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A.No.1778 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 16.04.2025	PRONOUNCED ON 23.04.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.No.1778 of 2025

in

O.P.No.147 of 2024

Sriharyni Prabhakar

... Applicant/petitioner

vs.

R.Dinesh Kumar

... Respondent/Respondent

For Applicant : Ms.K.Sumathi,

For Respondent : Mr.A.K.Sriram Sr., Counsel for

Mr.A.S.Kailasam Associates

ORDER

This instant application has been filed to pass an interim order permitting the applicant/petitioner mother, to have unsupervised and exclusive interim custody of the minor children Harsha Devakaran and Dushyant Devakaran from 1st May 2025 till 31st May 2025 for the summer holidays,

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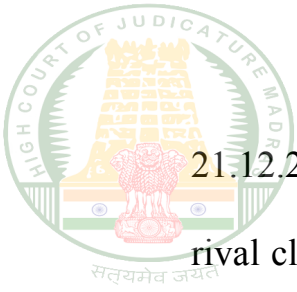


pending the disposal of the Original Petition.

2) Heard Ms.K.Sumathi, learned counsel appearing for the Applicant and Mr.A.K.Sriram learned Senior counsel appearing for Mr.A.S.Kailasam Associates for the respondents.

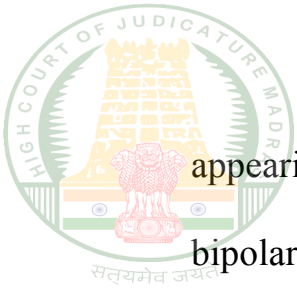
3) The learned counsel appearing for the applicant would submit that the respondent/father had grabbed the children from the custody of the applicant/mother at Bangalore and had brought them to Chennai. She would submit that the children were staying with her at Bangalore and in view of the compelling situation arising out of her employment, she had to travel outside Bangalore in the year 2023 and had requested the respondent/father, who was in good terms at that point of time to be in Bangalore with the children, but however, the respondent/father removed the children from Bangalore and brought them to Chennai and got them admitted to a school in Chennai. Only thereafter, the Original Petition had been filed. In spite of interim orders granting visitation rights to the applicant/mother were passed, the applicant/mother was not permitted to visit the children.

4) Relying upon the orders passed by this Court in the instant O.P., dated



21.12.2024, she would submit that this Court wanting to give a quietus to the rival claim between the parties, had directed video conferencing for two hours on sundays. Even that video conferencing was always interrupted citing other engagements which they were enrolled upon by the respondent/father. She would submit that either the respondent/father further ought to have seen that the children do not have any engagements during the two hours permitted by this Court or ought to have informed the applicant/mother a comfortable two hours window without any disturbance with them. She would submit that the matter was directed to be placed before the learned Master for recording of evidence and foreseeing a settlement, the evidence was not recorded. She would submit that there is no possibility of the settlement between the parties and therefore, the applicant/mother is ready to get along with the recording of evidence on 09.06.2025, and on the said date, the matter has to be listed before the learned Master. Therefore, she would submit that she being a biological mother of the children seeks to have the custody of the minor children during the summer vacation and prays this Court to grant interim custody of the minor children to the applicant/mother.

5) Countering her arguments, Mr.A.K.Sriram, learned Senior counsel



appearing for the respondent would submit that the applicant suffers from a bipolar disease, which is incurable and she has also attempted to produce a certificate given by a Doctor certifying that the applicant/mother had been cured from bipolar disorder. He would vehemently contend that the bipolar disorder is incurable and therefore, such a certificate had been placed before this Court, with an attempt to mislead the Court which would amount to a perjury. That apart, he would submit that even the mother of the applicant had complained about the conduct of the applicant/mother and now supported and given shelter by an another relative who did not want to disclose her name. He would also want to place on record an affidavit by his mother-in-law, who is mother of the applicant. He would further submit that it would only be dangerous to the minor children to be in the company of the applicant/mother unsupervised, that too in an alien state.

6)He would contend that the applicant/mother had innocuously got an order of injunction restraining the respondent/father from moving the children out of jurisdiction at Chennai after knowing well that the respondent/father has planned to take the children to Andaman and Nicobar Islands during the vacation. Only on his boarding the flight, the order of injunction was sent by



mail to the respondent/father and which did not provide a point of return to the respondent/father. For which reason, contempt has also been initiated by the applicant/mother against the respondent/father.

7)He would further submit that when the matter was listed for recording of evidence before the learned Master, the applicant/mother under the guise of discussing a settlement had sought time for leading evidence. Even though the respondent/father is not averse to the settlement as regards to the custody and visitation schedule of the minor children they have not reached for a settlement as the respondent also has an apprehension about the safety of the children of any visitation permitted to the applicant. Therefore, he prays this Court to dismiss the application with a direction to complete the part of the applicant/mother in the original petition and get along with the trial.

8) In reply, the learned counsel appearing for the applicant/mother would submit that in view of the dispute between her father and her mother, the father and the mother are living separately and since, the applicant is supporting the father, the mother is attempting to throw allegations against her which utmost can be proved by her in the box, if she wishes to proceed to lead



any evidence in the Original Petition and that cannot be taken on count to deny the visitation right. She would submit that presently she is staying at Chennai with her father in the application mentioned address.

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

10) Earlier by order dated 25.04.2024, this Court had passed orders permitting the interim custody of the children with the applicant/mother. This Court has also granted permission for the children to go to Bangalore by even after taking note of the order passed in CRP.(PD).No.3717 of 2023. Further, this Court had recorded its interaction with both the parents and the children. This Court has also recorded the minor children affection towards the applicant/mother. To dissipate the apprehension of the respondent/father, this Court had held that the mother would not put herself in a position, where the children would feel uncomfortable and also permitted the applicant/mother to invite her mother namely, the maternal grandmother of the minor children to be with them at the time of visitation. This Court has also in its order recorded that the applicant/mother should understand that this interim arrangement is

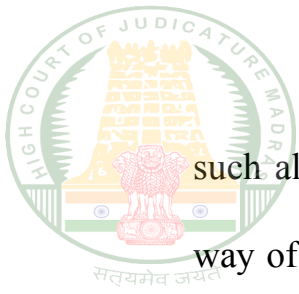


also where she is put to test in taking care of the children.

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11) Thereafter, when the matter was listed before this Court on 06.06.2024, this Court had recorded the statement made by the counsel for the applicant/mother that the order dated 25.04.2024, had been complied with. A further permission was also granted to the applicant/mother to be in the company of the children on the birthday of the elder son. Thereafter, in the subsequent hearings, talks of settlement have been recorded. However, when the matter was taken up on 21.12.2024, this Court recording the disputed claims of visitation between the parties, to give a quietus to the issue permitted the applicant/mother to have interaction with the children for two hours on sundays through video calls. This Court also had directed the matter to be listed before the learned Master for recording of evidence from 24.01.2025. Even before the learned Master, the parties have expressed their intention of settling the issue and therefore, for recording evidence, the matter now stands adjourned to 09.06.2025.

12) Various allegations have been made by the learned Senior counsel appearing for the respondent/father against the applicant/mother. Even upon



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such allegations, this Courts of the view, such allegations cannot stand in the way of a grant of visitation right to the biological mother. As even if she fails in her petition to get custody of the minor children and the respondent/father is entrusted with the custody of the minor children, the applicant/mother cannot be denied to be given visitation right for the reminder of the time, till children grow up to become a major. Further such allegations can only be taken into account to decide the suitability of the parties for grant of Guardianship of the minor children alone.

13) As seen from the records, the children have been away from the applicant/mother from 2023 bearing a short period of six days where she had custody of the minor children by intervention of this Court. This Court had also recorded in its order dated 25.04.2024, the affection that the children had towards the applicant/mother. Even when the matter was taken up after the short interim custody given by this Court, no complaint was made by the respondent/father about any inconvenience to the children. It is the claim of the applicant/mother, she is now residing in Chennai along with her father.

14) In such view of the matter, this Court is inclined to grant interim



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custody of the minor children namely Harsha Devakaran and Dushyant Devakaran to the applicant/mother from 01.05.2025 to 20.05.2025. The applicant/mother shall pick up the children at 10.00 am on 01.05.2025 and hand over the children back to the respondent/father @ 6.00 pm on 20.05.2025. The respondent/father is entitled to have a video conferencing with minor children on every sunday between 04.00 pm to 06.00 pm. The respondent/mother shall facilitate such video conferencing facility to enable the respondent/father to have video conferencing with the minor children.

15) Accordingly, the Application in A.No.1778 of 2025 in O.P.No.147 of 2024 is partly allowed. However, there shall be no order as to costs.

23.04.2025

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Pre-Delivery Order in
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in
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23.04.2025