromise memo, post on 27.03.2024. “

3. It is pertinent to point that in the subsequent hearing on 27.03.2024, my learned predecessor also thought it advantageous to send



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the parties to mediation and had observed as follows:

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“Considering the nature of dispute between the parties and though they had filed joint memorandum of compromise, they have not agreeable for certain conditions, this Court is of the view that both parties can attend Mediation.

2. Accordingly, Mrs.Uma Ramanathan is requested to mediate this matter and both parties can get the convenient date of the Mediator and appear before the Mediator. Post the matter on 12.04.2024. The weekend visitation right already granted by this Court on 19.03.2024 shall continue until further orders. “

4. I had an opportunity to interact with the petitioner and the respondent in the Chambers. The two children and also the learned counsels on either side were also present.

5. During the discussion it emanated that the two children are in the custody of the respondent /mother at least from September 2023 . The respondent stated that she has taken up residence at Pallavaram as the children are studying at Medavakkam. The petitioner is residing at Tambaram. The respondent states that she is residing at Pallavaram as she is of the opinion that there could be reconciliation of the differences between her and the petitioner herein. Both the petitioner and respondent are doctors by profession. The petitioner is attached to a Hospital at



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Tambaram. The respondent states that she is working overtime to provide for the maintenance of the two children.

6. As seen from the orders extracted above, the petitioner was under obligation to pay maintenance and due to various reasons, he was not able to pay the maintenance. The petitioner would submit that he would pay the maintenance amount within a reasonable time. I will leave it to the conscience of the petitioner to take a decision on that particular issue. It is however stated by the respondent that owing to maintenance not being paid at least from September 2023, she had to take additional burden in her working place and hence, she is not able to spend quality time with the children after their school hours.

7. Before my learned predecessor, an interim arrangement was made to the effect that the petitioner will have the companionship of the two children every Sunday from around 09.00am till 06.00pm. But it is seen that the petitioner has classes to be taken on Sundays and therefore, a request is made to revisit that particular arrangement and have it on every Saturday till Sunday morning.

8. Let me not state anything further, as the respondent stated that she would keep up her words for the petitioner having the custody of the two



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children from 1st May 2024 to 31st May 2024. The attitude of the respondent in understanding the importance of the father being in companionship with the two children is deeply appreciated. The petitioner should understand the difficulties the respondent would have gone through financially without any maintenance being paid by him from September 2023 till this date. That conduct of the petitioner cannot withstand the scrutiny of this Court.

9. Be that as it may, all these applications are disposed of with the following arrangement for the ensuing summer vacation which has already started:

i) From 01.05.2024 till 31.05.2024, the petitioner can have the custody of the two children Kaitlyn Marshia Russelian and Hailyn Marshia Russelian. It is hoped that the petitioner during this period would understand that the children would also, at times, require the presence of the respondent/mother and if they seek her presence, the petitioner should give necessary opportunity for them to interact with the mother as it would be to their advantage. The petitioner must understand that the respondent had voluntarily agreed for this arrangement;



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ii) the petitioner shall take adequate care of the two children and must ensure that no untoward incident happens to the children. He must pay heed to their mental health.

iii) As the petitioner is a medical practitioner, he should also realize that the grievances of the children is redressed immediately. He must understand that they are young children having been in the exclusive companionship of the mother and would miss her and also seek her companionship. I am confident that he would ensure that appropriate measures in that eventuality are taken;

iv) The petitioner must endeavour to pay the maintenance amount which he should have paid. The petitioner has left the respondent high and dry without even paying a single paisa from September 2023 and therefore would have no idea at all as to the day-to-day requirements and the necessities of the two children. The petitioner, therefore, must respect the views expressed by the two children and should not impose his views on them.



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10. My learned Predecessor had referred the parties to mediation. All other issues relating to visitation rights and payment of maintenance can be raised before the mediator. I hope and trust that both the petitioner and respondent would be sanguine enough to understand that they are not settling their issues but redressing the needs and necessities of the two children who are God's gift to them.

All these applications are closed with liberty to file appropriate application if need arises depending on the nature of the report given by the Mediator.

15.04.2024

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