



W.P(MD)No.22190 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.03.2024

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.22190 of 2023

and

W.M.P(MD)No.18483 of 2023

Minor.Eshaan
Rep.by his mother and Guardian
Mrs.Preethi,
Plot No.685, Malligai Street,
6th Main Road,
Gomathipuram,
Madurai-625 020,Tamilnadu.

..Petitioner

Vs

1.The Regional Passport Officer,
Office of the Regional Passport Officer,
Race Course Road,
Madurai-625 002.

2.Ajay,
S/o.Late.Kumar J.Pandian
(R2 is suo-motu impleaded vide
Court Order dated 17.10.2023)

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned communication, dated 24.08.2023 issued by the first respondent and quash the same and consequently direct the respondent



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to re-issue the passport to the minor petitioner Master.Eshaan in pursuance of the application vide File Number MD1075709750123, dated 23.08.2023.

For Petitioner	:Mr.D.Shanmugaraja Sethupathi
For R1	:Mr.M.Rajendran
	Central Government Standing Counsel
For R2	:Mr.N.Dilipkumar

ORDER

The Petitioner has prayed for issuance of a Writ of Certiorarified Mandamus to quash the impugned communication, dated 24.08.2023 issued by the first respondent and consequently, direct the respondent to re-issue the passport to the minor petitioner Master.Eshaan in pursuance of the application vide File Number MD1075709750123, dated 23.08.2023.

2. The case of the petitioner is that, Mrs.Preethi is the mother of the petitioner and the second respondent is the father of the petitioner. Their marriage was solemnized on 26.10.2015. Out of the wedlock, the petitioner was born on 13.09.2017. Subsequent to the marriage, the petitioner's mother was subjected to domestic violence and other harassment at the hands of her husband and his family members. On 02.03.2020, she was driven out from the matrimonial home. Thereafter, the second respondent has filed H.M.O.P.No. 110/2021 before the Family Court, Madurai seeking dissolution of marriage.



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Thereafter, the petitioner's mother filed H.M.O.P.No.286/2021 before the Family Court, Madurai seeking restitution of conjugal rights. When she was driven out from matrimonial home, all her belongings including certificates and her passport and passport of the petitioner were retained by her husband in the matrimonial home.

3. The petitioner has been studying 1st standard in a private school at Madurai. He has participated Regional Level Abacus Competition - Brainobrain Kids Academic Private Limited, Chennai and he won the silver medal. He has also participated in the 9th International Online Abacus Competition conducted by the Brainobrain Kids Academic Private Limited on 28.01.2023 and he acquired Championship. The 42nd India National Abacus Competition Festival is being scheduled on 9th and 10th of September 2023 at Trade Centre, Chennai. He has made an application to participate in the above National Level Competition. In addition, International Competition is scheduled to be held on 25.11.2023 at Dubai. He has been very interested in participating the Abacus International Competition Scheduled at Dubai. They have made all arrangements to fly abroad and participate in the event scheduled at Dubai. Under these circumstances, the petitioner's mother sent a letter, dated 09.01.2023 to the second respondent requesting to return back their passport.



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Since her husband has refused to hand over the passport, she has filed I.A.No.1 of 2023 in H.M.O.P.No.110 of 2021 before the Family Court, Madurai seeking direction to her husband to return the documents mentioned in the annexure including the passport. The Family Court Judge appointed an Advocate Commissioner to inspect the cupboard situated at the matrimonial home and take the inventory of the things kept inside the cupboard and hand over the things to her. As per the order of the Family Court, the Advocate Commissioner had inspected the cupboard and took inventory of the things found in the cupboard. To the shock and surprise, only their old passports were found. Her new passport and her son's passport were not found in the cupboard. On enquiry, the second respondent informed that he did not know whereabouts of their passport. Hence, left with no other option, she has submitted a complaint to the jurisdictional police for missing of passport. Thereafter, she has submitted an application to the first respondent to re-issue their passport. In the meantime, she received the impugned communication dated 24.08.2023 by the respondent stating that she has to submit annexure-D signed by both the parents or she has to get Court permission to issue passport to her minor child. Being aggrieved over the impugned communication passed by the first respondent, this writ petition has been filed.



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4. The first respondent filed counter affidavit and stating that Smt.Preethi Ajay, W/o.Ajay Kumar has applied for re-issuance of passport to her minor son Eshaan previously known as Ananth Kumar Ajai, S/o.Ajay Kumar born on 13.09.2017 at Madurai vide passport application reference No.MD1075709750123. The petitioner had reported lost of previous passport issued to the minor Eshaan, the son of petitioner. The petitioner has submitted a copy of system generated Lost Document Report from the official website of Tamil Nadu Police in support of her claim on lost of previous passport No.R8939419, dated 05.03.2018 valid upto 04.02.2023 issued by the office of the respondent in the name of the Ananth Kumar Ajay. Regarding change of name of minor passport applicant from Ananth Kumar Ajay to Eshaan, the petitioner has produced copy of Tamil Nadu Gazettee notification, dated 07.07.2021 duly declared by petitioner. He further submitted that the signature of the father is not obtained in the passport application and not submitted Annexure – 'D' duly signed by both the parents of the minor applicant. The petitioner had submitted Annexure – 'C' tick marked point No.(d). It is submitted that when divorce proceedings are pending before the Court of law and the single parent has not got full custody of the child, consent of both the parents are required or alternatively the minor applicant's parents should obtain



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permission from the Court to apply for a passport for the child without the consent of the other parent of the child. In the present case, there is an ongoing Court case for divorce / custody of child. In view of the above reasons, the passport issuing authority while processing the petitioner's minor son's passport application at Passport Seva Kendra, Madurai had informed the petitioner to either furnish the consent of the minor applicant's father or to obtain permission from the Court to apply for a passport for the child without the consent of other parent of the child and letter reference No.SCN/315601309/23 dated 24.08.2023 was sent to the petitioner intimating above said matter. While applying for previous passport for her minor child in the year 2018, both the parents signed in the declaration form/Annexure as per requirement and submitted along with the passport application and thereby, obtained passport No.R8939419, dated 05.03.2018 valid upto 04.03.2023 from the office of respondent. On submission of either consent of the minor applicant's father or permission from the Court to apply for passport for the child without the consent of the other parent, the passport application of the minor applicant Eshaan will be processed immediately in accordance with the provisions of Indian Passports Act, 1967.



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5. The second respondent filed counter affidavit and submitted that G.W.O.P.No.107 of 2021 filed by the second respondent seeking for custody of the child is pending before the learned Family Court, Madurai. He submit that there is no prerogative or exclusive right available to Mrs.Preethi to represent our minor son. An order has been passed by the learned Family Court Judge in I.A.No.734 of 2021 on 18.10.2022 granting interim custody of his son to him every Sunday from 9 a.m., to 5 p.m. Mrs.Preethi has not obeyed the said order even for a single date in the past 1 ½ years. His apprehensive is that Mrs.Preethi will run away from the jurisdiction of the Family Court and completely deny his access to his child. She had already corrupted the Child's mind by imbibing him with monstrous negative thoughts about him. His son was born on 13.09.2017. While walking out of the matrimonial home in March 2020 she forcibly took the child with her. He was only 2 ½ years old then. His relationship with his son since then had been beautiful with fond memories some of which have been captured in the photographs. Mrs.Preethi has blocked his access to his son since March 2020 and he is very much apprehensive that he will lose his son forever if Preethi secures a passport and takes him abroad. Her relatives Mrs.Sunitha, the petitioner's mother's sister and her cousins Mr.Bharath and his twins are settled in USA. Without obeying the order of the



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Family Court, Mrs.Preethi has moved this application. She expressed urgency in this matter. She informed that the competition is scheduled in a foreign country on 25.11.2023. She refused to honor the visitation rights and thus acted against the interest of the child by denying him an opportunity to participate in an international competition. Mrs.Preethi is using the petitioner as a tool to wreak vengeance on him. It is rather unfortunate that she has stooped low to this attitude and behavior. Strange is the request of Mrs.Preethi that she wants a reunion. Their son is studying 1st standard in Madurai. The immediate requirement for taking a passport is no longer there. There is no immediate foreign travel plans. The cause of action for the writ petitioner has now become infructuous. Under the guidelines formed under the Passport Act and Rules made thereunder, in cases where a divorce application is pending before the Court, the passport issuing authority is bound to insist on the consent of both the parents or in the alternative the applicant parent should obtain the permission of the Court to obtain a passport for the child without the consent of the other parent. The Court mentioned in the guideline can only mean family Court where the custody petition and the divorce petitions are pending. It is highly dangerous for his son to leave the country with Mrs.Preethi. The DVOP petition was once dismissed for default of Mrs.Preethi and again restored. She has been dragging on the proceedings before the Family Court Judge also.



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Mrs.Preethi rather got an order from Family Court for interim maintenance and he has paid the maintenance amount. His son is a minor. He has equal rights to determine what is best suited for him. His apprehensions are well founded. He do not want his son to travel abroad with her.

6. Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner, Mr.M.Rajendran, learned Central Government Standing Counsel appearing for the first respondent and Mr.N.Dilipkumar, learned counsel appearing for the second respondent and perused the materials available on record.

7. As per the compendium of instructions/guidelines relating to issue of passports in India/Abroad when the divorce proceedings are pending before the Court of law and the single parent has not got full custody of the child, consent of both the parents are required or alternatively the minor applicant's parents should obtain permission from the Court to apply for a passport for the child without the consent of the other parent of the child. In the present case, there is an ongoing Court case for divorce / custody of child. In view of the above reasons, the passport issuing authority while processing the petitioner's minor son's passport application at Passport Seva Kendra, Madurai had informed the



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petitioner to either furnish the consent of the minor applicant's father or to obtain permission from the Court to apply for a passport for the child without the consent of other parent of the child.

8. It is seen from the records that the matrimonial issues are pending. At this juncture, the petitioner has refused the second respondent to visit the child and hence, the second respondent has filed an application seeking interim custody of the child. The learned Family Court Judge in I.A.No.734 of 2021 on 18.10.2022 granting interim custody of the child to him every Sunday from 9 a.m., to 5 p.m., but the petitioner has not complied the said order even for a single date in the past 1 ½ years. The husband is not willing to say no objection for issuing the passport since he fears that if the passport is issued, the child may be taken out of the country and the access to the child with him may not be possible for ever. This Court is of the view that the objection raised by the husband is genuine and valid as the wife has not chosen to show the child to the father and she repeatedly saying that the husband does not want the child to be happy. This is not accepted as she is not willing to show the child to the second respondent/father, who is the natural guardian even once. Further, it is seen that claim made for issuance of passport as the competition is scheduled in a foreign country on 25.11.2023 and cause of urgency for filing the writ



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petition has now become infructuous. Hence, this Court is not inclined to accept the mother's claim.

9. Accordingly, the impugned order passed by the first respondent is well considered one and hence, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2024

Index : Yes/No
Internet: Yes/No
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To

The Regional Passport Officer,
Office of the Regional Passport Officer,
Race Course Road,
Madurai-625 002.



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V.BHAVANI SUBBAROYAN,J

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