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O.P.No. 196 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.06.2024

PRONOUNCED ON : 25.06.2024

CORAM

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

O.P.No. 196 of 2020

And

A.No. 2547 of 2024

Mrs. Gajalakshmi

... Petitioner

Vs.

Mr. Raghu Veera Pandian

... 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 minor Veslina G.R., and grant permanent custody of the minor to the petitioner, who is the natural guardian as per law.

For Petitioner : M/s. Jayanthi Venkatesh

For Respondent : Mr.E.Muralidharan

ORDER



O.P.No. 196 of 2020

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The petition has been filed by the mother of Veslina G.R., a child born on 21.06.2009 at United States of America seeking to be appointed as guardian of Veslina and to be granted permanent custody. The respondent is the husband of the petitioner/father of the minor child.

2. The marriage between the petitioner and the respondent was performed on 25.10.1998 at Vellore according to Christian rites and customs. They have a male child Lauxley G.R. Pandian, who was born on 24.07.1999. Veslina is their second child. Since she was born in United States of America. She is a citizen of that country.

3. In the petition, it had been alleged that the respondent exhibited a change in behaviour and began to verbally and physically abuse the petitioner. She had to take a decision to move over to United States of America for her job prospects. The respondent also came there on a dependent visa. Since the marriage had irretrievably broken down, the petitioner had filed I.D.O.P.No. 89 of 2019 before the Family Court at Chengalpattu. Subsequently, the petition has been transferred to the



O.P.No. 196 of 2020

Principal Family Court, at Chennai.

4. In the petition, it had been claimed that Veslina is just 10 years old and needs constant care and protection of a mother, the petitioner. Her first son has attained the age of majority. It is also alleged that the respondent is an alcoholic and is a very violent person. It has therefore been sought that the petitioner should be appointed as the guardian of her minor daughter Veslina and she may also be granted permanent custody.

5. A counter has been filed by the respondent denying the allegations raised against him. He stated that he never anticipated that the petitioner would file this petition as he always wanted to rejoin with her. He stated that the actual names of the two children are Lauxley Gaja Raghu Pandian and Veslina Gaja Raghu. The respondent claimed that he had included the name of the petitioner in the name of the two children. He denied allegations about change in behavior pattern and that he was an alcoholic. He further stated that I.D.O.P.No. 89 of 2019 has been transferred to the Principal Family Court at Chennai and renumbered as O.P.No. 87 of 2020. He had further stated that the minor daughter requires care and



O.P.No. 196 of 2020

protection of both the parents. He claimed that he had helped the petitioner to get employment in United States of America and later he went there on H4 dependent visa. He was working from home during his stay in United States of America and was the earning member of the family. He stated that even after the petitioner lost her job, he was able to get an alternate job for her. He further stated that he was always a dutiful father and he was not addicted to alcohol but was only a social drinker. He stated that the friends of the petitioner had wrongly advised her to file the petition. He further stated that the custody and guardianship of his child should be handed over to him and he would take every effort to ensure that her welfare is taken care of. He further stated that the petitioner had given a complaint to the Sholinganallur Police Station and he had to go there to settle the issues amicably. He therefore stated that the petition should be dismissed.

6. The petitioner filed a rejoinder to the counter statement. She reiterated the averments made in the petition. She further stated that land measuring 8.11 acres had been purchased at Peranmpet, Chinnathamal Theru from her earning but the registration was done in the name of the respondent. She further stated that she also purchased a residential apartment at



O.P.No. 196 of 2020

Sholinganallur and again the apartment was registered in the joint names of herself and the respondent. A loan had been obtained and it was she who was repaying the loan. She had to also maintain the family, spend for the education of the children and also for the welfare of the children. She claimed that the marriage had irretrievably broken down. She denied allegations against her in the counter affidavit. She denied allegations of influence exercised by her friends. She further stated that the respondent had moved away for over 10 years and had given money only twice for sums of Rs.75,000/- and Rs.50,000/-. The petitioner claimed that owing to her employment, she had to go to United Kingdom often. She had applied for visa for the child to be taken by her to the United Kingdom but it was rejected since the respondent was not travelling with them. It was further stated that under these compulsions this petition had been filed.

7. On the basis of the above pleadings, the issues which will have to be examined are :-

(1) Whether the guardianship of minor Veslina could be handed



O.P.No. 196 of 2020

over to the petitioner or to the respondent?;

(2) Whether the petitioner or the respondent should be granted custody of the minor child?;

(3) What other arrangements are to be made by this Court taking into consideration the welfare of the child?; and

(4) To what reliefs are the parties entitled to?

8. The parties were directed to tender evidence. The petitioner Gajalakshmi examined herself as PW-1 and marked Exs. P-1 to P-12. Ex.P-2 is the birth certificate of a daughter Veslina, Ex.P-5 series are the computer generated consolidated school fee receipts, Ex.P-7 series are the computer generated consolidated bank statement for the fee receipts for both the children, Ex.P-8 is the copy of the refusal given by U.K. Visa and Immigration to the minor child, Ex.P-9 is the copy of e-mail sent by the petitioner to the respondent, Exs.P-10 and P-11 are the notices exchanged between the counsels.

9. The respondent examined himself as RW-1 and marked Exs. R-



O.P.No. 196 of 2020

1 to R-5. Exs. R-1 and R-2 are e-mails from the petitioner which were marked during the cross examination of PW-1. The communication by the petitioner dated 05.08.2013 that he should not call upon the minor child was marked Ex.R-4 and e-mail dated 26.09.2013 wherein the children expressed interest in conversing with him marked as Ex.R-5.

10. On conclusion of trial, before hearing the arguments of the learned counsels, the Court had an interaction again with the petitioner, the respondent and the child on two separate dates, 18.04.2024 and on 04.06.2024.

11. The respondent then filed A.No. 2547 of 2024 seeking visitation rights to meet the minor child.

12. In the affidavit filed in support of the said application, he had stated that he was not able to meet the minor child and therefore stated that without causing disturbance to her studies, he should be permitted to meet her.

13. Counter has been filed to the said application by the petitioner



O.P.No. 196 of 2020

herein, questioning the bona fide of the petitioner in seeking visitation rights when he had not seen her for nearly about 8 years.

14. Heard arguments advanced by Ms. Jayanthi Venkatesh, learned counsel for the petitioner and Mr.E.Muralidharan, learned counsel for the respondent.

15. The learned counsel for the petitioner also filed written submissions. After stating the facts of the case, she stated that the petitioner had been taking care of the two children and that the respondent had failed to discharge any moral or legal responsibility and had been isolated for nearly 11 years from the children. She further stated that the minor child Veslina is now going to higher school education and therefore, she is at a very crucial stage of her educational carrier. She stated that the petitioner is providing all support of the minor not only in her studies but also in her extra curricular activities. She further stated that the petition should be allowed and the petitioner may be appointed as guardian of the minor child or rights to custody.

16. The learned counsel for the respondent however stated that the



O.P.No. 196 of 2020

respondent had spent substantial amount of money towards the welfare of the two children and also reiterated that the respondent is always willing to take custody of the child. He stated that if guardianship is to be granted to the petitioner, then the respondent may be given visitation rights at periodical intervals so that the bond of father and daughter would not be severed.

17. The learned counsel for the petitioner relied on the Judgment reported in **2011-1-L.W., 436 [P.Senthil Kumar Vs. P.Sunitha]** with specific reliance on the observations made in paragraph Nos. 71, 72, 73 & 76 which are as follows:-

“71. Thus, as rightly contended by Mr.R.Shanmugasundaram, Learned Senior Counsel for the respondent, it is evident that right from 1994 onwards, the petitioner has not made any payment towards maintenance of his wife and minor child and failed to discharge his moral and legal obligations, in providing even the basic needs, like, food, shelter, education, etc., to the minor son and all of a sudden, after nearly fourteen years, has come out with an application



O.P.No. 196 of 2020

under the Guardian and Wards Act, in the year 2008, for custody and guardianship of the minor son. If the averments of the petitioner that he was affectionate and always willing to provide the basic requirements to the minor child, were to be true, he should have readily accepted to pay, atleast the maintenance awarded to the child, to show his bona fides, that he has considered the paramount welfare of the child. Pleadings and material on record disclose that when the petitioner has failed to provide maintenance to the wife and son for so many years, during the pendency of maintenance petition, divorce proceedings and even after the disposal, now all of a sudden, after so many years, in the petition for guardianship, has contended that he would be the best person to provide education, health and other basic needs to the child. The conduct of the petitioner does not reflect his bona fides.

72. Father, who fails to discharge his moral and legal obligations under law to provide even the basic needs to the child, inspite of demand, whatever be the difference between the spouses and who has vehemently opposed the maintenance



O.P.No. 196 of 2020

grant, tooth and nail, upto Apex Court, has no moral conscience to contend that he was always ready and willing to provide all the best that the child required. In the opinion of this Court, such a person is dis-entitled to seek for custody and guardianship of the child, for the simple reason that the moral fibre is totally absent in his conduct.

73. Whether the petitioner was really interested in the welfare of the child from 1994 till 2008, till he filed the Guardianship O.P., it is also relevant to consider the conduct of the petitioner. Though he has inter alia contended that he has made several attempts to see the child in the respondent's house and also in the School and that his efforts were thwarted, as rightly contended by the Learned Senior Counsel for the respondent that if the petitioner-father was really interested in seeing the child, nothing prevented him from filing an application seeking for guardianship, even during the pendency of the maintenance claim petition or taking out an application for interim custody, pending litigation inter-se between parties. There is absolutely no reason, as to why he has not chosen to do, so all along, eventhough remedy was



O.P.No. 196 of 2020

available. He has not even taken out any application, claiming visitation rights, during the pendency of divorce proceedings or Guardianship Petition and therefore, the contention that he has due regard for the welfare of the child, is far from truth, not supported by any iota of evidence and cannot be accepted.

76. Merely because the father is the natural guardian, he is not entitled to have priority over the mother of the child in the matter of custody and guardianship. Paramount welfare of the child alone is the consideration and the Court has to consider all the factors, including, the economic status, character of the person, claiming custody and guardianship, love and affection shown by the parties towards the betterment of the child, the age of the child, etc. ”

Issue Nos. 1 and 2:

18. The petition has been filed by the mother of a minor child Veslina G.R, born on 21.06.2009 in the United States of America. The child is a citizen of the United States of America. The petitioner had married the



O.P.No. 196 of 2020

respondent on 25.10.1998. They have an elder son Lauxley G.R Pandian, who was born on 24.07.1999. After a few years, there were complaints raised by the petitioner and the respondent against each other. This necessitated the petitioner to file I.D.O.P.No. 89 of 2019 before the Family Court at Chengalpattu, seeking divorce. Subsequently, the said petition had been transferred to the Family Court Chennai and renumbered as I.D.O.P.No. 87 of 2020. The petitioner claimed that the marriage has irretrievably broken down. Their son had attained the age of majority. The daughter is still a minor. It is under those circumstances that the petition was filed seeking to appoint the petitioner as guardian of the minor daughter and to grant permanent custody.

19. A counter had been filed denying and disputing the allegations raised against the respondent. It had been stated that the child requires the attention of both the father and the mother. The respondent denied the allegations relating to his conduct in personal life. He also stated that he had always taken care of the petitioner and also had good relationship with his two children. He stated that the petition has been filed owing to a misconceived motion of the petitioner against the respondent. He claimed



O.P.No. 196 of 2020

that the petition should be dismissed.

20. The petitioner filed a rejoinder once again reiterating the allegations against the respondent. The petitioner once again stated that the two children were always under her care and protection and that the respondent had hardly made any efforts to visit the child. She further stated that in 2018 when she got confirmation of her visa to the United Kingdom for her job, she had also applied for dependent visa for the minor child. That was refused since the respondent was not travelling with the petitioner. It is under those circumstances, that she had filed the application seeking guardianship and custody of the minor child.

21. During cross examination, the petitioner had stated as follows:-

“At the time of filing the O.P. Petition, I was in India. I do not mention either in my petition or my proof affidavit that I have worked in U.K., for a period of 2 ½ years as there was no necessity. Witness adds: only purpose of Visa this petition has been filed for the custody of minor child. It is correct to state that only



O.P.No. 196 of 2020

for the purpose of obtaining Visa, I have filed this O.P.

I do not know whether the same has been averred in my petition or in my proof affidavit.”

22. She had however clarified these statements when she was cross examined further:-

“I have filed this O.P. Petition as there is harm and threat to me and my children and there is no support meant for children and for visa purpose. In my petition, I have averred about the harassment, but I did not mention specifically about the date and place. I deny the suggestion that there was no such harassment happened and I am purposely saying the same for the purpose of this case only.”

23. A careful examination of the above statements would show that the petitioner had applied for guardianship of the child for purpose of obtaining visa for the benefit of the child to go over to United Kingdom and the petitioner was travelling to the United Kingdom only because she had to take care of her children and be employed for that purpose. Even though an



O.P.No. 196 of 2020

initial reading of the above extracts might indicate that the petitioner had applied seeking guardianship of daughter only for the limited purpose of obtaining visa still an overall reading of the petition would clearly show that the petitioner had suffered at the hands of the respondent. He had illtreated her. This fact is evident on a reading of a petition.

24. The petitioner had been very truthful in her evidence as would be evident from the following extract of her cross examination:-

“It is true that in my marriage my parents did not participate. It is true that all the marriage expenses were meted out by my mother-in-law.”

25. She had further stated as follows during cross examination:-

“The respondent lastly met my second child in April 2016 he came uninformed to my home and my children got panic. Thereafter, I went to the police and the police suggested him to go legally.”

26. It is seen that the respondent had extracted the reasons for



O.P.No. 196 of 2020

filing of the petition and also that he had last seen the child in April 2016 and not thereafter during cross examination. This is very indicative since for the past 8 years, the respondent did not have any contact with the minor child. This is a very crucial aspect as in the past 8 years, the child had grown from being 7 years in the year 2016 to 15 years in the year 2024. In this crucial period, the child has been in the sole company of the petitioner.

27. Even during interaction which this Court had with the child, she stated that the respondent had not met her and did not spend quality time for the past 7-8 years. It is between those ages, namely 7-16 that a child would require the guidance of the father. Unfortunately, the respondent hide himself behind the excuse of difference of opinion with the petitioner and had practically deserted the child. It would not serve the interest of the child if she were to be thrust on the respondent. The respondent would not know anything at all about the child, her requirements, her interests in life, her future aspirations. They would only be strangers forced together by order of the Court.

28. The issues between the petitioner and the respondent have



O.P.No. 196 of 2020

multiplied to a large extent. This Court need not examine the reasons for the same. The Court is interested only in the welfare of the child. During cross examination, the respondent stated as follows:-

“The marriage between me and the petitioner might have happened at Vani Mahal, Otteri, Vellore. I do not remember exactly the name of the mahal. We have two children. I have no idea. I have no idea because I am denied access to my children. From the year 2013 I have been separated from the petitioner. This case is filed for the guardianship of my daughter. I do not know where my daughter is studying since I am denied access to my daughter.”

29. It is thus seen that both the respondent and the child are stranger to each other.

30. I fervently hope that as years go by, their relationship would



O.P.No. 196 of 2020

become better and they both understand each other and the reasons for the separation from 2016 till 2024.

31. The respondent had further stated as follows in cross examination:-

“I have not filed any application for visitation, as there are two cases are pending filed by my wife in the family court and in the High Court. It is true that in those two cases also I have not filed any relief asking for visitation rights. I have been away from my children from the year 2013. Lastly, I visited them in the year 2016.”

32. It is thus seen that the respondent himself has admitted that after 2016, he had not visited the children.

33. I had a deep discussion with the child to examine her interest in life and her aspirations. She has interests in athletics and in dancing. She participates in those activities in the school where she is studying. She was



O.P.No. 196 of 2020

very categorical in her statement that the respondent had not visited her for the past 8 years and that she would prefer to be with her mother. The next two years of her life, namely, when she turns 17 and 18 are extremely crucial and it is the mother, who would understand a child of that age. It would only be appropriate that the child continues to reside with her mother.

34. The respondent had also marked documents which are e-mails sent by the petitioner and by his son. But a decision cannot be taken on the basis of stray e-mails sent. It would be a different issue if there had been personal contact between the respondent and his child. Unfortunately, during the pendency of this petition for the past four years, the respondent had also not filed any application seeking either interim custody for a short period or during the weekends or atleast for a few hours or atleast to speak to her through video conference. He had not taken any steps. He had admitted that he had not taken any steps. Thrusting him on the child would do more harm to the child.

35. For all these reasons, Issue Nos. 1 & 2 are answered in favour



O.P.No. 196 of 2020

of the petitioner and against the respondent and I hold that the petitioner Mrs. Gajalakshmi is entitled to be appointed as the guardian of the minor daughter Veslina G.R and to have permanent custody of the minor.

Issue No.3:-

36. The respondent had filed A.No. 2547 of 2024 seeking visitation rights.

37. This Application has been filed at the time of advancing arguments. When the child was examined in chamber, she very categorically stated that she would not like to be with the respondent. She feels very uncomfortable with him. But the respondent is still her father. Even though issue Nos. 1 & 2 have been answered in favour of the petitioner and against the respondent, I would still keep the doors open to the respondent and the child. The respondent had not met the child for the past 8 years. It is therefore impossible for this Court to fix timings for any visitation. If ever the respondent seeks to meet the child, he must intimate the petitioner in advance and thereafter, at the convenience of the child, he could meet her at any place



O.P.No. 196 of 2020

as the child says. The child is now 16 years of age and will soon be 18 years and therefore, would be able to take a decision and express her wish about meeting the respondent.

38. In view of these reasons, I would answer issue No.3 that the respondent must address the petitioner and seek the convenience of the child and thereafter visit the child. This could be done whenever the respondent pleases but ofcourse, subject to the convenience and wish of the child. The issue is answered accordingly.

Issue No.4:

39. This Original Petition stands allowed and the petitioner is appointed as guardian of the minor child and also granted permanent custody of the minor child Veslina G.R. If the respondent wants to meet the child, he must intimate the timings to the petitioner and at the convenience of the child, the respondent may meet the child. If the child is not willing, then the respondent will have to abide his time. He must respect the wishes of his child.



O.P.No. 196 of 2020

40. In the result,

(i) This Original Petition stands allowed. No costs.

(ii) The petitioner is appointed as guardian of a minor daughter

Veslina G.R.

(iii) The petitioner is granted permanent custody of minor Veslina

G.R., (till the child attains the age of 18 years).

(iv) A.No. 2547 of 2024 is disposed of with the above

observations.

25.06.2024

vsg

Index:Yes/No

Neutral Citation:Yes/No

Speaking order : Yes/No

1. **List of Witnesses examined on the side of the Petitioner:-**

1. P.W.1 – Mrs. Gajalakshmi

2. **List of witnesses examined on the side of the Respondent:-**



WEB COPY



O.P.No. 196 of 2020

1. DW1- Mr. V.Raghu Veera Pandiyan

3. List of Exhibits Marked on the side of the Petitioner:-

1. Ex.P1 = photocopy of the birth certificate of Lauxley G.R.Pandiyan;
2. Ex.P2 = original birth certificate of my daughter Veslina;
3. Ex.P3 = computer generated statement of accounts in respect of account held by me in HDFC Bank Limited, Porur Branch bearing account No. 03901930001734;
4. Ex.P4 = my e-mail intimation to RTO in respect of my car loan closure;
5. Ex.P5 = computer generated consolidated school fee receipts of my minor child G.R. Veslina;
6. Ex.P6 = original college fee receipts in respect of my son Lauxley G.R.Pandiyan;
7. Ex.P7 = computer generated consolidated bank statement in respect of fee receipt of both child G.R. Veslina and Lauxley G.R.Pandiyan;
8. Ex.P8 = copy of refusal of entry clearance given by UK Visas & Immigration to my minor child Veslina Gaja Raghu along with photocopy of passport of my minor child Veslina Gaja;
9. Ex.P9 = e-mail sent by the petitioner to the respondent in respect of Visas refusal happened in Sept 2018 for Veslina;



O.P.No. 196 of 2020

WEB COPY

10. Ex.P10 = Office copy of the legal notice dated 23.07.2013 sent by my counsel to the respondent;
11. Ex.P11 = office of teh legal notice dated 18.11.2013 sent by my counsel to the respondent counsel; and
12. Ex.P12= certificate under Section 65B of Indian Evidence Act for the printed and other documents marked by me.

List of Exhibits Marked on the side of the defendants:-

1. Exs. R-1 and R-2 are e-mails from the petitioner which were marked during the cross examination of PW-1
2. Ex.R-3= e-mail dated 14.12.2012 sent by me to the petitioner;
- 3.Ex.R-4= e-mail dated 05.08.2013 sent by the petitioner to me;
4. Ex.R-5= e-mail dated 26.09.2013 sent by my son to me.

25.06.2024

vsg

C.V.KARTHIKEYAN, J.



WEB COPY



O.P.No. 196 of 2020

vsg

Pre Delivery Order made in

O.P.No. 196 of 2020

And

A.No. 2547 of 2024

25.06.2024