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A.No.2102 of.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 08.07.2025	PRONOUNCED ON 29.07.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

A.Nos.2102, 883, 2464, 884, 1293, 3034 to 3039 of 2025

in
OP. No.77 of 2025

A.No.2102 of 2025

Mr.Walter Philips.J

... Petitioner

vs.

Mrs.Olive Sharanya

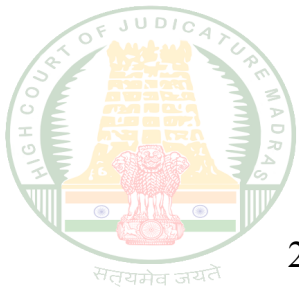
... Respondent

For Applicant : Ms.Elizabeth Sheshadri in all Applns

For Respondent : Mr.S.Rajendrakumar for
Mr.Sharath Chandran

COMMON ORDER

This Application in A.No.2102 of 2025 had been filed to restore the common order passed dated 25.03.2025 in A.Nos.883 & 883 & 1293 of 2025 in GWOP No.77 of 2025, granting interim weekend custody and 50% of the entire summer vacation holidays.



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2.The Application in A.No.883 of 2025 had been filed to grant interim custody of the child, Leah Walter, to the petitioner along with his parents, the child's grandparents during all Christmas Holidays, recognizing the significance of the festival for the petitioner, the child's grandparent and the child, who is being raised in the Christian faith, this arrangement is sought to ensure the child's religious and cultural upbringing in accordance with true christian values and traditions.

3. The Application in A.No.883 of 2025 had been filed to direct the respondent to grant access to the petitioner to the minor child's overnight weekend custody with the permission to pick up the child from school on Friday evening and drop her back in school by Monday morning.

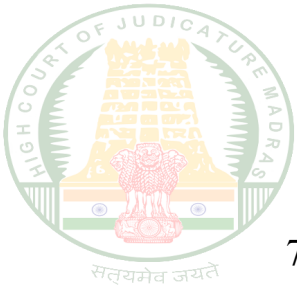
4. The Application in A.No.2464 of 2025 had been filed to grant the applicant/petitioner interim custody of the minor on the birthdays of the paternal grandparents specifically the paternal grandmother (31/07/2025) and paternal grandfather (13/01/2026) every year as well as the petitioner's birthday (23.03.2026) every year and may the minor child be permitted to



attend all familial functions on the paternal side, including all weddings, baptisms, birthday celebrations of paternal uncles, aunts, cousins and the wedding anniversaries of the paternal grandparents, and paternal uncle and aunts every year and the death anniversary of the child's paternal side great grandparents every year.

5.The Application in A.No.1293 of 2025 had been filed to grant interim custody of the minor child, Leah Walter to the petitioner, along with the paternal grandparents of the child, for 50 percent of all the holidays every year, permitting vocational trips with overnight custody during those permitted holidays, the holidays include all school and religious holidays such as quarterly, half yearly, annual and as well as all significant religious holidays such as Deepavali, Pongal Christmas and Easter.

6.The Application in A.No.3034 of 2025 had been filed to grant the petitioner, interim custody of the minor child to travel with the minor child Internationally and Nationally, beyond the territorial email communication between the petitioner and the respondent whenever the petitioner wishes to take the child.



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7.The Application in A.No.3035 of 2025 had been filed to make appropriate directions to the respondent to hand over the minor child passport to the petitioner at least two months prior to the scheduled travel to enable timely initiation and completion of the requisite visa formalities.

8.The Application in A.No.3036 of 2025 had been filed to direct the respondent to hand over custody of the child to the natural guardian, the petitioner in the event that she travels international or outside the jurisdiction of this Court to pursue her career or future.

9.The Application in A.No.3037 of 2025 had been filed to direct the respondent to notify this Court and obtain the petitioner permission who is the natural guardian of the child before taking the child outside the jurisdiction of this Court.

10.The Application in A.No.3038 of 2025 had been filed to direct the respondent to deposit the child passport before this Court.



11. The Application in A.No.3039 of 2025 had been filed to grant the petitioner access to the minor child's educational information and permit the petitioner to attend all school related activities, including but not limited to Parent-Teacher meetings, open days, sport events.

12. The father has approached this Court seeking for himself to be appointed as a Guardian of the minor child and had filed various applications seeking various interim reliefs, the prayers of which are indicated above. During the earlier hearings, it was brought to the notice of this Court that the petitioner herein had earlier initiated IDOP under the Divorce Act, 1869, and had also filed interim applications before the Family Court seeking for interim custody of the child on the very same grounds on which the various applications have been filed. This Court had a doubt on entertaining the applications for interim custody.

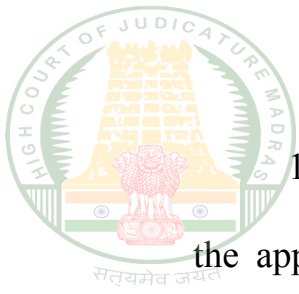
13. It is to be noted that guardianship and custody of a minor child, even though are interlinked can act in different spheres. The custody of the child can be given to a parent, but the non-custodial parent can be vested with the guardianship of the minor in a given particular case. This Court does not have a doubt on the maintainability of the GWOP. Section 12 of the Guardians and



Wards Act deals with the interim custody of the child. Section 41 of the Divorce Act vests the power with the Court to decide the custody of the child.

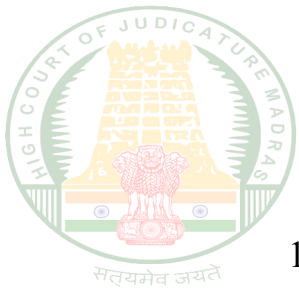
Similarly, Section 7 of the Family Courts Act empowers the Court to decide on the guardianship and custody of the child. The issue of concurrent jurisdiction and the maintainability of GAWA Petition before this Court had been decided by a Larger Bench of this Court in *Annapoorni's* case. However, the issue of maintainability of a petition for custody, which is interim in nature available under the Divorce Act/Family Courts Act, vis-a-vis the Guardians and Wards Act, 1890, is still a debatable issue. Hence, the learned counsels were also requested to address the issue of maintainability, as in the present case, the petitioner had initiated a proceeding under Section 41 of the Divorce Act, which had culminated in orders passed by this Court on the Appellate side in C.R.P.No.3805 of 2024. The petitioner had also filed various applications seeking for interim custody of the child for various instances.

14. Heard Ms.Elizabeth Sheshadri, learned counsel appearing on behalf of the applicant Mr.S.Rajendrakumar learned counsel appearing for Mr.Sharath Chandran, learned counsel appearing for the respondent.



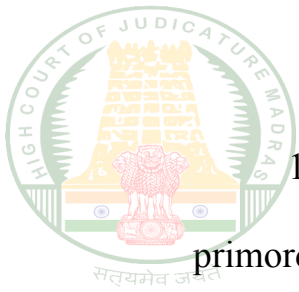
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15. The learned counsel appearing for the applicant would contend that the applications are maintainable before this Court, as this Court has been specifically empowered under Section 12 of the GAWA Act to make Interlocutory orders touching upon the temporary custody and protection of the person of the minor, in the interest of the minor. Relying upon a judgment of this Court in *Annapoorni's* case particularly the interpretation of the clause 17 of the Letters Patent Act, she would submit that this Court exercising the *parens patriae* jurisdiction is not bound by the orders passed by the Courts either under the Divorce Act or the Family Courts Act. Exercising *parens patriae* jurisdiction, this Court in the interest of the child, can decide on the applications. She would vehemently contend that this would not amount to forum shopping or forum convenien. She would further submit that the forums that the petitioner had approached are all in the same campus, which do not cause any physical hardship to the respondent and only if a litigant is called upon to attend hearings at Court at different places, it would cause harassment to the litigant and the same could be termed as forum shopping. She would submit that the Family Court considering that the applicant is the biological father, had also granted visitation rights to the father, which had been modified by this Court on the Appellate side.



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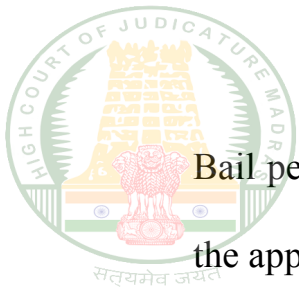
16. She would further submit that there is no *resjudicata* in issue of custody. Relying upon the judgment of the Hon'ble Supreme Court in the case of ***Rosy Jacob Vs Jacob A Chakramakkal*** and ***Vikram Vir Vohra V Shalini Bhalla*** reported in ***1973 (1) SCC 840*** and ***Vikram Vir Vohra vs. Shalini Bhalla*** reported in ***2010 (4) SCC 409*** and the judgment of the Division Bench of the Kerala High Court in the case of ***Thomas @Manoj E J Vs Indu S***, she would submit that there can be no *resjudicata* in child custody cases. As and when the child grows up, changed circumstances automatically sets in, apart from any other circumstances that may arise due to the conduct of the custodial parent and a fresh application for custody would always be maintained. Therefore, the doubt that has crept in the mind of the Court as regards to the maintainability of application cannot be said to be a doubt and successive application for custody of the child is maintainable. She would submit that the earlier application was filed in the year 2022 and the present application is after three years and the child has also grown and is better accommodated with the father which is evident from the relationship between the father and the minor during the weekend custody permitted by this Court.



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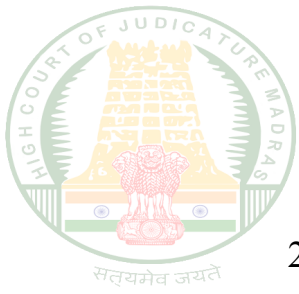
17. On the merits of the application, she would contend that the primordial objection of the respondent to grant visitation to the applicant is that the applicant had been inflicted with STD. Such an objection was the only objection that the respondent took in I.A.No.1 of 2022, before the Family Court. However, the Family Court holding the same to in favour of the applicant had granted a limited visitation right before the Child Care Centre at Family Court. Being aggrieved against the findings with regard to the allegations made by the respondent, the applicant had filed a revision petition only to strike off the findings given by the Family Court. This Court on the Appellate side in the said revision, had modified the right of visitation by holding that the applicant can meet the child in a public place.

18. She would submit that this Court in the instant O.P., had also permitted the father to be with the child on his birthday, on which date, a ruckus was created by the respondent which had lead to the filing of complaint before the Police. This Court even though had granted an ex-parte interim custody to the child during the weekends and the summer holidays, had recalled the said order on the submissions made by the respondent that the criminal case had been registered against the applicant and the Anticipatory



Bail petition filed by him, had been dismissed. She would further submit that the applicant had been granted Anticipatory Bail by this Court thereafter and in a SLP filed by the applicant, the Hon'ble Apex Court had directed the weekend custody as ordered by this Court on 25.03.2025.

19. She would submit that there is no dispute as regards to the relationship of the applicant with the minor child. Hence, she would submit that the applicant would have an equal parenting right of the minor child. She would further submit that whenever the visitation as ordered by this Court took place in a mall, the respondent and her father used to record the interaction of the applicant with the minor child which intimidated the minor child and the child reserved the emotions and refrained showing love to the father. Even after the order of the Hon'ble Apex Court, when the weekend rights was sought to be exercised, the father of the respondent made a hue cry as if the applicant manhandles him. She would submit that the respondent and her family members are using the child as a pawn to put the applicant on terms. The child being a minor child aged about 6 years, wants the company of the mother during the right of visitation and if permitted taking advantage the respondent is only intimidating the child.



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20. She would submit that the applicant had proved by material records from various Doctors indicating the applicant not only did not have STD, but would also clearly indicate that he was never inflicted of such kind of a disease. In spite of it, the respondent had been raising the said issue, not only before the Family Court, but also before this Court and the Hon'ble Apex Court. She would contend that for the past four years, the applicant had only met the child on 61 days and by calculating the time which is spent to the child would only equal to five full days, which would mean that the applicant being the biological father had spent only one day in a year till the filing of these applications. She would submit that when a non-custodial parent is denied equal visitation right or equal custody of the child, it would not only create serious parental alienation with the child, but it would also be detrimental to the interest of the child. In the present case, she would submit that the respondent being an actress would be called to do carry out her professional duties at any time of the day and in such circumstances, the applicant should also be permitted to have equal custody of the child. Relying upon the judgment of this Court in the case of *V.Anusha vs. B.Krishnan* reported in **2022 SCC Online Mad 4609**, she would submit that it is a loss, which is



irreconcilable for a parent, who does not get the custody and for which reason, it will be only healthy to direct co-parenting. It is the custodial parent, who would have to instill the importance of the non-custodial parent. She would submit that in the present case, the child is very tender age and if regular custody is not given to the father, the child may not only know the loveable father, but the father himself.

21. She would further rely upon the judgment of the Karnataka High Court in the case of *Savitha Seetharam vs. Rajiv Vijayasathy Rathnam* reported in **2020 SCC Online Kar 2747**, to contend that the Court should endeavour to make such interim arrangements at interlocutory stage, which in a manner, permits shared parenting between the parties. She would submit that such shared parenting will contribute to the mental, physical, emotional, psychological development of the child. Relying upon the judgment of this Court in the case of *S.Anand @ Akash vs. Vanitha Vijayakumar & Anr.*, reported in **2011 (2) CTC 736**, she would submit that it is the duty of the Court to draw a parenting schedule, when it finds that the parents have not reached to an understanding with regard to a such schedule. She would draw attention of this Court to the reliance placed by the Karnataka High Court and this Court



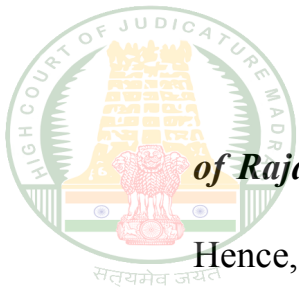
on the United Nations Conventions on Rights of the Child. She would further contend that the shared parenting would be both child's centric and parents centric. She would vehemently contend that in a Matrimonial litigation, the child is being used as a pawn by both the parents either with custody or without custody. In the case of a custodial parent, the child is used as pawn to force the non-custodial parent for terms with right of custody. In the claim of a non-custodial parents, he threatens the custodial parent with the claim for guardianship and custody to force the custodial parent to give up rights. If a shared parenting plan is envisaged, it may reduce litigation for custody. She had also placed on record, the guidelines and parenting plan envisaged by child rights foundation in an NGO. She would submit that the said plan had been considered by various High Courts and have indicated adoption of such guidelines while dealing with child custody cases by itself and its subordinate Courts. She would persuade this court to frame such guidelines also to be adopted in future child custody cases pending decision of guardianship. She would pray this Court to exercise the powers by giving co-parenting/shared parenting in this case by adopting the said guidelines.

22. Countering her arguments, the learned counsel appearing for the



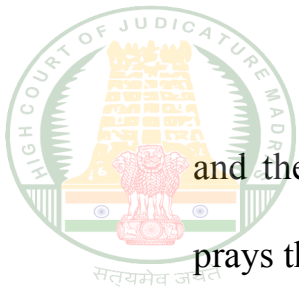
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respondent would vehemently contend that the applications in the present case cannot be said to be maintainable and the same would have to be rejected on the basic principle of *forum conveniens*. He would submit that the applicant while seeking interim custody before the Family Court in I.A.No.1 of 2022, had indicated various reasons as to why he seeks interim custody, such reasons were all negatived and the applicant was granted only visitation right over the child. Now, he had filed these various applications on the very same reason and has sought for interim custody, but he has chosen to dissect the reasons in filing individual applications for custody. Therefore, he would submit that what the applicant has attempted to is nothing but forum shopping as he had earlier failed in his attempt before other Court, where he has sought for custody of the child. Therefore, any application for custody on the very same reasons would be hit by principles of *resjudicata*. He would submit that only under changed circumstances any further application before an other forum would be maintainable. In support of his contentions in opposing the claim on the ground of *forum conveniens*, he has relied upon the judgment of the Hon'ble Apex Court in the case of ***Kusum Ingots & Alloys Ltd., Vs Union of India and Another*** reported in ***(2004) 6 SCC 254*** , ***Union of India and Others Vs Cipla Limited and another*** reported in ***(2017) 5 SCC 262*** and ***State***



of Rajasthan Vs Union of India and Others reported in **(2018) 12 SCC 83**.

Hence, he would submit that this Court need not exercise its discretionary jurisdiction, which it is to exercise in case of custody of a child between the warring parents. He would further rely upon a judgment of this Court in the case of **Radhika Konel Parekh Vs Konel Parekh** reported in **1993 (1) LW 159**, to contend that any order passed by a Family Court in child custody cases would operate as a *resjudicata* in a same issue before any other Court including this Court. In the present case, he would submit that the issue of interim custody has already been decided by the Family Court in a petition filed under Section 41 of the Divorce Act which had attained finality in a proceeding in CRP.No.3805 of 2024 before this Court. Hence, the applicant ought not to be permitted to re-agitate the very same issue on the very same grounds before this Court. He would further submit that the issues with regard to co-parenting and shared parenting can be decided in an appropriate case and not in this case, as the respondent opposes the application filed by the applicant solely on the grounds of *resjudicata*. He would submit that in the present case, the issue had been decided by a Competent Court under the provisions of the Divorce Act and the applicant is attempting to reopen the same before another forum, which has also a jurisdiction to deal with the issue

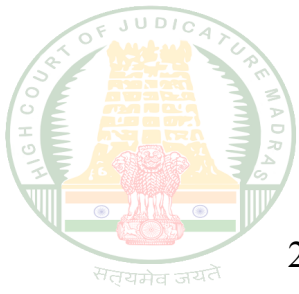


and therefore, the same is hit by the principles of *forum conveniens* and he prays this Court to reject the application.

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23. I have heard the rival submissions made by the learned counsel appearing on either side and perused the materials placed on record.

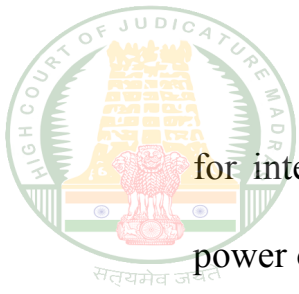
24. The issue with regard to the maintainability of the applications had been heavily contested by the respondent. He had also relied various judgments and had contended that the applicant is attempting in forum shopping. It was his contention that the applicant had earlier approached the family Court and had invoked Section 41 of the Divorce Act seeking for interim custody of the child and the said application was dismissed. The relief sought for in the said application was not granted, however a right of visitation pending the divorce proceeding was granted. He had also further submitted that this Court in CRP.No.3805 of 2024 had refused to interfere with the orders of the Family Court, but had modified the right of visitation. Therefore, it was his contention that by applying the principles of *resjudicata*, the applicant cannot seek to file any further application in a different forum seeking for interim custody of the child.



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25. The provisions of the Family Court Act, Divorce Act and the Guardianship and Wards Act provide for considering the grant of interim custody of the child pending the main proceedings. The Court while exercising such interim reliefs, takes into the consideration of the primary interest of the child in granting such reliefs.

26. As already noted supra, interim custody of the child can be sought for by a party in the proceedings initiated by them. In such an event, if a proceedings for interim custody had been initiated in any one of the forum, then the party should not be permitted to institute the very same proceedings before another forum. The Courts may have power to grant such relief in a proceedings instituted before it by any one of the party, but if such powers are exercised when similar application which is prior in time pending before the other Court, the same would be hit by the principle of *res-subjudice*. This Court may be a superior Court to a Family Court exercising its power under the Family Courts Act or the Divorce Act, but under the provisions of the Guardianship and Wards Act in deciding interim custody, this Court and the Family Court have concurrent jurisdiction. Further in an interim application



for interim custody both the High Court and the Family Court exercise the power of the original jurisdiction.

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27. In a given case, an application would have been disposed of by either granting interim custody or refusing it, either in a proceeding initiated for divorce or Guardianship of the minor. The refusal to grant interim custody by Court would not entitle the applicant therein to move the other Court in which another proceeding is pending seeking for a similar relief. It would be hit by principles of *resjudicata*, but however limited to a case, where there are changed circumstances. These principles have been enunciated in the various judgments referred to by the respective counsels appearing on either side.

28. From the judgments referred to by the learned counsels appearing on either side and the discussion above, the following principles emerge:-

a) pending an application for interim custody in one of the forum, an application for similar relief in the other forum would be barred by principles of res-subjudice.

b) a further application after the disposal of a similar application by another forum would be maintainable subject to



change in circumstances and not otherwise.

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29. Applying the aforesaid broad principles to the facts of the present case, the changed circumstances that had been put forth by the learned counsel appearing for the applicant is that when the initial application for interim custody was sought for, child was two years old and presently the child is five years old. That apart, it is the claim of the applicant that his relationship with the minor child had progressed which also could be noted by this Court.

30. Admittedly, the minor child was born on 23.03.2019. The dispute between the parties had been arisen on 12.04.2021. The applicant had initially filed an application for interim custody of the child in I.A.No.1 of 2022 in the Divorce proceedings initiated by him under the Divorce Act before the Family Court. A perusal of the order of the Family Court would show that it had after considering the claims made by the applicant and the respondent herein had refused to grant him custody of the minor child, however, held him to be entitled for visitation and granted him visitation right.

31. A Contempt Petition was sought to be filed for non compliance of



the order in I.A.No.3 of 2022, but the same had been dismissed as not pressed by recording an endorsement made by the petitioner. In the interregnum, the respondent herein seems to have taken out an application in I.A.No.2 of 2022 for maintenance, which was disposed of by order dated 04.11.2023, directing payment of Rs.30,000/- per month in addition to the amount already paid. The applicant seems to have preferred a Civil Revision Petition in CRP.No.2666 of 2024, as against the said order of maintenance and had initiated CRP.No.3805 of 2024 against the order made in I.A.No.1 of 2022. CRP.No.3805 of 2024 was disposed of by this Court by its order dated 25.09.2024, modifying the order of visitation granted by the Family Court. For better appreciation, the relevant dates are tabulated herein:-

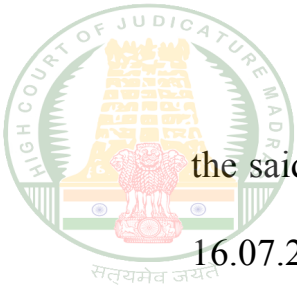
29.07.2022	Order in I.A.No.1 of 2022, rejecting the interim custody and granting visitation rights have been passed
16.10.2022	Contempt Petition filed by the applicant was dismissed as not pressed
04.11.2023	Family Court ordered payment of maintenance
16.07.2024	In the Revision filed by the applicant, this Court admitted the CRP on a condition that the applicant should deposit for a sum of Rs.2,70,000/- being the 50% of the arrears of maintenance as ordered by the Family Court
31.07.2024	Revision was filed against the order made in I.A.No.1 of 2022, after two years
25.09.2024	Order in CRP has been made modifying the period of visitation
29.01.2025	Present OP had been filed



32. From a reading of the order passed by the Family Court in I.A.No.1 of 2022, the applicant had given various reasons for seeking interim custody.

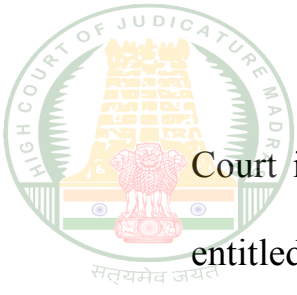
The applicant had filed various applications before this Court not only seeking for interim custody, but also a right of visitation during various occasions. All these occasions for which interim visitation is sought for where also the reasons shown by the applicant in his application before the Family Court seeking interim custody. Except for the reason that the child is grown now and better relationship, no other reason had been attributed to the change in circumstances. The claim of the applicant that he had filed the Civil Revision Petition only as against the finding of the Trial Court would suggest that he was satisfied with the right of visitation granted to him.

33. From the dates that had been tabulated above, the Family Court in July 2022 had rejected his request for interim custody by only holding him to be entitled for a right of visitation on alternate weeks at Child Care Centre at Family Court. He had not preferred any revision against that order. He had also filed an application for Contempt of the said order, but had made an endorsement not to press that application. Thereafter, in November 2023, the Family Court had passed an order directing payment of maintenance. Against



the said order, the applicant had preferred a revision before this Court and on 16.07.2024. This Court while admitting the Civil Revision Petition had put the applicant on terms as indicated in the order. Only thereafter, the applicant had filed a Civil Revision Petition against the order rejecting his claim for interim custody in which this Court had modified the right of visitation. Thereafter, the present Original Petition had been filed before this Court and various applications have been taken out. As indicated above, the reasons on which the various applications have been taken out were also the same reasons that were attributed by the applicant in his Interlocutory Application before the Family Court.

34. From recording the sequential events, it could only be inferred that the applicant is not bonafide in his attempt to get interim custody of the child. Further, this Court do not find any changed circumstances for grant of interim custody as prayed for by the applicant. But however, considering the fact that the Hon'ble Apex Court had permitted to have the week end custody of the child as ordered by this Court dated 22.04.2025, pending this application and that there are no complaints even from the respondent over such visitation and also taking into account that the applicant being the biological father, this



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Court is of the view pending this Original Petition, the applicant would be entitled to have that weekend custody alone.

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35. In view of the same, these Applications are dismissed. However, the applicant/father is permitted to take the custody of the minor child from the residence of the respondent/mother at 10.00 am on every Saturday and shall hand over back the child at 6.00 pm on the following Sunday. However there shall be no order as to costs.

29.07.2025

Index : Yes / No
Internet : Yes / No
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