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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

PRONOUNCED ON : 30.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.17177 of 2024

Priya Lakshmi

...Petitioner

VS.

1.The Regional Passport Officer,
Madurai.

2.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

3.The Inspector of Police,
Rural Police Station,
Virudhunagar.

4.Vimalkumaran

... Respondents

(R4 suo motu impleaded vide
order dated 26.07.2024)

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the first respondent for renewal of the passport No.R4729351 of the petitioner's minor daughter Rohitha Shri based on her application No.MD 1075964547923 dated 13.11.2023.



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For Petitioner : Mr.K.Seenuramachandran

For Respondents : Mr.A.Srinivasan for R1

Mr.A.Albert James

Government Advocate (crl.side)

for R2 & R3

No appearance for R4

ORDER

The petitioner got married to the fourth respondent on 31.05.2012. Rohitha Shri was born through the wedlock on 13.05.2014. The marital relationship between the parties came under strain. The marriage was dissolved on 15.12.2022. The fourth respondent was directed to pay monthly maintenance of Rs.10,000/- for the child. However, no orders were passed regarding her custody. The child is with the petitioner/mother. The fourth respondent had questioned only the order of maintenance. The decree of divorce has become final.

2.The petitioner wants to migrate abroad. The petitioner as well as the child are having passports. The petitioner applied for renewal. The petitioner encountered difficulty in the matter of processing the daughter's application for renewal. The Regional passport officer, Madurai vide e-mail dated 22.12.2023 wanted the petitioner to obtain court permission for granting passport to the child and also Annexure – D signed by both the parties. In these circumstances, the present writ petition came to be filed.



3.The learned standing counsel appearing for the passport officer submitted that the first respondent has merely followed the standard procedure.

4.None appeared for the fourth respondent/father of the child.

5.The learned Government counsel appearing for the jurisdictional police submitted that there is no criminal case pending.

6.The issue raised in this writ petition is no longer res integra. The Hon'ble High Court of Kerala in the decision reported in 2014 2 KLJ 246 (Juvairiya v. Regional Passport Officer) held as follows :

“As stated in section III of schedule III, if the applicant parent is not in a position to get the consent of the other parent whatever be the reason for such inability, all that is required to be produced along with the application, apart from other documents, is an affidavit in Annexure "G". It is not necessary for such an applicant to produce the consent of the other parent or an order by the court granting custody of the child to him/her. If such an order is there it has to be produced but it is not stipulated that in cases where an order granting custody of the child to the applicant parent has not been passed by a competent court, the parent having custody cannot apply for a passport for the minor child. All that the law requires



in such a case is the production of a sworn affidavit in the form prescribed in Annexure "G" as also other documents set out in table 2”

In the case on hand, the child is very much with the petitioner. It is true that the order dated 15.12.2012 in HMOP No.113 of 2019 on the file of the Sub Court, Virudhunagar is silent on the question of child's custody. The father of the child has not appeared before this Court to oppose the writ prayer. In these circumstances, I am inclined to adopt the approach of the Kerala High Court as mentioned above. The first respondent shall not insist on obtaining consent from the fourth respondent herein. The petitioner however has to mention the name of the fourth respondent as the father of the child. I am not sure if the renewal application has been closed. If it has been closed, the petitioner may have to file a fresh application. Otherwise, the petition mentioned application shall be processed and the passport for the petitioner's child Rohitha Shri shall be renewed without insisting on consent from the fourth respondent. This shall be done as expeditiously as possible.



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7.This writ petition is allowed. No costs.

30.08.2024

Index : Yes/No
Internet:Yes/No
skm

To

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Virudhunagar,
Virudhunagar District.
- 3.The Inspector of Police,
Rural Police Station,
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G.R.SWAMINATHAN, J.

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WP(MD)No.6346 of 2024

30.08.2024