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O.P.No. 67 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.06.2024

PRONOUNCED ON : 19.07.2024

CORAM

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

O.P.No. 67 of 2020

And

O.P.No. 672 of 2022

And

A.No. 5960 of 2023

And

O.A.No. 471 of 2023

And

A.Nos. 2618 & 3887 of 2023

And

Cont.P.No. 3074 of 2023

O.P.No. 67 of 2020

Dr.Deepa

... Petitioner

Vs.

Dr.K.Srinivasa Raghavan

... Respondent

PRAYER: Original Petition filed under Section 25 of Guardian and Wards Act & Clause 17 of Letters Patent read with Order XXI Rules 2 and 3 of the Original Side Rules, to grant permanent custody of the minor male child Mrithyunjai Srinivasa Raghavan, born on 06.05.2008, to the petitioner.



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O.P.No. 67 of 2020

For Petitioner : Ms. V.Uma Shankari

For Respondent : Mr.T.Sai Krishnan

O.P.No. 672 of 2022

Dr.K.Srinivasa Raghavan

... Petitioner

Vs.

Dr.Deepa

... Respondent

PRAYER: Original Petition filed under Section 25 of Guardian and Wards Act, 1890, & Clause 17 of Letters Patent read with Order XXI Rules 2 and 3 of the Original Side Rules, to grant custody of the minor male child Mrithyunjai, born on 06.05.2008, to the petitioner.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : Ms. V.Uma Shankari

Cont.P.No. 3074 of 2023

Dr.K.Srinivasa Raghavan

... Petitioner/Respondent/Applicant/Petitioner

Vs



O.P.No. 67 of 2020

Dr.Deepa

...Respondent/Petitioner/Respondent/Respondent

PRAYER: Contempt Petition filed under Section 11 of the Contempt of Court Act, 1890, to punish the respondent for daring, willful and wanton violations of the orders of this Hon'ble Court dated 24.11.2023 in A.No. 6226 of 2023 in A.No. 5960 of 2023 in O.P.No. 672 of 2022.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : Ms. V.Uma Shankari

COMMON ORDER

O.P.No. 67 of 2020 had been filed by the mother Dr.Deepa under Section 25 of the Guardian and Wards Act, 1890, seeking permanent custody of the minor child Mrithyunjai Srinivasa Raghavan, who was born on 06.05.2008.

2. O.P.No. 672 of 2022 had been filed by the father Dr.K.Srinivasa Raghavan also under Section 25 of the Guardian and Wards Act, 1890 seeking custody of the minor male child Mrithyunjai Srinivasa Raghavan.



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3. Since both the petitions related to the custody of the child Mrithyunjai Srinivasa Raghavan, one filed by the mother and the other by the father and evidence was recorded in common a common Order is passed.

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4. In the petition filed in O.P.No. 67 of 2020, it had been stated that the petitioner and the respondent had married on 24.08.2001 and that there were differences between the two of them owing to demand for dowry and owing to physical and mental abuse. Later the petitioner started to live separately with her parents from December 2003 till June 2007. It had been stated that she returned back to her matrimonial house in June 2007. The petitioner underwent fertility treatment and conceived two babies. The petitioner went into labour at 5 months of pregnancy and on 06.05.2008 gave birth to two boys. One of the babies died within three days. The surviving male child was named Mrithyunjai Srinivasa Raghavan. He is the bone of the contention between the petitioner and the respondent.



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5. The petitioner returned back to her matrimonial house after three months. It is claimed that however the illtreatment continued. Thereafter, both she and the respondent got jobs at Muscat and were therefrom August 2009 till May 2009. It was stated that the respondent suffered serious illhealth owing to his diabetic condition. It was claimed that the respondent also physically abused the child. Thereafter, the petitioner and the respondent returned back to Salem and according to the petitioner, the ill-treatment continued. The petitioner then filed a petition seeking divorce before the Principal Sub Court, Chengalpattu. The respondent thereafter consented for mutual divorce and accordingly, an order dated 25.03.2019 was passed in H.M.O.P.No. 73 of 2018 by the Principal Sub Court at Chengalpattu granting divorce by mutual consent. It was agreed that the respondent would visit the child once in a week or thrice a month.

6. The petitioner stated that the respondent however continued the ill-treatment and she was not able to concentrate on her work. She had to work to sustain herself and the child. In July 2019, the petitioner got an offer in Muscat and commenced working there. She had also obtained visa for her



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son and had also taken him there.

7. The petitioner stated that the child was a preterm child and suffered recurrent respiratory tract infection and abdominal pain. He had to be given constant medical care. He recovered in 2011. He had to be monitored constantly every hour. He is also being treated for Attention Deficit Hyperactivity Disorder. The petitioner stated that between the ages of 2 and 7, the child had not even seen the respondent except for about two occasions when the respondent saw the child in the school. The petitioner alleged that the respondent never offered to help either physically or monetarily. It is stated that the respondent is an orthopaedic surgeon and has no income. Both his parents are also Doctors.

8. The petitioner claimed that she is profitably employed at Dubai and at the time of the petition, stated that she was earning a sum of Rs.3,31,516/- per month. She therefore stated that she is financially capable of looking after the child. At the time of filing the petition, the child was studying class VI at Indian School in Muscat. The petitioner had to return back to India with the child on 17.12.2019. It is stated that the respondent forcibly entered into the house of her parents and demanded to see the child.



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The child was not willing to interact with the respondent. Thereafter, the respondent had to leave. It was under those circumstances that this petition had been filed seeking permanent custody of the child.

9. A counter affidavit had been filed on behalf of the respondent wherein he had stated that the minor child is in the custody of the petitioner outside the jurisdiction of this Court and it is therefore contended that the petition is not maintainable. It is also stated that the provision of law under which the petition was filed is also not correct. It was further stated that the petition had been filed to violate the terms of the consent decree for divorce granted in H.M.O.P.No. 73 of 2018 dated 25.03.2019.

10. The respondent stated that there are several instances when he had been subjected to ridicule and insults have been thrown at him whenever he wanted to meet the child. Even access to the child was deprived. It was further stated that the petitioner was only interested in her career prospects rather than in bringing up the minor child. It was further stated that the respondent was prepared to take care of the child by imparting good education. It was further stated that the petitioner was always suspicious and



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did not even come forward with the original documents of a car which the respondent had left with her. It was also stated that he was paying the medical claim for the child and also for the petitioner. Various other statements about LIC policy and credit cards were also stated. It was specifically denied there was dowry harassment, physical or mental abuse. It was stated that the petitioner, after completing her PG in General Surgery at Madurai Medical College joined Hitech Hospital in May 2007 in Salem. The respondent came back from U.K., in May 2007 and also joined the same college.

11. The respondent specifically denied that he was a diabetic patient. He also denied that he could not beget a child. He stated that it was for the petitioner that abortion had to be done twice. He denied allegations of cruelty. He denied the statements about fertility treatment. He stated that she had never undergone any such treatment. He further stated that an emergency surgery had to be done for the petitioner and she refused to listen to the mother of the respondent. She went to labour and it was the mother of the respondent, who assisted in the caesarean delivery. It was his mother, who delivered the child. It was stated that the child was taken to Manipal Hospital, Bangalore and to Salem for check ups. It was stated that the child



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was happy in Salem when the first year birthday was also celebrated. He denied physical abuse being committed against the child. He further alleged that the petitioner had fed the child with falsity and had created an evil attitude against himself. The respondent further stated that he had not sought custody of the child since he hoped that the petitioner's attitude would change after divorce.

12. The respondent specifically denied each and every allegation made against him in the petition. He stated that the child was studying in CEEDEEYES DAV school. He stated that the petitioner had taken the child to Muscat in violation of the terms of divorce granted in H.M.O.P.No. 73 of 2018. He stated that he went to the school on 06.07.2019 and again on 26.07.2019 but was prevented from meeting the child. When he contacted the school authorities, he was informed that the child was on leave for pilgrimage. It was thereafter informed to him that the transfer certificate had been issued. He then came to know that the child was taken abroad. He further stated that the main problem in the marriage was money. Counselling also failed. The counselling attempt by the mother of the respondent also failed. The attempt at counselling by the Melmaruvathur Principal and



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Management also failed.

13. The petitioner also gave a complaint to the Tamil Nadu Medical Council against the respondent. He stated that when he was with the child, he behaves lovingly but in the presence of the petitioner, his behaviour changes. He also stated that there are videos and photographs to show the cordial and affectionate relationship that he has with his child. He finally stated that the petition should be dismissed.

O.P.No. 672 of 2022:

14. This Petition had been filed by the father Dr.K.Srinivasa Raghavan under Section 25 of Guardian and Wards Act, 1890 seeking permanent custody of the male child Mrithyunjai Srinivasa Raghavan, born on 06.05.2008.

15. The petition contained the same facts as stated in the counter to O.P.No. 67 of 2020 wherein the petitioner was the respondent. Once again, the petitioner had alleged that the respondent never informed him about going to Muscat or taking the child to Muscat. He stated that there



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were photos and videos of the child with him to show that he is a normal and healthy child. He stated that he was always prepared to extend financial help. He also raised allegations against the ego of the respondent. He stated that he had taken every effort in the best interest of the child. He had also sought details from the Ministry of External Affairs and from the Regional Passport Office about the whereabouts of the child.

16. The petition contained allegations against the respondent, about her job, about her attitude and about taking the child to Muscat. There were also allegations against the conduct of the child. It had been stated that after the filing of O.P.No. 67 of 2020, the petitioner had been completely denied visitation rights to see the child. An interim order was passed permitting him to talk to the minor child over phone or video call on Saturdays between 06.00 p.m., and 07.00 p.m., and physically when the respondent was in India. It was stated that the said order was not complied. It was stated that there is no proper and effective communication between him and his son inspite of orders from the Court. It had been stated that it was under those circumstances that the petition has been filed seeking custody of the minor child.



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17. The petition filed in support of O.P.No. 67 of 2020 will be taken as the counter affidavit in O.P.No. 672 of 2022.

18. The petitions had a torturous passage before the Court. However, finally joint evidence was recorded in both the petitions.

19. The petitioner in O.P.No. 67 of 2020, Dr.Deepa was examined as PW-1. She filed her proof affidavit and marked Exs. P-1 to P-6. Ex.P-1 is the birth certificate of the minor child, Ex.P-2 is the copy of divorce by mutual consent in H.M.O.P.No. 73 of 2018, Ex.P-4 are the original Medical Reports with respect to the child.

20. The respondent examined himself as RW-1 and marked Exs. R-1 to R-27. Ex.R-1 is the certified copy of the order in H.M.O.P.No. 73 of 2018, Exs.R-11 and R-12 are printouts of the whatsapp messages dated 29.06.2019 and 27.10.2019 and 23.07.2018 respectively, Ex.R-14 is the petition seeking custody filed by the witness before the District Court at Chengalpattu, Ex.R-19 are the e-mail conversation between the petitioner



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and the respondent, Ex.R-20 is the printouts of whatsapp messages dated 07.06.2019, 29.06.2019, 06.07.2019 and 07.07.2019, Ex.R-22 are the e-mail communications between the parties and whatsapp chat from June 2021 to July 2021, Ex.R-25 is the transfer certificate of the minor child issued by DAV Public School, Kanchipuram, Ex.R-26 is the pen drive containing photos and videos with the respondent and photo album.

21. The points to be determined are:-

“(i) whether the petitioner in O.P.No. 67 of 2020 / mother is to be granted the permanent custody of the minor child or whether the respondent in the said O.P.No. 67 of 2020 / father is to be granted permanent custody of the minor child Mrithyunjai Srinivasa Raghavan;

(ii) Whether the petitioner had committed wilful contempt of the orders of this Court?

(iii) if the custody is decided, what would be the nature of the visitation that the Court should grant; and



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(iv) To what other reliefs the parties are entitled to?”

22. It is clarified that since O.P.No. 67 of 2020 was filed first, the term petitioner would imply the petitioner in O.P.No. 67/2020 /mother and the term respondent would imply the respondent in O.P.No. 67Of 2020/father.

23. Heard arguments advanced by Ms.V.Uma Shankari, learned counsel for the petitioner and Mr.T.Sai Krishnan, learned counsel for the respondent.

24. It is the contention of the learned counsel for the petitioner that the child was born premature after fertility treatment. It had been stated that two babies were delivered on 06.05.2008 but one child died within 3 days. It was stated that the matrimonial relationship between the petitioner and the respondent was very painful and there were complaints of physical and mental abuse. It was stated that the petitioner had filed an application



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seeking divorce and finally the respondent granted consent and therefore an order of divorce was granted in H.M.O.P.No. 73 of 2018 on 25.03.2019 by the Principal Sub Court at Chengalpattu. The learned counsel was emphatic that the respondent continuously ill treated the petitioner. It was also stated that the petitioner had obtained a job at a hospital in Muscat in July 2019 and she had taken up that particular opportunity. It was also stated that the child is suffering from ADHD and is taking treatment. It was stated that between the ages of 2 and 7, the child did not even see the respondent.

25. The learned counsel further stated that whenever the respondent came to visit the child, he used to bring another person and take lot of pictures with the child. It was stated that the child hated these visits and became agitated. It was stated that after the pandemic, the petitioner came back to Muscat with the child. It was also stated that the respondent always complained about the petitioner to the child during the video calls. The child refused to talk to the respondent. It was also stated that he also blocked the number of the respondent.

26. It was also stated that the child is a special child and requires



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affection, care and positive talk which the respondent failed to provide. The learned counsel pointed out that the petitioner at the time of filing the petition was earning a sum of Rs.3,31,516/- per month and was therefore financially capable of looking after the child. It was also pointed out by the learned counsel that in the best interest of the child, the petitioner has to be granted custody of the child.

27. The petitioner also has financial stability to meet the needs of the child including education, health care and life style. It was also stated that the child prefers the petitioner against the respondent. It was also stated that the respondent had abused the petitioner and the child and therefore, it would be in the interest of the child that the petitioner is granted custody.

28. The learned counsel for the respondent however denied and disputed all these contentions. According to the learned counsel, the petitioner was interested only in finance and not in the interest or the welfare of the child. It was stated that the respondent had taken much care and is prepared to meet every expense of the child. It was also stated that the respondent is also equally financially well off and would be the best suitable



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person to take care of the child.

29. The learned counsel further stated that the child was with the respondent for a short period on the directions of the Court and there were several photographs taken which show that the child was very happy at Salem. The learned counsel stated that the respondent is prepared to take good care of the child and give good and proper education. The learned counsel pointed out the attitude of the respondent in denying personal visits of the respondent to meet the child. As a matter of fact, the respondent never knew that the child had been taken to Muscat. He had been insulted by the petitioner, by her parents and by the school authorities. It had been stated that whenever he went to school, he used to wait outside the gate for many hours hoping to see the child.

30. It had been stated that the respondent is the most suitable person to be granted permanent custody of the child. It was further stated that the child is normal and behaves exceptionally well in the presence of the respondent and that the child was tutored by the petitioner. It was therefore finally stated that the petition should be dismissed and the respondent must be given custody of the child.



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31. I have carefully considered the arguments advanced and perused the material available on records.

32. The nomenclature the petitioner would mean and imply the mother/ petitioner in O.P.No. 67 of 2020 and the nomenclature respondent would mean and include the father/respondent in O.P.No. 67 of 2020.

33. This clarification is required since the father has filed O.P.No. 672 of 2022 and the mother is the respondent therein. Both the petitions have been filed under Section 25 of the Guardian and Wards Act. 1890.

Point No.1:

34. Both the petitioner and the respondent are medical professionals. The petitioner is now employed in a hospital at Muscat and is financially very sound. The respondents/parents are also Doctors and they have a clinic at Salem. The respondent is also a medical professional and he has a clinic to fall back on. There is no evidence produced that he is not financially well off. They are both educated but unfortunately they seem to be



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warped with pride and prejudice and not with any sense or sensibility.

35. Let me not revert to analysis of the allegations levelled by the petitioner and the respondent against each other. The allegations have been ego driven and a reading of the two petitions and the counters filed therein would show that they continue to level allegations with extreme capacity to repeat without any capacity to learn or reform.

36. It is evident that the child was born after much hardship suffered by the petitioner. She had to take fertility treatment. Even this fact had been denied by the respondent.

37. I really wonder at this denial of reality. The two children were born in and around the fifth month of pregnancy. They were both boys. One of the baby died within about three days. The child, who survived, Mrithyunjai Srinivasa Raghavan had the scars of being delivered pre-term. These scars were evident physically and also to a little extent affected his mental health. But he had overcome them all.



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38. It is the specific case of the petitioner that between the years age of 2 years and 7 years the child had not even seen the respondent except on two occasions when the respondent saw the child in the school. The respondent should have extended a helping hand to the child atleast as a medical professional and ensured that the child recovered from the troubles which he suffered as a boy delivered preterm. But let me not deal any further into that aspect.

39. The child is now at an age where is able to think for himself, is able to formulate ideas and opinions for himself. He is at an age when he is prepared to challenge opinions stated by others and at an age when he wants to literally break free.

40. Suffice to point out that the child had been in the care and protection of the mother at all materials times except for sporadic visits and interventions by the respondent. The respondent claims that access was not permitted. But however what was required was not physical contact, but guidance and understanding of the pain in which the child was placed. The petitioner, as a mother was left to fend for herself with the child, who



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suffered complications owing to the circumstances in which he was born.

41. The respondent cannot disclaim ignorance of these facts. He had very proudly stated that it was his mother who delivered the child. Then as a medical professional, the mother should have known about the complications which a child delivered in and around five to six months of pregnancy would face.

42. At this age when the child looks to avenues to further his dreams and compete with other children of his age, very unfortunately there is no guidance provided by the respondent. During my interaction with the child, I came to know that he studied in a Boarding School in his 9th and 10th standard. This litigation had affected him very deeply. The appearance of the respondent and taking photographs whenever he surfaces in the school had also disturbed him. He had completed his 10th standard but he himself was not satisfied with the marks he had obtained. He however wants to pursue medicine and he is of the opinion that if he is permitted to join his mother in Muscat, that dream could become a reality for him in that country.



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43. Strangely, there has been an order restraining the school authorities from issuing his transfer certificate, I am not able to comprehend on what basis the respondent had sought such an order to be passed by this Court. This has put the child to extreme disadvantage. He is neither here nor there. He is technically now studying in 11th standard in the school but he is not going to school. He is at home. His mental condition cannot be imagined. The suffering which he is undergoing on a day to day basis can never be imagined. The duty is very much on the respondent to extend a guiding hand at this crucial stage of his child but unfortunately the respondent had projected only himself and raised allegations against the petitioner.

44. During my interaction, the respondent produced a few photographs and stated that the child was very happy at Salem when he was there for two days. It is the guidance of the respondent right through the formative years of the child which is important and not just companionship for two days. The respondent should have resisted from taking photographs and exhibiting them when the child visited his house. They only exposed the narcissism of the respondent towards himself rather than care and affection



for the child.

45. Section 17 of the Guardians and Wards Act, 1890 is as follows:-

“(1) Matter to be considered by the Court in appointing guardian.- (1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Courts shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.”



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46. Section 25 of the Guardian and Wards Act, 1890 is as follows:-

25. Title of guardian to custody of ward

(1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order, may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the [Code of Criminal Procedure, 1882 (10 of 1882)] [Now see Section 97, Criminal Procedure Code, 1973 (2 of 1974)].

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.



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guardian does not of itself terminate the guardianship.

47. In *Rosy Jacob v. Jacob A. Chakramakkal*, (1973) 1 SCC 840, the Hon'ble Supreme Court held that the object of the Act is not merely physical custody of the minor but due protection of the rights of ward's health, maintenance and education. The power and duty of the Court under the Act is the welfare of the minor. In considering the question of welfare of the minor, due regard has of course to be given to the right of the father as natural guardian but if the custody of the father cannot promote the welfare of the children, he may be refused such guardianship. The Hon'ble Supreme Court further observed that merely because there is no defect in his personal care and his attachment for his children which every normal parent has, he would not be granted custody. Simply because the father loves his children and is not shown to be otherwise undesirable does not necessarily lead to the conclusion that the welfare of the children would be better promoted by granting their custody to him. The Hon'ble Supreme Court also observed that children are not mere chattels nor are they toys for their parents. Absolute right of parents over the destinies and the lives of their children has, in the



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manner to be useful members of the society and the guardian court in case of a dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them.

48. In *Thrity Hoshie Dolikuka v. HoshiamShavakshaDolikuka*, (1982) 2 SCC 544, the Hon'ble Supreme Court reiterated that the only consideration of the Court in deciding the question of custody of minor should be the welfare and interest of the minor. This is a special duty and responsibility of the Court. Mature thinking is indeed necessary in such situation to decide what will enure to the benefit and welfare of the child.

49. In *Mausami Moitra Ganguli v. Jayant Ganguli*, JT (2008) 6 SC 634, it was held by the Hon'ble Supreme Court that "*The principles of law in relation to the custody of a minor child are well settled. It is trite that while determining the question as to which parent the care and control of a child should be committed, the first and the paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute. The question of welfare of the minor child has again to be*



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welfare and interest of the child and not the rights of the parents under a statute. The question of welfare of the minor child has again to be considered in the background of the relevant facts and circumstances. Each case has to be decided on its own facts and other decided cases can hardly serve as binding precedents insofar as the factual aspects of the case are concerned."

50. In **2008 4 CTC 425 (Nil Ratan Kundu and another Vs. Abhijit Kundu)**, it was held that *"the law relating to custody of a child is fairly well-settled and it is this. In deciding a difficult and complex question as to custody of minor, a Court of law should keep in mind relevant statutes and the rights flowing there from. But such cases cannot be decided solely by interpreting legal provisions. It is a humane problem and is required to be solved with human touch. A Court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the Court is exercising parens patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort,*



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values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgement, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor."

51. The Judgments and provision of law stipulates that the Court should have only the welfare of the child in mind.

52. In the instant case, the child had crossed the age of 15 and is in a very formative period of his life. The Court will have to balance and determine which is the best possible avenue for the child, to further his dreams. The Court will have to balance the relatives advantages of being with the petitioner and the respondent and at the same time also examine whether there would be any disadvantages felt by the child by being directed to reside with either the petitioner or the respondent.

53. The petitioner, as stated is a qualified surgeon and she is now working in a hospital at Muscat. She had been working there even at the



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53. The petitioner, as stated is a qualified surgeon and she is now working in a hospital at Muscat. She had been working there even at the time when she filed O.P.No. 67 of 2020. Even in that petition, she had declared that her monthly income was Rs.3,13,516/-.

54. The child, when he was at Muscat along with the petitioner also continued School and there is no evidence on record that the respondent had contributed financially for such education.

55. There are however allegations of physical and mental abuse against the respondent.

56. During the cross examination of the petitioner, she was asked about her allegation that the respondent had hit the child. In cross examination, it had been elicited that the respondent actually thrashed the child. The question and answers in this connection are as follows:-

“Q: The respondent had never hit the child as pointed by you what do you say?”



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Q: I put it to you that the respondent is a very responsible doctor who cannot even imagine of such behavior towards the child.

A: Not true. He beats me and the child very badly even in front of my mother.”

57. It had thus seen that the statement that the respondent thrashed the side on the wall several times and that he beat the petitioner and the child very badly even in front of the mother of the petitioner came out during the cross examination of the petitioner and not during her chief examination.

58. Thereafter, the petitioner was further put to further questions and the following was the answer:-

“Q: You brought the child and handed over to your in-laws at Chennai Airport.

A: I was forced to do. I did not want to give the child, but the respondent became very violent so I have to drop and come back on the same day.”



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same day.”

59. It is also seen that it was the respondent, who agreed for divorce by mutual consent.

60. No application had been filed seeking visitation by the respondent.

61. In the cross examination, the fact that it was the respondent, who agreed for mutual divorce again came out and the question and answer is as follows:-

“Q: You withdrew the HMOP No. 72 of 2017 which was filed before the Chengalpet Court?

A: Yes. The respondent was agreed for divorce by mutual consent.”

62. It is the case of the respondent that he would inform in advance to meet the child but the petitioner did not permit him to do so. But



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“Q: On occasions, he informed in advance and when he came to see the child, you never permitted him to visit the child. It is correct?”

A: It never happened. I always encourage the child to play with him and we have several videos of them playing and it was on our insistence, he goes and plays. But he created a lot of problems sitting outside the house shouting and honking bells continuously even at late hours.”

63. With respect to the education expenses of the child, again, during the cross examination, the petitioner asserted that the respondent had not given any alimony for the child. The question and answer is as follows:-

“Q: I put it to you that the respondent has offered to take care of the education expenses of the child, but you have refused to the same?”

A: Never. He has not even given any alimony for the child.”



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A: Never. He has not even given any alimony for the child.”

64. During the interaction in the chamber, the respondent stated that his father wanted to see the child but the child was not allowed to go over to Salem and that the father died without seeing the child. Even though this is an extremely irrelevant fact so far as deciding the custody of the child, the explanation of the petitioner again came out during her cross examination. The questions and answers were as follows:-

“Q: During June 2021, the respondent beg with you to have the child interact with his paternal grand father who was sick and also requested the child to be brought to India to see his grandfather.

A: It was during July. I accepted and asked him to sent tickets for both and bear the trip cost including quarantine, he refused saying that he cannot afford and he sent videos persuading the child to escape from the house go to embassy and escape from the country several times.

Q: It was June 2021, the respondent



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A: He attended video calls.

Q: I put it to you that he offered to bear the expenses but you did not extent your co-operation.

A: No. I have videos saying he cannot afford the trip costs.”

65. For the assertion that the respondent could not afford the cost of the trip, there has been no follow-up question put that the said statement of the petitioner is false. Therefore, the statement in the cross examination has been to be taken as true and correct, namely, that it was the respondent, who could not afford to send the tickets and had rather sent a video persuading the child to escape from the house.

66. A careful perusal of the cross examination of the petitioner shows that the explanations of the petitioner came out during the cross examination. In her proof affidavit, she had stated about the medical sufferings of the child but those issues had not been addressed during her cross examination. It must therefore be taken that the child did suffer physically and also mentally at the early stages of his life. It is also to be



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cross examination. It must therefore be taken that the child did suffer physically and also mentally at the early stages of his life. It is also to be noted that the respondent was not available at that particular point of time to offer solace at that crucial condition of the child.

67. During the cross examination of the respondent, who was examined as RW-1, it is quite surprising to note that he was not even aware that the child is a special child with ADHD disorder. The questions put to him and the answers are as follows:-

“Q: Are you aware that your child is a special child with ADHD disorder?”

A: Only from the evidence of petitioner, I came to know. I find the child that he is normal.

Q: Are you aware that the petitioner has filed two doctor certificates showing that your child is special child with ADHD disorder?



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68. The respondent may have an issue about the child not being present when his father wanted to meet him. Again I am not able to understand as to how this issue would be relevant to decide the custody of the child. At any rate, the actual fact came out during the cross examination of the respondent. The questions and answers on that issue are as follows:-

“Q: When your father was ill, are you aware that your child was with the petitioner in Oman?”

A: Yes.

Q: It was during in the pandemic time and flights were not available from India to Oman?

A: Yes.

Q: You wanted your son to meet his grand father?

A: My father wanted to meet his grand son.



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Q: At that point of time, the flights were circuited through Europe from Oman to India and at that time the petitioner asked a consent form from you for which you refused to sign?

A: I received the consent form only after my father death.

Q: I put it to you that the above averments of yours is not true.

A: I deny.

Q: The petitioner asked you to pay air fare for the child and you said you did not have the money for Rs.50,000/-?

A: I deny. I accepted to pay the money for the child.

Q: How did you expect the special child to come to India without a mother from a foreign country?



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country?

A: She says that the minor child is a special child based on one document. To my knowledge, the minor child is normal.

Q: Are you aware that the child is a minor child and he cannot travel alone to India during the pandemic period?

A: Yes. I know the child is a minor child.

Q: Do you remember what you said to the minor child at that point of time?

A: Yes. In the heat of the moment, I told my child to somehow come and it was totally under the emotions in front of my father's dead body.

Q: You told your son take your passport and go to Indian embassy and go to India?



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69. It is thus seen that the child was in Oman at the time of death of the father of the respondent and therefore, during the pandemic it was impossible for the child along to come over to Salem.

70. The respondent also examined his friend R.Arvidan. It is not known as to how that friend could determine as to who should be the guardian and who should have the permanent custody of the child. He is a stranger to the family. He is a stranger to the child. He has no right or authority to speak about an issue relating to the custody of a child. In fact, he had stated as follows in his evidence:-

“Without the knowledge of the child's mother, the child requested his father Srinivasa Raghavan to buy a toy gun. Mr.Srinivasa Raghavan bought the gun for his child.”

71. This statement itself shows that it would only be appropriate that the respondent withdraws his companionship from the child, as when he had a chance to purchase an article, he had purchased and given him a toy gun of all play things.



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that the respondent withdraws his companionship from the child, as when he had a chance to purchase an article, he had purchased and given him a toy gun of all play things.

72. The evidence recorded would clearly show that no specific denial had been made for the statements made by the petitioner that the respondent thrashed the child. No suggestions have been put that she was giving false evidence. There is also not positive evidence from the respondent about financial support given for the education of the child. His statements joining an insurance policy for the petitioner would not put him in a better position so far as grant of custody is concerned.

73. During the interaction in the chamber, the child had expressed himself very clearly that he is suffering everyday owing to the abuse of the respondent not only on him but also on his mother. The attitude and conduct of the respondent had deeply affected the child. He had not obtained the marks expected in the 10th standard exam. But still has dreams and to that end, I am of the definite opinion that it would be in his welfare that the custody is granted to the petitioner/mother and not to the respondent.



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has completely broken down. It is very clear that he would not go with the respondent. The wishes of the child will have to be given due credence.

75. In O.P.No. 672 of 2022, the averments and allegations are practically the same and since the evidence was recorded jointly in both the Original Petitions, the examination of the said averments in O.P.No. 672 of 2022 would not in any way change the course of decision taken.

76. In view of the reasons stated, Point No.1 is answered that the petitioner in O.P.No. 67 of 2020 / mother has to be given permanent custody of her minor son Mrithyunjai Srinivasa Raghavan till the child attains the age of 18 years.

Issue No.3:

77. The respondent had also filed Cont.P.No. 3074 of 2023. I am not able to understand as to how a Contempt Petition could be filed by a father against a mother in a matter of custody of their child. It is the wishes of the child which is primary and in this case, the child had given a clear cut



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not able to understand as to how a Contempt Petition could be filed by a father against a mother in a matter of custody of their child. It is the wishes of the child which is primary and in this case, the child had given a clear cut statement that he would like to stay with his mother. No mother can forcibly send a child out. Every mother would only be interested in taking in a child. If there is an order of the Court against the petitioner directing her to handover custody or to abide with some conditions, care should be taken that the relationship of a mother and her child is not frustrated. The Contempt Petition is vexatious and had been filed only to cause further harassment to the petitioner. Since a decision had been taken that permanent custody of the child should be handed over to the petitioner/mother, I have no hesitation in dismissing the Contempt Petition.

Point No:2

78. It would be advisable that the respondent focuses on how he could be of assistance for the mental health of the child instead of forcing himself on the child with a camera and a friend in tow. I am not passing any orders regarding visitation rights and I would direct the respondent to renew companionship after the child attains 18 years of age. The point is answered



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1. I hold that the permanent custody of the child Mrithyunjai Srinivasa Raghavan should be handed over to the mother/petitioner in O.P.No. 67 of 2020/ respondent in O.P.No. 672 of 2022 till he attains the age of 18.

2. I am not inclined to make any arrangement for visitation rights for the respondents as it is evident that the child does not want to stay with the respondent. This would automatically mean that

- (i) O.P.No. 67 of 2020 is allowed;
- (ii) O.P.No. 672 of 022 is dismissed;
- (iii) Cont.P.No. 3074 of 2023 is dismissed;
- (iv) O.A.No. 471 of 2023 is dismissed;
- (v) A.No. 5960 of 2023 is dismissed; and
- (vi) A.Nos. 2618 and 3887 of 2023 are dismissed.

80. In view of the relationship among the parties, there is no order as to costs.



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80. In view of the relationship among the parties, there is no order as to costs.

81. It is specifically directed that if the petitioner/mother applies for transfer certificate, the school authorities, wherever the child completed his 10th standard must issue transfer certificate within three working days. The petitioner is permitted to take the child to Muscat to her place of work and provide him with proper and good education and also take care of him.

19.07.2024

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 – Dr.N.Deepa

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



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

1. Ex.P1 = the photocopy of the birth certificate of minor son Mrithyunjai, who was born on 06.05.2008;
2. Ex.P2 = the photocopy of the Divorce Order by mutual consent with the respondent dated 25.03.2019 in H.M.O.P.No. 73 of 2018 passed by the Principal Subordinate Judge, Chengalpattu.
3. Ex.P3 = the original individual Employment Contract dated 01.07.2019 entered into between me and Badr Al Samaa, Group of Hospitals and Polyclinics, Sultanate of Oman.
4. Ex.P4 (series) = the Original Medical Reports dated 07.05.2018, 09.11.2018 and 06.05.2019, in respect of minor son Mrithyunjai;
5. Ex.P5 = the original certificate dated 24.10.2019 given by Indian School Al Maabela, Sultanate of Oman to my minor son Mrithyunjai Srinivasa Raghavan;
6. Ex.P6 = the photocopy of my Aadhaar card bearing No. 5003 5618 0357.

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

1. Ex. R-1 = the certified copy of the order dated 25.03.2019 passed in H.M.O.P.No. 73 of 2018 by Principal Subordinate Judge, Chengalpattu along with Office copy of the H.M.O.P. Petition;
2. Ex.R-2= the served copy of the proof affidavit of the petitioner filed in H.M.O.P.No. 72 of 2017;



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1. Ex. R-1 = the certified copy of the order dated 25.03.2019 passed in H.M.O.P.No. 73 of 2018 by Principal Subordinate Judge, Chengalpattu along with Office copy of the H.M.O.P. Petition;
2. Ex.R-2= the served copy of the proof affidavit of the petitioner filed in H.M.O.P.No. 72 of 2017;
3. Ex.R-3= the original registered post refused by Principal of CDS School, Chengalpattu dated 14.08.2014;
4. Ex.R-4= the original details of the Honda City Car loan availed and repaid by the respondent from State Bank of India;
5. Ex.R-5 (series)= the original Mediclaim Health Insurance Policy paid by the respondent;
6. Ex.R-6 (series)= the original receipt of Family Security Scheme of Indian Medical Association of petitioner paid by respondent;
7. Ex.R-7= the original bank challans dated 30.03.2011 and 31.03.2011 paid by the respondent;
8. Ex.R-8= the e-mail dated 10.09.2021 addressed to the petitioner by Bank of Baroda;
9. Ex.R-9 (series)= the original add on credit card issued to the petitioner and old card statements;
- 10.Ex.R-10= the printout statement of mobile bills paid by the respondent;
- 11.Ex.R-11= the printout of whatsapp messages dated 29.06.2019 and 27.10.2019;



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- 14.Ex.R-14= the original custody petition filed and withdrawn by the respondent at District Court, Chengelpattu;
- 15.Ex.R-15 (series)= the original letter dated 25.08.2011 sent by petitioner's father to the respondent;
- 16.Ex.R-16= the e-mail conversation between the respondent and the petitioner's brother including e-mail attachments;
- 17.Ex.R-17 (series)= the original communication held between me and Tamil Nadu Medical Council;
- 18.Ex.R-18= the office copy of the reply notice dated 23.10.2013 addressed to petitioner's counsel along with original letter from petitioner counsel dated 07.10.2013;
- 19.Ex.R-19 (series)= the e-mail conversation between the respondent and the petitioner to know whereabouts of son after divorce and FSS IM Scheme;
- 20.Ex.R-20= the printout whatsapp messages dated 07.06.2019, 29.06.2019, 06.07.2019 and 07.07.2019.
- 21.Ex.R-21 (series)= the e-mail between the respondent and Indian Embassy and Ambassador's Office in Oman;
- 22.Ex.R-22= the e-mail communications between the respondent and the petitioner and whatsapp chat June 2021 to July 2021;
- 23.Ex.R-23= the computer printout of minor (Child) travel consent;
- 24.Ex.R-24= the photocopy of the letter dated 09.12.2018 sent by the respondent to the Maintenance Manager;
- 25.Ex.R-25=the photocopy of the Transfer Certificate of minor child



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- 23.Ex.R-23= the computer printout of minor (Child) travel consent;
- 24.Ex.R-24= the photocopy of the letter dated 09.12.2018 sent by the respondent to the Maintenance Manager;
- 25.Ex.R-25=the photocopy of the Transfer Certificate of minor child Mrithyun Jay issued by D.A.V Public School, Kancheepuram District; and
- 26.Ex.R-26= the pendrive containing photos and videos with the respondent and photo album;
27. Ex.R27= the original certificate under Section 65 B of Evidence act filed by me dated 26.04.2022 for Doc. Nos. 8, 13, 16, 19, 21, 22, 23, 10, 11, 12, 20, 25.

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C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in

O.P.No. 67 of 2020

And

O.P.No. 672 of 2022

And

A.No. 5960 of 2023

And

O.A.No. 471 of 2023

And

A.Nos. 2618 & 3887 of 2023

And

Cont.P.No. 3074 of 2023

19.07.2024