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CRP. PD. No.1405 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:14.07.2025

Pronounced on:28.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

CRP. PD. No.1405 of 2025

P.Kalenthirababu

Petitioner(s)

Vs

K.Madhanapriya

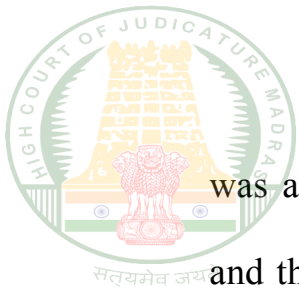
Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the decretal order passed by the learned Sub Judge, Alandur in I.A. No.2 of 2024 in HMOP. No.486 of 2021 and consequently, grant visitation rights to the petitioner to visit his minor child as prayed for in the I.A. No.2 of 2024.

For Petitioner : Mr.Colonel Ganesan
for M/s.Colonel Ganesan Associates
For Respondent : Mr.Wilson,
for M/s.A.S.Kailasam Associates

ORDER

The husband/father, aggrieved by a dismissal of his Application seeking visitation rights to see his minor son is before this Court. With the consent of the parties, the matter was referred to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. The minor child



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was also produced by the respondent/wife before the learned Mediator and the petitioner/father had multiple occasions, though limited in time, to interact with his minor son. Thereafter, the learned Mediator had sent a report stating that the mediation failed and indicating that if any detailed report is necessary, the same would be provided.

2. Accordingly, on 04.07.2025, I had requested the learned Mediator to send a detailed report. In pursuance of the order, the learned Mediator has also forwarded a detailed mediation report dated 14.07.2025. The same is carefully perused and taken into consideration.

3. I have proceeded to hear the learned counsel for the parties.

4. Mr.Colonel Ganesan, learned counsel for the petitioner/ husband, would submit that the Trial Court ought not to have dismissed the Application seeking visitation rights, without factoring the legal position with regard to the right of either of the parents to exercise visitation rights to see their minor child/children. The learned counsel for the petitioner would also state that though earlier attempts were made by the petitioner to see the minor son, all attempts were thwarted by the respondent, by lodging complaints and also issuing threats of

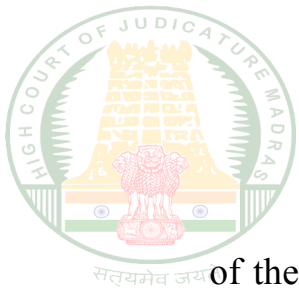


approaching the police authorities. He would therefore state that it is not as if the petitioner never attempted to take any effort to see his minor son.

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5. The learned counsel would take me through the averments in the Application seeking visitation rights and fortify his contentions that right from 2019, the petitioner has been trying to see his minor child. He would further state that though the respondent assured to produce the minor child before the Family Court, the respondent never kept her word and was bent upon denying the right of the father to see his minor son.

6. The learned counsel for the petitioner places reliance on the decisions of the Honorable Supreme Court in *Roxann Sharma vs Arun Sharma* in Civil Appeal No.1966 of 2015 dated 17.02.2015; *Kiran Raju Perumacha vs Tejaswini Chowdhury* in SLP.Civil Appeal No.7261 of 2024, reported in 2025 INSC 358; *Sugirtha vs Gowtham* in SLP.Civil.No.18240 of 2024 dated 20.12.2024 and the decision of our Court in in the case of *Dr.Mithra vs Mr.B.Raghavendran* in CRP.No.02 of 2024 dated 09.01.2024, relying on the above decisions, the learned counsel would contend that Courts have never prevented the parent to visit the minor child.



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7. He would further state that the petitioner is not seeking custody of the minor child but is only desiring to see his minor child in order to develop a rapport which is essential for the overall well-being of the minor child. He would rely on the above decisions and also contend that even where the father was found to be an alcoholic, the Courts never denied his right of visitation. Equally, even when there was a delay in approaching the Court seeking visitation as well, the Courts have not put delay against the father, in order to deprive him of a right to see his minor child.

8. The learned counsel would also state that the Court exercising *parens' patriae jurisdiction*, has to give due weightage to the child's overall welfare and also factor moral and ethical values above physical comforts. He would therefore pray for the order of the Trial Court being set aside and would also request for atleast a supervised visitation to be permitted.

9. Per contra, Mr.Wilson for M/s.A.S.Kailasam Associates, learned counsel for the respondent, would state that the divorce petition was filed in October 2019 and no attempts were made by the petitioner /husband to see his son and only when the HMOP was at the stage of arguments, the



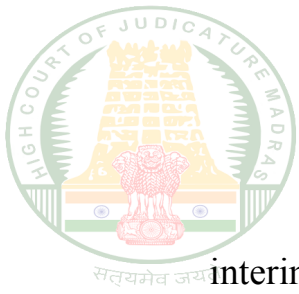
Application has been taken out, which is clearly lacking in bona fides.

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10. Taking me through the prayer in the Application, Mr. Wilson would contend that the visitation rights have been sought for only till disposal of the main OP alone and when the HMOP is itself on the verge of conclusion, with only arguments to be advanced and final orders passed, the visitation rights that the petitioner seeks is not even going to be worthwhile and he would therefore state that the petitioner can work out his rights independently and not by way of an Application in the pending HMOP.

11. I have carefully considered the submissions advanced by learned counsel on either side. I have also gone through the decisions that have been relied on by learned counsel for the petitioner.

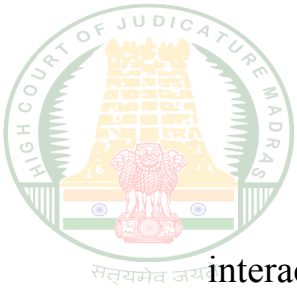
12. In matters of this nature, especially concerning the interest and welfare of a minor child, the rights of the parents for custody and visitation, there can never be a straitjacket formula. Everything will boil down to the facts and peculiar circumstances of each case and at the same time, the welfare of the minor would be the prime concern of the Court while deciding such an Application.



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13. In the present case, admittedly, the father does not seek for interim custody, but only visitation rights to see his minor son. The minor is admittedly aged 10 years and is studying in Standard 5/Standard 6 in a school affiliated to the Central Board of Secondary Education.

14. Only in view of the fact that the said minor child is capable of forming a mature opinion and the opinion of the child could be weighed and assessed in a judicious manner, I have directed a trained Mediator of this Court to interact with the child and also permit interaction between the father and the son and give a report regarding the same. The learned Mediator, has stated that initially the child was nervous, distressed and fidgety whenever the topic of the father was brought about. Equally, it is seen from the report that initially when the father and the child interacted, the child was visibly distressed and answered questions put by the father with subtle nods which according to the Mediator indicated that the child was not in a mindset to have any conversation with the father. After counselling the child and also diverting its attention with a puzzle game, the child was more relaxed and started talking to the Mediator and even at that point of time whenever the topic of the father was brought about, the child appeared to be stressed around the topic.



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15. The learned Mediator has further stated that when the father interacted with his minor son talking about neutral and general topics, the child responded fully and the conversation went on for more than 20 minutes. However, when the father wanted to know if the child would wish to see him once in a while and even online, the minor has stated that he does not wish to do so.

16. The learned Mediator has concluded that the child was less distressed when the interactions were general with no direct confrontation with regard to the relationship of father and son. The learned Mediator has suggested that visitation rights to the father, if being considered by the Court, then it should be in the presence of a child friendly neutral person such as a psychologist or a child counselor, social worker, to avoid causing distress or trauma to the child.

17. As a loving father, the petitioner seeks to see his child in order to develop a rapport. Admittedly, even when the child was a toddler, his parents got separated and therefore, naturally the minor does not remember the father, having not seen the father for close to 5-6 years. Naturally, when the child is in the care and custody of one of the warring spouses, it is understandable that the spouse with whom the child resides



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is very likely to prejudice the mind of the child. Therefore, the reaction of the child, depending on the age as well as other attending circumstances, will have to be certainly taken into account, while permitting either of the parents, who is not having custody to visit the child.

18. As regards the contention of the learned counsel to the respondent, Mr.Wilson that there is inordinate delay and that the Application has been taken out at the fag end of the HMOP proceedings and that even if an order is passed, it would only provide a limited visitation right to the father, I see these reasons not being germane to decide the Application seeking visitation rights.

19. In fact, even in the petition, the petitioner has specifically averred that right from 2019, soon after the separation, the father has made sincere attempts to see the minor child. These averments are not even specifically denied in the counter affidavit filed by the respondent/ wife.

20. Be that as it may, considering that after initial anxiety and stress, the child has been able to move normally with his father, I am of



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the opinion that time alone would be the healer. The child cannot be deprived of the love of the father, irrespective of whatever disputes are going on between the father and the mother, unless of course it is shown by the other spouse that it would not be in the interest or welfare of the child to even permit the father/mother to visit the child. Considering the fact that after not seeing the father for about 6 years, the child has been interacting with the father comfortably for more than 20 minutes is itself an indicator of the fact that if the father is given visitation rights, the father would be in a position to win back the trust of the child, despite whatever has been fed into the child's mind about him.

21. In view of the above, I am inclined to set aside the order of the Sub Judge, Alandur in I.A. No. 2 of 2024 and considering the fact that the child is studying in middle school and taking the suggestions of the learned Mediator, at least to start with, the father should be permitted to visit his minor son, twice a month, on the second and fourth Sundays between 10 a.m and 12 p.m.

22. I hereby appoint **Ms.Madhumitha, Clinical Psychologist and Psychotherapist, (Mobile No.72005 98327), residing at Old No.6, New. No.13, Flat No.1, Residency Parikrama, 14th Cross Street,**



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Shastri Nagar, Adyar 600 020 to supervise the visitation rights of the petitioner/father on the second and fourth Sundays of every month between 10 a.m and 12 p.m and the child shall be brought to **Phoneix Mall, Velacherry Main Road, Indra Nagar, Velacherry, Chennai 600 042** and handed over to the Psychologist and the petitioner/father shall be entitled to interact with the child within the premises of the Mall under the direct supervision of the Psychologist and the mother shall be entitled to pick up the child from the place where the child is handed over to the petitioner. The said arrangement shall be limited to three months from now. At the end of three months, the Psychologist shall file a report to the Sub Judge, Alandur, regarding the interaction between the father and the child.

23. Liberty is granted to the petitioner to move an Application under Section 26 of the Hindu Marriage Act, 1955 after the disposal of the HMOP proceedings and seek visitation rights on the same terms or on modified terms, subject to any change in circumstances. Both the parties shall co-operate with Ms.Madhumitha, Psychologist, keeping in mind with the interest of the child is paramount. The petitioner shall pay a sum of Rs.6,000/- (Rupees Six Thousand only) per visit to the Psychologist.



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24. In fine, this Civil Revision Petition is allowed with the above directions. Considering that the HMOP is of the year 2021, I direct the learned Sub Judge, Alandur to dispose of the OP on merits and in accordance with law, within a period of four (4) months. No costs.

28.07.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

1. The Sub Judge,
Alandur.
2. Ms. Madhumitha,
Clinical Psychologist and Psychotherapist,
Old No.6, New. No.13, Flat No.1,
Residency Parikrama, 14th Cross Street,
Shastri Nagar, Adyar 600 020.



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P.B.BALAJI, J.,

rkp

Pre-delivery order in
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