



O.P.No.860 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 11.08.2025	PRONOUNCED ON 07.10.2025
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CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU
O.P.No.860 of 2016

Ms.Abirami Kalyanasundaram,
D/o.Kalyanasundaram,
L 1, Rohini Gardens,
Santhome High Road,
Raja Annamalaipuram,
Chennai – 600 028.

... Petitioner

Vs

S.Sakthivel,
S/o.Dr.R.Sundaravadivelu,
Flat 10H, Block 2,
Ramaniyam Sanjivini,
72/1. Dr.Muthulakshmi Salai,
LB Road, Thiruvanmiyur,
Chennai – 600 041.

... Respondent

PRAYER: Original Petition filed under Sections 3, 7 to 10 of the Guardians and Wards Act, 1890 read with Order XXI Rule 2, 3 of the Madras High Court Original Side Rules praying to pass necessary orders declaring the petitioner as the guardian of the person of the minor child – Shivdevan till he attains major age and pass such other further order.



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For Petitioner : Mr.Aravind Subramaniam
Senior Counsel
For Respondent : No appearance

ORDER

This original petition has been filed by the petitioner, the mother of the minor child, Shivdevan-Minor, seeking to appoint herself as the legal guardian.

2) The case of the petitioner is that she married the respondent on 22.02.2007 at Ramaswami Hall, MRC Centre, R.A.Puram, Chennai-28. Out of the said wedlock, a male child, Shivdevan-Minor, was born on 18.05.2010. The respondent used to verbally abuse the petitioner for trivial issues. There is always a dispute in the matrimonial life. The minor child was under care and custody of the petitioner ever since his birth. The petitioner for the best interest and welfare of the minor child now seeks to declare herself as the legal guardian of the minor.

3) The case of the respondent is that the respondent being the natural guardian, has every legal and moral right to the custody of the minor child. The marriage was a love marriage and the allegations of abuse are false, arising only after the interference of the petitioner's mother, who was made



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Director in the respondent's business with 10% shareholding while the petitioner also held an honorary post. The petitioner voluntarily left her employment, often threatened suicide over trivial matters, and eventually left the matrimonial home with the child without cause. On the contrary, the respondent has always been a responsible father, caring for the child and maintaining attachment with him, while making sincere efforts for reunion, including filing O.P. No.4499 of 2016 for restitution of conjugal rights. Hence, the present petition is devoid of merits and liable to be dismissed.

4) Heard Mr. Aravind Subramaniam, learned Senior counsel appearing on behalf of M/s. Nathan Law Associates, learned counsel appearing for the petitioner. There has been no representation on the side of the respondent when the matter was taken up for hearing on 04.08.2025 and as a last chance the matter was again adjourned to 11.08.2025, even on the said date, there was no representation. Hence, the matter was heard on the side of the petitioner. From the records, it could be also seen that the cross examination of the respondent was completed on 16.04.2025 and was adjourned for the examination of witness on the side of the respondent on 28.04.2025, on which date, at the request of the learned counsel for the



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respondent, it was adjourned to 28.04.2025. However, an application was taken up by the petitioner in A.No.2166 of 2025 for taking the child to abroad during the vacation. The passport was handed over to the petitioner with a direction to redeposit the passport before this Court by 10.06.2025. Even when the said order was passed, there was no representation on the side of the respondent. Thereafter, the matter was directed to be listed before the learned Additional Master-I for recording of evidence on 04.06.2025. When the matter was listed before the learned Master for recording of evidence on 10.06.2025, there was no representation on the side of the respondent and it was again adjourned to 25.06.2025. On 25.06.2025, learned counsel appearing on behalf of the respondent had reported no instruction and hence, for appearance for the respondent, the matter was again adjourned to learned Additional Master on 10.07.2025. As even on 10.07.2025, there was no representation on the side of the respondent and in view of the order dated 24.02.2025, directing the completion of evidence on the side of the respondent on 30.06.2025, the matter was listed before this Court.

5) As indicated above, when the matter was listed on 04.08.2025, there has been no representation on the side of the respondent and was



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adjourned to 11.08.2025, even on which date, there was no representation on the side of the respondent. Hence, the matter was heard by this Court.

6) The learned counsel for the petitioner submits that from the very inception of the marriage, the respondent subjected the petitioner to verbal and physical abuse on trivial issues. He further submits that the minor child has been in the custody of the petitioner. The learned counsel further submits that the respondent, being a suspicious and ill-tempered person, frequently threw tantrums and used filthy language against the petitioner, even for returning late from the office. Owing to the respondent's hostile attitude, the petitioner was deprived of good employment opportunities. It is further submitted that the respondent used to hurl objects at the petitioner, and he did not permit the petitioner's parents to visit her nor did he allow the petitioner to visit them. On several occasions, the respondent beat the petitioner black and blue in the presence of the child. On one such occasion, when the respondent slapped the petitioner, one of her eardrums was torn; on another, he threw a TV remote at her, leaving a scar on her face which remains till date.

7) The learned counsel further submits that the respondent is highly



sensitive and intolerant even towards the ordinary sounds made by the minor child. He compelled the petitioner to sleep separately for nearly one year to avoid the child's crying at night. The respondent used to spend hardly ten minutes a day with the child and habitually employed horrible, disgusting, and un-parliamentary language in the presence of the child while quarreling with the petitioner. When the child, then aged about 18 months, accidentally broke the mouse of the laptop, the respondent assaulted the minor child severely.

8) It is further submitted that when the petitioner reported the respondent's conduct to his parents, they failed to lend an ear to her grievances. The respondent's behavior has gravely affected the psychological development of the child. The child's eyes often reflect fear and anxiety, which, if allowed to persist, may cause permanent psychological trauma and could eventually drive the child towards anti-social tendencies.

9) The learned counsel further submits that though the respondent filed a counter and cross-examined the petitioner in the interim application, he failed to prosecute the main petition, which clearly demonstrates his



lethargic attitude. The deposition during cross-examination also reveals that the respondent's primary concern is his business and money, rather than the welfare of his family. In these circumstances, and in the paramount interest and welfare of the minor child, the petitioner prays that this Hon'ble Court may be pleased to appoint her as the legal guardian of the child.

10) The respondent even though had not lead in evidence in support of his averments in the counter, has not appeared. Hence, the Court takes on record the counter affidavit filed by the respondent to analyse the case of the respondent. A perusal of the counter affidavit filed by the respondent would indicate that the respondent had made the following averments:-

a) The respondent has every legal and moral right to continue as the natural guardian of the minor child and to claim custody of the child. He further submits that the marriage between the petitioner and the respondent was a love marriage, and therefore, the allegations of abuse leveled against the respondent are highly improbable and entirely false. The marriage took place after considerable struggle and upon the condition that the petitioner's mother be included as a Director in the business initiated by the respondent. Accordingly, the petitioner's mother was allotted 10% shareholding in



the company, and the petitioner herself was given an honorary post and remuneration in the said company.

b) The petitioner and respondent led a happy married life until the unwarranted interference of the petitioner's mother. The petitioner voluntarily resigned from her employment on the ground that she did not receive the increment she had expected. The petitioner often threatened the respondent with suicide over trivial issues. On one such occasion, when the petitioner's mother visited the matrimonial home and expressed her dislike for the wall paint, the petitioner insisted that the colour be changed immediately and threatened to jump from the terrace if her demand was not met.

c) Being a responsible father, the respondent would wake up the minor child, bathe and dress him, and drop him at school. The minor child is very much attached to the respondent. The allegations of abuse against the respondent are false and baseless. On the contrary, the petitioner, when hysterical and out of control, would physically assault the respondent. The petitioner, without any justification, suddenly left the matrimonial home and took the child to her parents' house.



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d) Despite the petitioner's conduct, the respondent made sincere efforts to bring back his wife and child. He often visited the child, and the child also expressed his desire to spend time with the respondent, which was obstructed by the petitioner. The respondent has always been ready and willing to resume cohabitation with the petitioner and their child, but the petitioner, under the influence of her mother, demanded complete control of the respondent's business. The petitioner also filed a police complaint, which was subsequently withdrawn and referred to mediation, treating it as a family dispute.

11) I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

12) Admittedly, the minor child is born in the year 2010 and is currently aged 15+ years. The present O.P had been filed in the year 2016 which would indicate that the minor child from the year 2016 is in the care and custody of the petitioner, who is the mother. The respondent in spite of orders of this Court fixing a time line had not led in any evidence in support of his claim. Be that as it may, the minor child had been in continuous



custody and care of the petitioner.

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13) Considering the age of the child and his school education, which is at a stage where the child has to undergo public examinations, this Court is of the view that it would not be an appropriate stage to deny the petitioner the custody of the minor child, as it would have an effect of shifting the minor child from the current environment and putting the minor child to unnecessary strain both emotionally and physically.

14) In such view of the matter, this Court finds no other option to continue the child in the custody of the petitioner/ mother by appointing her as the guardian of the person of the minor till he attains the age of majority. But, however, considering that the respondent being the natural guardian would be entitled for visitation of the minor child.

15) It is to be further noted that the Division Bench of this Court in its order dated 23.07.2018 by allowing the respondent to have a right of visitation of the minor child had also imposed a condition that the respondent should pay a sum of Rs.35,000/- per month towards the maintenance expenses of the child every month, to be paid on or before 07th



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of every calendar month.

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16) A Review Petition was filed by the respondent and the Review Petition were closed with a direction to dispose the Original Petition within a period of four months. Even after the grant of fixing of such time limitation, the cross-examination of the petitioner was completed only on 16.04.2025. The Division Bench in the Review Application had also specifically held that when the respondent is not willing to comply with the order of maintenance then he cannot also insist upon the right of visitation.

17) This Court while disposing of an application in A.No.223 of 2023 on 28.06.2023, had found that the maintenance as fixed by this Court has also not been fully paid to reject the claim of the respondent to be appointed as a guardian *ad-litem* or in the alternative to admit the minor child in a boarding school. Further proceedings also do not indicate that the respondent has been complying with the condition that had been imposed by the Division Bench of this Court in the Intra-Court Appeal.

18) In such view of the matter, if the respondent pays the arrears of the maintenance as fixed by this Court in O.S.A.Nos.263 & 264 of 2017 and



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continues to pay the same every month, the respondent can be permitted to exercise his visitation right as ordered by the Division Bench of this Court in O.S.A.Nos.263 & 264 of 2017.

19) In fine, the Original Petition stands allowed and the petitioner is appointed as the guardian of the minor child and the respondent would be permitted to exercise the visitation as indicate above. Further pursuant to the order made by this Court on 29.04.2025, the petitioner had also deposited the original passport of the minor, which has been directed to be kept in the custody of the Joint Registrar of Original Side in a sealed cover. Hence, the Registry is directed to return the passport that has been deposited before this Court, pursuant to the order dated 29.04.2025. However, there shall be no order as to costs.

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Index :Yes/No

Speaking order: Yes/ No

Neutral Citations: Yes/ No



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List of witnesses examined on the side of the petitioner:

PW1- Mrs.Abirami Kalyanasundaram

List of documents marked on the side of the petitioner:

Exp1	The computer generated birth certificate of Shiv Devan Sakthivel.
Exp2	The photocopy of the Family card for the period 2005-2009 (Compared with the original).

List of witnesses examined on the side of the Respondent:

NIL

List of documents marked on the side of the Respondent:

ExR1	The e-mail dated 23.11.2016.
ExR2	The e-mail dated 12.09.2016.
ExR3	The e-mail dated 14.10.2016.
ExR4	The letter dated 11.11.2016.
ExR5	The e-mail dated 23.03.2022.
ExR6	The e-mail dated 15.02.2021.
ExR7	The e-mail dated 21.02.2021.

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Pre-Delivery Order in
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