

A.No.990 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON
19.03.2025

PRONOUNCED ON
21.03.2025

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

A.No.990 of 2025
in
GWO.P.No.61 of 2024

Kayal Vili P
Applicant(s)

Vs

R.Jagan Kumar

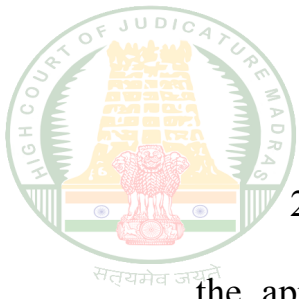
Respondent(s)

For Applicant(s) : Mr.K.F.Manavalan

For Respondent(s): Mr.Gowtham Thilak V.B., for
Mr.Sharath Chandran

ORDER

The instant application had been taken out by the applicant/mother seeking permission of this Court to take the minor daughter along with her to Germany subject to the conditions that may be prescribed by this Court pending adjudication of the Original Petition.



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2.The learned counsel appearing for the applicant would submit that the applicant who is the respondent in the Original Petition, has been beneficially employed as Technology Lead in an IT company and that she had been presented with an opportunity of being deputed on-site in Germany by her employer. He would further submit that the opportunity that had been given to the respondent would not only bring a change in the applicant's professional career, but also would be in the best interest of the minor child. He would further submit that the development of the child with a broad curriculum is available in Germany that would help the child in her future endeavours. He would further submit that the respondent father can also have a regular Video Conferencing with the minor child and in addition, he would submit that the applicant would undertake to visit India twice a year during which time, he would also have physical access to the minor child. He would further submit that in the applicant's affidavit also undertaking to co-operate for the expeditious disposal of the main Original Petition for Guardianship had been given.

3. Relying upon the judgment of the Hon'ble Apex Court made in Civil Appeal No.2704 of 2010, dated 25.03.2010, he would contend that the applicant's opportunity for personal development cannot be curtailed by the



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Court on the ground of prior custody of the child. Further placing reliance on the said judgment, he would submit that the Court is only required to ensure visitation rights. A further reliance has also been placed upon a judgment of the Hon'ble Apex Court made in Civil Appeal Nos.3544 -45 of 2020, dated 28.10.2020, and he would submit that the Hon'ble Apex Court in the said judgment had overturned the judgment of the High Court of Karnataka and had permitted the mother to take the child to Singapore where she is employed and is residing. He would submit that the said order came to be passed taking into the interest of the mother as well as the child. Therefore, he would pray this Court to grant permission of the mother/applicant to take the minor child with her to Germany.

4. Countering his arguments, the learned counsel appearing for the respondent/father would at the outset submit that the present application had been taken out only to refuse the father's visitation rights. He would further submit that only after the order of this Court dated 19.12.2024, wherein the custody of the child to the father was granted, the applicant had taken recourse to a dead offer that was made to her as early as in the month of September, 2024. He would submit that in the parlance of the IT industry, such an offer of deputation would be only available for the limited period



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and in the present case, the applicant claims that the offer which was made to her on 12.09.2024, was accepted by her on 30.12.2024 and it is almost more than three months, since offer made to the applicant and therefore, the said contention of applicant is only a brainstorming attempt by the applicant/mother to deny the rightful visitation rights of the father. He would further submit that inspite of visitation right being given to the respondent/father, by order of this Court dated 09.01.2025, the respondent/father is only permitted to meet the child on 16.02.2025 and that too such visitation rights had been alleged to have been not cordial as the respondent/father is alleged to have created a ruckus on that day. He had further relied upon the judgment of the Kerala High Court which according to him had distinguished the judgment of the Hon'ble Apex Court made in Civil Appeal No.2704 of 2010 and rejected a claim by the mother of the minor child therein to take the child to Germany. He would also place on record the order passed by the Hon'ble Apex Court affirming the order of the Kerala High Court and therefore would contend on the present facts of the case, the application need not be ordered.

5. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials placed on



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6. The Original Petition had been taken out by the father of the minor child seeking permanent custody. He had also taken out interim applications for having a visitation right of the minor child. Originally the parties were directed to appear before the Mediation Centre for resolving the dispute that had been raised in this Original Petition. The said mediation also seems to have failed. By order dated 19.12.2024, this Court had permitted the father to have visitation rights of the minor child on certain days and also a joint custody on the day of New Year 2025. On 09.01.2025, recording a finding that the interim arrangement under order dated 19.12.2024 had worked out satisfactorily, a further arrangement seems to have been made for the Pongal holidays and thereafter, on every odd sundays, where the father was permitted to visit the place of the minor child and spent time jointly with child between 10 am and 6 pm. It has also been brought on record that the visitation rights during the Pongal holidays namely 11.01.2025 to 13.01.2025 did not happen as the father due to his avocation had to be away from Chennai. It has also been brought on record that even the odd sundays visitation was not carried out. According to the mother, the father did not exercise his rights, but the father contends that he was not permitted to visit



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the child under one protest or the other. Now the present application had been filed by the mother placing on record the offer which had been given for deputation by her employer to Germany . The said offer seems to have been made on 12.09.2024.

7. Admittedly, the mother had accepted the offer only on 30.12.2024. Therefore, during the course of hearing on 17.03.2025, this Court had queried upon the mother as to whether there are any subsequent communications to indicate that the offer is still open. On 18.03.2025, she had produced an e-mail communication from one Mr.Solomon Christy claiming him to be the Reporting Manager. The said communication was opposed by the learned counsel appearing for the father by contending that such communication had emanated after the direction issued by this Court. Hence, the learned counsel for the mother had sought time for producing the relevant documents. When the matter was heard on 19.03.2025, she had produced the screenshot taken from the official website indicating that the said offer is still in progress and also the Visa application filed by the mother is still under consideration. The applicant/mother claims that the offer is still open and when she indicates her date of travel further procedure will be completed by her employer including to obtain the Visa and the travel dates



would be finalised.

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8. Even though the learned counsel appearing for the father had disputed that such offer would not be kept open for a longer duration as claimed by the mother, he had not produced any substantial material in support of his claim.

9. From a perusal of the offer dated 12.09.2024, it could be seen that the assignment was for a period of three years w.e.f., 05.11.2024. The mother had accepted the offer on 30.12.2024. Even though this Court is not willing to accept the e-mail communication from the alleged Reporting Manager to the mother dated 17.03.2025, however considering the screenshots taken by the mother on 18.03.2025, there is clear indication that the assignment given on 12.09.2024 is still in progress and the said assignment awaits the travel processing.

10. The employer's global mobility platform of which screenshot produced would indicate that duration of work was from 05.11.2024 to 15.10.2026 and that the Visa stamping (ICT work permit) is in progress. The work authorisation is also from 05.11.2024 till 04.11.2027, which is in



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consonance with the assignment dated 12.09.2024. In such view of the matter, this Court is of the view that the assignment given to the applicant/mother is still open and not closed.

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11. The issue now left to be decided is as to whether the applicant/mother would be entitled to take the minor child along with her to Germany.

12. Two judgments of the Hon'ble Apex Court had been relied upon by the learned counsel appearing for the mother. In a judgment made in Civil Appeal No.2704 of 2010, dated 25.03.2010, the Hon'ble Apex Court had held that the mother's autonomy on her personhood should not be curtailed by the Court on the ground of prior order of custody of the child. The Hon'ble Apex Court had also held that every person has a right to develop his or her potential which is the basic human right and the mother should not be asked to choose between her child and her career. The Hon'ble Apex Court had also held that the custody of the child is not given to her, she may not be able to pursue her career in Australia, which would affect her development in the career or to the future prospects of the child.



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13. This judgment was sought to be distinguished by the learned counsel appearing for the respondent/father by drawing the attention of this Court to a Division Bench judgment of the Kerala High Court in the case of ***Hirosh Joseph vs. Tina Kalayil*** reported in ***2017 SCC Online Ker 28746***. Relying upon the said judgment, he had contended that the Division Bench taking note of the aforesaid judgment of the Hon'ble Apex Court stated supra, differentiated the same by considering the facts of the said case particularly the age of the child, being not in a position to make an assessment of his right to choose between the parents. The Court weighed the child's company of both father and the mother vis-a-vis the right of one of the parent in permitting the parent to go abroad taking the child.

14. It is to be noted that in the facts of the case before the Division Bench of the Kerala High Court, the mother had sought permission to take the child to Germany where she was to undergo higher education. The Division Bench had also categorically held that if the mother is permanently employed in Germany and the child is of an age where he will be in a position to take a conscious decision which shall be open for the parties to seek modification of the order. Further it is to be noted that as a matter of law, the Hon'ble Apex Court considering the jurisdiction of the Court under



the Guardians and Wards Act to be a *parens patriae* jurisdiction had held the opinion of the child should not weigh the decision of the Court in granting custody of the child. The Court would have to be guided by the principles of parental alienation also. Hence, this Court is not inclined to accept the submissions of the learned counsel appearing for the respondent/father on the reliance made from the Division Bench of the Kerala High Court to deny the claim of the applicant/mother.

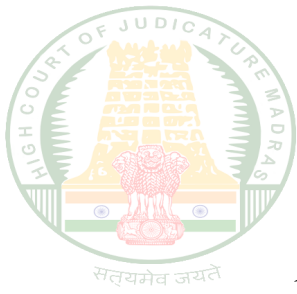
15. The Hon'ble Apex Court in a three Judge Bench in Civil Appeal Nos.3544-45 of 2020, dated 28.10.2020 had permitted the mother to have the custody of the child at Singapore on various conditions. An analysis of the aforesaid judgment, it could be seen that in the said facts of the case, the mother was employed in Singapore and the child was in the custody of the maternal grandparents. The Hon'ble Apex Court have also taken into consideration the right of the father to have access and visitation of the minor and had held that the Court should draw a balance between the conflicting parents and the sense of security in the child. The Apex Court had also taken into consideration the continuous custody of the mother of the minor child.



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16. In the present case admittedly, the parties had been living in separation for almost three years and the child had been in continuous custody of the mother. In spite of orders of visitation given to the father by order dated 09.01.2025, the father had not exercised his right of visitation. This Court in its order dated 09.01.2025, had in fact given a right of visitation by the father between 11.01.2025 and 13.01.2025. Even though it sought to be excused as he had to go to Pune on official business during the said period, this Court is unable to accept the same. The order was made on 09.01.2025 permitting the father to have the custody from 11.01.2025 to 13.01.2025, 11th and 12th January being the Saturday and Sunday, it is not known as to how the father could have visited Pune on office business, nor has he placed on record of such visit or proof of the same. Further he had pleaded in his counter that he was not permitted to have visitation on odd sundays. Except for a bald statement no specific instances had been given. Admittedly, the father is residing in Coimbatore and to visit the child, he has to come down to Chennai. He had not placed on record any travel details nor any communication from the mother asking him to postpone the visitation right. This only brings this Court to come to a conclusion that the respondent/father is attempting to thwart the personal growth of the mother, which the Hon'ble Apex Court has decried.



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17. For the aforesaid reasons, this Court is inclined to hold that the applicant/mother is entitled to take the child to Germany, however, on the following conditions:-

a) The applicant/mother shall file an affidavit of undertaking do abide by the following conditions along with all the travel particulars including the place of stay at Germany and the mode of communication to the father to enable him have video conferencing with the minor child;

b) Till the mother leaves to Germany, the respondent/father is entitled to have the custody of the minor daughter on alternate weekends starting from 10 am on the Saturday till 6.30pm of the following Sunday;

c) The applicant/mother shall not relocate outside Germany except India without leave of this Court;

d) The applicant/mother shall facilitate the grant of access



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and visitation to the respondent/father in the following manner:-

(i) The respondent/father would be at liberty to engage with the minor child on a suitable Video Conferencing platform for one hour on every wednesday, saturday and sunday and 5 to 10 minutes on other dates subject to the convenience of the child with prior intimation to the applicant/mother.

(ii) If the respondent/father proposes to visit Germany, he would also be entitled to have a visitation of the child preferrably during the weekends.

(iii) The applicant/mother shall ensure the presence of the child in Chennai during the child's long vacation, with prior intimation to the respondent/father about the period of visit. On such visit, the respondent/father shall be entitled to have the custody of the child, which shall be 50% of her stay in India. It is also made clear that the applicant/mother shall bring the child to India atleast twice a year during which the respondent/father would have access and visitation as



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stated supra.

(iv) There shall be no deviation of these conditions.

18. Accordingly, the Application is ordered on the above terms.

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Internet: Yes/No



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Pre-Delivery Order in
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