



O.P.No.759 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON 30.07.2025	PRONOUNCED ON 26.08.2025
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CORAM

THE HONOURABLE **MR.JUSTICE K.KUMARESH BABU**
O.P.No.39 of 2024

T.S.Aravindan

... Petitioner

Vs.

M.Mathivathani @ Divya

... Respondent

PRAYER: Original Petition filed under Section 3, 7 to 10 and 25 of Guardian & Wards Act, 1890 read with Order XXI Rule 2 & 3 of Original Side Rules praying to appoint the petitioner as the guardian of the person of the minor child Dhakshith Seyon.A and to grant custody of the minor child Dhakshith Seyon.A to the petitioner.

For Petitioner : Ms.K.S.Kamakshi

For Respondent : Ms.Sri Vidhya Aravindan

ORDER

This original petition is presented by the father of the minor child,



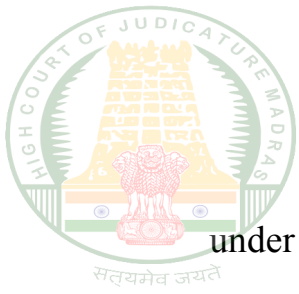
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Dhakshith Seyon.A. By this petition, the petitioner seeks to appoint himself as the legal guardian of the minor child and to grant custody of the said minor in his favour.

2) It is the case of the petitioner that he and the respondent were married on 20.05.2018 and were blessed with their son, Dhakshith Seyon, on 03.06.2020. The respondent left the petitioner without any rhyme or reason and took away the minor child on 21.08.2021. Thereafter, the respondent refused to permit any meeting between the petitioner and the minor child. Hence, this petition has been filed seeking to appoint the petitioner as the legal guardian of the minor child and to grant him custody.

3) It is the case of the respondent that the petitioner is neither a dutiful husband nor an affectionate father, and therefore not entitled to the custody of the minor or to be appointed as his legal guardian. The respondent alleges that the petitioner prioritised money over the child's welfare, failed to provide necessary medicines during emergencies, and neglected both the respondent and the child. The respondent contends that the petitioner is not a fit person to be appointed as the legal guardian, and that, as the child is only 3½ years old, it is necessary for him to remain



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under the care of his mother at this tender age. She prays for dismissal of the petition.

4) Heard Ms. K.S. Kamakshi, learned counsel appearing for the petitioner, and Ms. Srividhya Aravindan, learned counsel appearing for the respondent.

5) Ms. K.S. Kamakshi, learned counsel for the petitioner, submits that after the marriage and the birth of the minor child, the respondent left the matrimonial home and took the child to her parents' house. She states that the petitioner, along with his parents, went to the respondent's parents' house to persuade her to return, but the request was not heeded. The petitioner waited for nearly two years, during which time he issued a legal notice dated 21.07.2023 seeking reunion, which was neither complied with nor replied to. It is further submitted that since 25.08.2021, the respondent has not allowed the petitioner to meet his minor son.

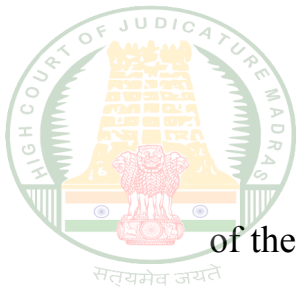
6) She contends that the respondent is lethargic and lacks the care, skill, and intellect required to bring up the minor. She submits that the respondent desires only to live a posh life, and deserted the petitioner when



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her care was most needed. She further submits that even after the separation, the petitioner supported the respondent for the purchase of groceries through online. It is argued that such conduct would be detrimental to the child's upbringing and that the respondent has deprived the petitioner of his rightful access to the child. She further alleges that the parents of the respondent harassed the petitioner.

7) It is submitted that the child is being brought up in isolation by the respondent and her parents, has been admitted to a local creche, and is not receiving proper care. The respondent, being self-employed, spends the whole day at her clinic, leaving the child in an unconducive environment. She further submits that the petitioner, as a loving and dedicated father, can provide proper education, health care, and an overall conducive environment for the child's growth. She further contends that the respondent deposed that the petitioner looked after the respondent and the child when both were in the hospital. She also deposed that the petitioner paid the registration charges to obtain license for the respondent's physiotherapy. These statements would substantiate that the petitioner is a dutiful husband and the fit person to be appointed as guardian. It is argued that the petitioner, as the father and natural guardian, is best suited to have custody



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of the child and prays for the petition to be allowed.

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8) In reply, Ms. Srividhya Aravindan, learned counsel for the respondent, denies that the respondent left the matrimonial home without reason. She asserts that the respondent has undergone much hardship, cruelty, and mental agony due to the petitioner and his mother. It is submitted that the petitioner informed the respondent's father that he was going to shift residence and asked her to collect her belongings, threatening to dispose of them otherwise. It is alleged that the belongings were not properly returned and that some were sold without her knowledge. The respondent has filed H.M.O.P. No. 4679 of 2023 before the V Additional Judge, Family Court, Chennai, seeking dissolution of marriage on grounds of cruelty and desertion, and claiming permanent alimony. Counsel requests that the allegations of cruelty set out in that divorce petition be considered in the present proceedings.

9) It is further alleged that the petitioner and his family performed certain black magic rituals and coerced the respondent to participate. After delivery, the respondent contracted COVID-19 and was unable to breastfeed the child. This was allegedly met with humiliation and rebuke from the



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petitioner and his parents. It is contended that the petitioner avoided taking financial responsibility for the respondent and child, compelling her to seek assistance from her parents, including for emergency medical expenses. The respondent's parents are said to have borne the expenses for the child's delivery. She further contends that the petitioner is unhygienic in caring for the child, failing to sterilize feeding bottles or use clean water. An incident is alleged where, while the respondent and child were in a car conversing on the phone, the petitioner drove into a barricade, causing severe shock to child.

10) It is submitted that the petitioner's conduct has never reflected love or care for the minor and that he is overly calculative with money. Counsel asserts that the present petition has been filed only after the divorce petition and is an attempt to coerce the respondent rather than to serve the welfare of the child. She submits that as per law, at such a young age, a child's custody should remain with the mother for proper nurture. She further contends that the petitioner himself deposed that he has not paid any money for the expenses and maintenance of the child. The reasons advanced by the petitioner regarding the respondent's self-employment and the use of a creche are said to be insufficient to establish unfitness. In light of the



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above, she prays that the petition be dismissed in the best interest and welfare of the child.

11) Heard the learned counsels for their respective parties and perused the materials available on record.

12) It is pertinent to note that the copy of the divorce petition filed by the respondent in O.P. No. 4679 of 2023 has been marked as Ex.R1, wherein she has sought dissolution of the marriage on the grounds of cruelty and desertion. In response, the petitioner has filed a petition for restitution of conjugal rights, marked as Ex.R3. The timing and sequence of these proceedings clearly indicate that the present petition seeking custody and guardianship of the minor child and the petition for restitution of conjugal rights have been filed only as a counter-action to the divorce proceedings initiated by the respondent.

13) The birth certificate of the minor, marked as Ex.P3, shows that the child was born on 03.06.2020, and is therefore around five years of age. At this crucial developmental stage, it is well recognized both in law and by established child welfare principles that custody should ordinarily remain



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with the mother, unless the contrary is clearly established. Further, it is evident from the facts and circumstances of the case that the respondent is self-employed and fully capable of taking care of the minor child. She has been the primary caregiver since August 2021 and has managed the child's upbringing with the support of her parents, ensuring his health, education, and emotional well-being. Her employment status does not detract from her ability to provide a stable and nurturing environment. and there is no material on record to suggest that the child has suffered in her care.

14) Significantly, the petitioner has not taken any sincere steps to meet or engage with the child from August 2021 until the filing of this petition, further undermining his claim of genuine concern for the child's well-being. More importantly, the petitioner has failed to prove himself to be a fit person either to disturb the current custody arrangement or to be appointed as the legal guardian. There is no evidence to demonstrate that placing the child in his custody would be in the child's best interest. On the contrary, the evidence and circumstances point to the stability, care, and nurturing environment already being provided by the respondent.

15) In view of the above, the petition lacks merit and is liable to be



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dismissed in the best interest and welfare of the minor child.

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16) In such a view of the matter, this Court is of the considered view that the respondent can retain the custody of the minor child. However, the petitioner being the biological father would be entitled for effective visitation rights over the minor child.

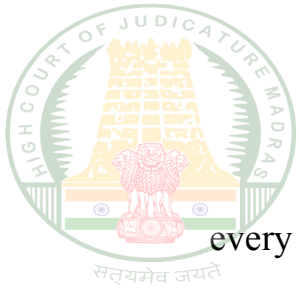
17) In fine, the O.P. stands dismissed on the following terms;

i)The custody of the minor remains undisturbed unless change in above circumstances;

ii)The petitioner would be entitled to have the custody of the minor child during the summer vacation and the extended holidays.

iii)The petitioner would have a right of visitation of the minor child during the major festivals and also on the birthday of the minor child.

iv)The respondent shall provide video conferencing platform to the petitioner enabling him to have video conferencing with the minor child on



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every Wednesdays and Saturdays between 6.00 pm and 8.00 pm and shall also ensure that such video conferencing would be made effectively at least for a minimum of 30 minutes per day.

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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- Mr.T.S.Aravindan

List of documents marked on the side of the Petitioner:

Exp1	The marriage invitation card of the petitioner
Exp2	The family photo of the petitioner along with pendrive.
Exp3	The computer generated birth certificate of the petitioner's minor son A.Dhakshith Seyon
Exp4	The photocopy of the petitioner's Aadhaar card. (Compared with original)
Exp5	The certificate under Section 65(B) Indian Evidence Act.
Exp6	The declaration of the petitioner's willingness to act as guardian.

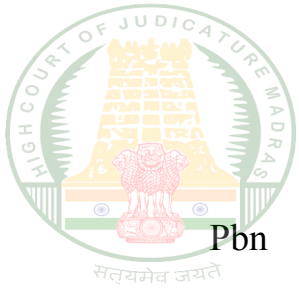
List of witnesses examined on the side of the Respondent:

RW1- Mrs.Mathivathani

List of documents marked on the side of the Respondent:

ExR1	The copy of the petition filed in O.P.No.4679 of 2023 is marked as Ex.R1
ExR2	The copy of the counter
ExR3	The copy of the petition filed by the petitioner in O.P.No.56 of 2024.
ExR4	The petitioner's scan report.
ExR5	The petitioner's scan bill.
ExR6	The original legal notice dated 21.07.2023 sent by the petitioner to the respondent.

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K.KUMARESH BABU,J.

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Pre-Delivery Order in
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