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C.M.A.No.2436 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.11.2025

Delivered on: 28.11.2025

CORAM

**THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

C.M.A.No.2436 of 2024

Sravani Chitra,
W/o.S.Gopalakrishnan,
D/o.Dr.Krishnaiya,
No.3, Krishnabai Street, Gokulam Colony,
Habibulla Road, Chennai – 600 017. ... Appellant/Respondent

/versus/

S.Gopalakrishnan,
S/o.Mr.G.Seetharaman,
No.3, 6th Cross Street,
Jaya Nagar, Tiruvallur – 602 001. ... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of Family Courts, Act, 1987 read with under Section 28 of Hindu Marriage Act, 1955, to set aside the fair and decretal order dated 20.07.2024 passed by the II Additional Principal Family Court, Chennai in O.P.No.340 of 2020.

For Appellant : Ms.S.P.Arthi

For Respondent : Mr.G.Thyagarajan.



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J U D G M E N T

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The petition filed by the respondent/husband seeking divorce on the ground of cruelty under Section 13 (1)(ia) of Hindu Marriage Act was allowed by the Family Court, Chennai in H.M.O.P.No.348 of 2020.

2. Being aggrieved, the present appeal has been filed by the wife.

3. Before advertng to the merits of the case, events which has led to the present appeal are given below.

4. For the sake of convenience, the parties appellant and respondent are referred to as the wife and the husband respectively.

5. While pursuing their Postgraduate Course in the Medical College, the parties fell in love and after three years of love affair, got married on 25.10.2015 at Chennai. After marriage, separate house was set up in a rented apartment at Kelambakkam. In the month of December 2015, the wife went to Delhi to pursue her Laparoscopy Training Course and stayed for seven months. At the end of July 2016, on her return to Chennai, the rented house in



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Kelambakkam was vacated and they shifted to the wife parent's house at T.Nagar. The wife joined at Prashanth Multi Specialty Hospital, Chetpet and thereafter, she joined Chettinad Health City. Due to medical issues, Intra Uterine Insemination (IUI) was attempted but failed. Thereafter, on getting a donor ovum through IVF procedure, the wife got conceived and a female child was born on 08.10.2019. In the interregnum, misunderstandings arose between the spouses for various reasons, which led the husband leaving his pregnant wife without any information.

6. In the petition for divorce, the husband has alleged that he was forced by his wife to shift his residence from Kelambakkam to his father-in-law's house at T.Nagar. On compulsion, he was staying in his in-laws house.

(a) According to him, the wife had bad and inhuman behaviour and failed to be a dutiful wife to him. She used to disrespect him even at work place.

(b) She used to constantly quarrel with him for trivial reasons without any fault on his part. Without any reason, she forbidden him from meeting his father, his Sisters and friends.

(c) Under compulsion and in order to satisfy her demand, he lived with



his wife in her parent's home up to the middle of 2018. He further alleged that She went to pursue her higher studies at Delhi against his wish.

(d) He obliged his wife, when she wanted to leave her father-in-law's house and occupy the vacant flat in the building owned by his father-in-law and in which his father-in-law was running hospital in the ground floor. On multiple occasions, the wife used to threat that she will commit suicide if he did not agree for her request. She used to throw chair at him and verbally abused him with filthy and vulgar words and threatened him with physical violence.

(e). Due to complication and medical conditions, the wife had no capacity to conceive in the normal and natural physical intercourse with him. He and his wife undergone various investigations as both were anxious to have a child. His wife threat to commit suicide if he do not agree for IVF treatment by receiving a donor ovum and she also forced him not to disclose about her treatment to his family members.

(f) When he was away from India for three months between September to December 2018 to pursue his studies at Switzerland, the wife got conceived through IVF. On his return from abroad, he joined work for three hours in



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order to spend more time with his wife, however she allegedly continued her unruly behaviour. Due to constant quarrel, he was unable to concentrate on his work and day-to-day activities. He has lost his peace of mind and happiness due to her ill-treatment and ultimately was forced to leave the wife in the Month of April 2019 because of mental torture caused due to the behaviour of his wife.

(g) After the child birth, when he and his family members visited his wife at the hospital, there was no courtesy extended by the family members of his wife. When his family members went for naming ceremony of the child, they were verbally abused and ill-treated in the presence of relatives. He further stated that he gave Rs.20 lakhs to his father-in-law for the purchase of SKODA Octavia car, but to his shock, the father-in-law using the money purchased the car in his own name. When he questioned, the father-in-law informed him that he had done so only for his welfare. The car was used by him from April 2019 to August 2019 and later he left the car in the dispensary of his father-in-law, handing over the key to one of the staff working under his father-in-law.

7. In the counter filed by the wife, apart from alleging receipt of huge dowry on demand for each of the allegations in the petition by way of response, counter allegation made.



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The counter by the wife leads as below:

(a) She went to Delhi to pursue her Laparoscopy Training only with the consent and help of her husband, who came to Delhi and chose a rental apartment for her stay. He used to visit Delhi every month and also enrolled her in a 15 days course saying that she must finish all fellowships before coming back to Chennai. She has expressed shock to know that her husband believes that she require his permission to pursue further education, which shows her husband's backward and misogynistic mentality.

(b) Before her return from Delhi, it was her husband who expressed his wish to stay in her parent's house at T.Nagar since he was having difficulty in paying rent and also difficulty in paying the loan amount for her father's car. During that time, her parents have moved to Porur to stay with her sister, who was pregnant. Therefore, after a brief stay in T.Nagar, they moved to Nungambakkam, where they lived separately and independently till the middle of 2018. She had never forbidden him from meeting his father, sisters and friends. She never behaved rudely or disrespectfully towards them.



(c) She had always been a supportive daughter-in-law and sister-in-law, even though her in-laws behaved rudely to her. Only with her husband's consent, they moved to 2nd floor of the hospital building in Nungambakkam. She never threatened to commit suicide and she is shock to hear such malicious allegations against her. Small differences been exaggerated in the petition. In fact, it was the husband who used to drink and come back to home and quarrel with her. Her desperate request to stop drinking and smoking been misconstrued as mental cruelty and as an attempt to control him.

(d) She expresses shock reading the allegations that she threatened to commit suicide in the event that the petitioner did not agree to undergo IVF. According to her, it was consensual decision by both to undergo IVF and her husband enthusiastically supported the procedure. When the Doctor suggested to take donor ovum, she hesitated but it was her husband who comforted her, telling that it would be his sperm that would be used and the child would grow in her, so the ovum would not matter. She suffered through 432 injections, 2 major surgeries, two minor surgeries, and total six admissions so that she could bear her husband, a child and make him happy. Her husband had full knowledge of treatment plan and we had, in fact, given two semen samples before he left to Switzerland.



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(e) He had consented to the entire treatment by signing various documents at the hospital and had intimate knowledge of the whole procedure. According to her, the husband did not provide any emotional support during those tough times, when his relatives insulted her for not having children.

(f) He decided to work only for three hours and moved to Thiruvallur to settle certain property disputes between his father and his aunt in Thiruvallur. It is false to say he was working only 3 hours to be with the wife.

(g) Her husband rarely spent one day per week with her and even if he is at home, he used to spend majority of his time, talking with his family over the phone.

(h) She was depressed by his attitude, however he went trips to Singapore and Kodaikanal without taking her with him and frequently went out for movies and dinners with friends all of the while, despite having made her to quit her job and stay at home to manage her pregnancy by herself.



(i) The claim of her husband that from January to March 2019, he was with her, is wholly false and impossible since he was staying at her parent's house after she recovered from threatened abortion near the end of December.

(j) In the midst of this, her husband demanded division of property from her family and compelling her father to transfer 2½ grounds of land situated in Velacherry to him.

(k) He also made her father to spend about Rs.2.5 lakhs towards plan approval etc., Her husband initially agreed for constructing a house in Velacherry and live in it. Later, changed his mind and told her to move to Thiruvallur, where sister-in-law had set up a clinic and she will be working under her supervision.

(l) He left the matrimonial companionship abruptly, without any information to her. Only after her parent-in-law and sister-in-law came to the hospital and started abusing she realised that her marriage suffers turmoil and trouble. Till then, she was under a genuine belief that the marriage was going normally. Her husband was not present when she was admitted in the hospital for delivery. He did not sign the consent form.



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(m) She was admitted in the hospital on 05.08.2019 at 7.00 a.m and underwent surgery at 12.00 pm. Her husband and his family members came to the hospital after 3.00 p.m and left the hospital even before she was shifted from ICU. They spoke rudely to her father.

(n) Her husband did not attend the naming ceremony of the child. He has not even laid an eyes on the girl child as on date and has not made any attempt to meet her.

(o) To meet the demand of her husband, her father took a loan of Rs.30 lakhs to buy the SKODA car. The insidiousness of the husband is made clear on his admission that he was using the car from April 2019 to August 2019. Thereafter, in the last week of August 2019, after damaging the car severely left the car in front of his father's hospital, handing over the key to one of the hospital workers.

(p) The allegation that her father was given Rs.20 lakhs for the purchase of the car is false. The allegation that she behaved rudely with her husband and



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his family members are false. She who suffered a lot due to conduct of her husband.

8. It is noted before filing the petition for divorce, the husband has caused notice through Lawyer and the notice was duly replied by the wife. In her reply, the wife had requested not to resort to any drastic decision and to explore possibility to ironing out their differences between them by mutual discussion, considering the larger interest of the family.

9. Referring about her reply, the wife in her counter had further contended that instead of trying to solve the dispute, the husband has filed divorce petition in haste. She has further recollected that when their love affair brought to the notice of the respective family, there was initial resistance and only after deliberations among the families for more than two years, the marriage was finalised. On the request of the husband's family, both the engagement and marriage were conducted in a grand manner, spending more than Rs.15 lakhs.

10. After the marriage, she was constantly harassed by the husband's family on many occasions for the delay in pregnancy. Her husband was demanding her father to built a house at Velacherry on the land owned by her



father. She states that all the income was spent by her and she had no opportunity to save any money. She was compelled to pay for meals, shopping and outings with friends. Even during the IVF treatment and pregnancy, the entire expenses was met out only by her parents. Though her husband used to travel abroad frequently with his friends, he never took her to any such foreign trips. He never care to show affection or offered consolation when she fell sick. When she was pregnant, her husband left her alone, neglected her and refused to accompany her during check-ups. The efforts put up by her and her family members to repair the reputationship, did not yield any fruit. Her husband moved to Thiruvallur and when her father met him and attempted to solve the issue, her husband had informed that wife must be submissive and learn to do whatever he says and should never question him. She says, her husband using the divorce petition as a means to further harass and torture her.

11. Pending divorce petition, the husband has taken out an application seeking for the appointment of an Advocate Commissioner to collect blood sample and produce the same to DNA test since he suspect that the IVF child was not born with his semen. The said petition was strongly opposed by the wife. The family Court, referring to the provisions under Assisted Reproductive Technology (Regulation) Act, 2021, concluded that the petitioner,



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being the husband, must be aware about the medical ethics and the connected guidelines existed at the point of time with regard to the Assisted Reproductive Procedure prior to the commencement of the reproductive process. The entire process and the risks involved therein been explained to him and his wife as a commissioning couple, by the Expert Doctors. Only thereafter, the expert doctors have obtained their consent the voluntariness of the commissioning couple in on records. Hence, holding that it is clear that in order to settle his revenge against his wife, the petitioner has filed this application with malafide intention dismissed his petition with costs, directing the husband to pay a sum of Rs.3000/- to the respondent within a month.

12. With these pleadings, the parties went for trial, husband examined as P.W.1, 11 Exhibits in support of his case. The wife examined as R.W.1, 9 Exhibits filed in her support was considered.

13. The Family Court had held that the wife has caused mental agony and mental cruelty to her husband. Hence, he is entitled to get relief of dissolution of marriage on the ground of cruelty.

14. The decree of divorce is impugned in the present appeal on the



following grounds:

(i) The Family Court had taken into consideration extraneous matters which does not form part of the pleadings. The Court on surmises, drawn erroneous inference that the husband had subjected to ill-treatment and cruelty. Court even without pleadings, by making a probing enquiry into the past conduct of the wife, the Family Court have gravely erred in granting divorce on the ground of cruelty.

(ii) Ex.P.8, is the whatsapp communication alleged to have been sent by the wife. Nothing about this whatsapp message spoken in the petition or in the testimony of the husband. In the cross examination of R.W.1, the whatsapp message was admitted in evidence, though it is an electronic evidence accepted on evidence without certificate under Section 65(B) of Indian Evidence Act. Though it was admitted by the wife in the cross examination, the content of the WhatsApp message, as canvassed by the husband to depict his wife in a bad light, was not an issue pleaded to afford opportunity to the respondent to defend.

(iii) The conclusion of the Family Court regarding the car, which stood in the name of father-in-law and given as dowry to the husband is erroneous.



Admittedly it was in custody and use of the husband till he abandoned the car in front of his father-in-law's hospital.

(iv) The demand of dowry though well-established through evidence and partly admitted by the husband himself, same surprisingly ignored by the Family Court, by saying that the demands were made prior to the wedding and therefore not relevant.

(v) The husband has gone to the extent of disowning his own child by filing an application to conduct DNA Test, which has grossly tarnished the appellant's character and chastity.

(vi) Furthermore, the failure of the husband to take efforts to see his child or enquiry about her well-being expose his indifference towards his daughter. Nevertheless, the Family Court favoured him and granted relief.

(vii) The Family Court failed to consider the welfare of the minor child, who will be directly affected by the dissolution of marriage, ignoring the well-being of the child, had dissolved the marriage, which need to be interfered.



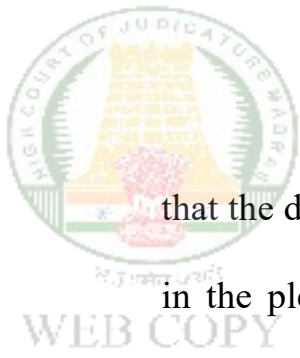
15. The Learned Counsel for the appellant emphasised and attacked the Family Court's order primarily on the following two grounds:-

(i). The husband, who had deserted his pregnant wife and taking advantage of his own wrong and had pleaded cruelty. Unfortunately contrary to the evidence available and the pleadings, the Family Court had overreached and decided based on issues not pleaded by parties.

(ii) The family Court failed to take note of the welfare of the child and given premium to the husband, who had cruel enough to disown his own child by filing an application for DNA test.

16. The Learned Counsel appearing for the respondent submitted that the counter-allegations made against the husband without any sign of intention to reunite, suffices to hold that the marriage has broken irretrievably by accusations of cruelty against each other. He further submitted that the husband was forced to take out an application for DNA test because he was given to understand that his sperm was not used in IVF procedure. However, he had not pursued the matter any further after the dismissal of the Interlocutory application by the Family Court.

17. The Learned Counsel appearing for the respondent/Husband claims

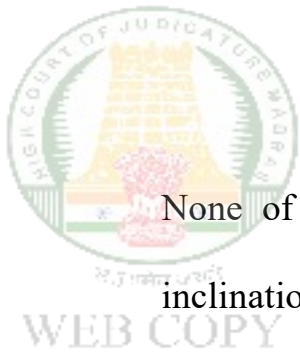


that the divorce was granted on cumulative examination of the averments found in the pleadings and testimony. The Family Court had extracted the relevant portions in the testimony of the parties, which would indicate that by frequent quarrel, the husband been put to mental cruelty and by total disrespect when his family visited her house to see the child was the last straw on the camel's back which broke the possibility of reunion.

18. Heard the Learned Counsels and records perused.

19. Two young highly educated persons who loved each other before marriage, were not able to sustain their love and affection even for 5 years after their marriage. Meanwhile, they have also begotten a child through Assisted Reproductive Process. The Husband had approached the Court with accusations against his wife attributing cruelty. Whereas, the counter of the wife is in equal accusation about her husband. For every incident, he had cited as cruelty, she has an alternate incident of cruelty by husband.

20. From the events placed before us by way of evidence and testimony, we are able to find that after the husband left his pregnant wife during the April 2019, without any acceptable reason, the husband had lost his trustworthiness.



None of the family elders from the either side seems to have shown any inclination to save the matrimonial relationship. Soon after the child's birth, when the husband and his family members visited the hospital where the appellant was admitted for delivery there was an opportunity for burying difference. Lastly when they visited the house of the appellant for child naming ceremony they could have attempted to reproach. Whereas, while referring about this incident, the husband states that when he and his family members visited the hospital, they were not received with courtesy by the family members of his wife. When his father and sister went to the home of his wife for naming ceremony of the child, they were verbally abused and ill-treated. To this allegations, the wife had contended that in the hospital when they visited to see the child, they spoke rudely to her father for screening the fact that she was conceived. When they came for child naming ceremony, she was busy in pooja, however her family members took care of the visitors properly.

21. Regarding the visit to her house for naming ceremony, her grievance is that the husband did not come and his family members were treated at the most respect. She has also produced photographs of the child naming ceremony in which father-in-law and Sister-in-law were present in the function and taken photograph. What we fail to see that at that time, when they had an



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opportunity for the family members to reconcile the broken relationship, it did not occur.

22. On reading the Lawyer notice given by the husband and wife reply to the husband, we are able to see that the wife had requested her husband to wait and not to act in haste. However, soon after the reply, the husband has filed the divorce petition.

23. The allegations in the divorce petition making out ground for cruelty and matching allegations in the form of counter by the wife even taken on face value, nowhere, the parties have expressed any sign of burying their differences and the desire to lead life jointly. The very disheartening factors in this case is that neither the parties nor the Family Court, which has granted divorce had whispered anything about the welfare of the child, who had been brought to the world not as a natural consequence but by scientific assistance with the consent of the parties who are now at loggerheads.

24. Much has been said about Ex.P.8, which is the WhatsApp message admittedly sent by the wife to her husband, disclosing an incident, which involves a boy in her life prior to marriage. Though the trial Court has given



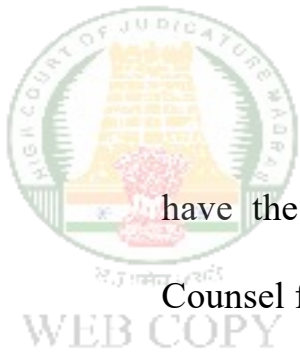
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much weightage, *dehors* this evidence, the cruelty aspect which has been ground for granting divorce stands proved.

25. The content of Ex.P.8 is beyond the pleadings and scope of the divorce petition. Likewise, the interlocutory application filed for the DNA test is also beyond the pleadings. We are only constrained to say that these two factors are the product of the external assistance got by the parties. The original pleadings of the husband does not contain anything about his doubt regarding the paternity of the child nor the character of his wife. By making irresponsible allegations, the strained relationship between husband and wife had become worst.

26. Record reveals that several attempts were made by the Court for amicable settlement between the parties. The Family Court has seen and heard the two sparing parties before it, but failed to consider the welfare of the child who is the real victim in the fight between the parents. However, all the attempts had ended in vain.

27. Repeatedly, in the course of argument, it was contended that the respondent, who has disowned his child and deserted his pregnant wife, cannot



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have the advantage of divorce. Whereas, it is contended by the Learned Counsel for the respondent/husband that a person who was willing to stay in his in-laws house which is normally stigma in the Indian Society particularly in Tamil Nadu, was driven out from the house by treating him disrespectfully.

28. The allegations and counter-allegations going unended even while the matter was heard by this Court, there is no scope of meeting. What we could see from the contention of the appellant is that she been now forced to rear the child alone, without any financial support. She is not expecting any emotional support from the respondent with whom she has lost faith and trust. In her cross-examination, she states that the only dispute between them is the conduct of her husband, who used to drink and come home to torture her. It is obviously clear that the parties keep on adding the allegations, been improvising their case from the date of exchange notice till the date of adducing evidence. In the given circumstances, since the parties are well-educated and grown up, if they are not inclined to reunite and lead the marital life, but only interested in making accusations against each other, there is no purpose in retaining the marital status.

29. At this juncture, we hold the Family Court, while considering the



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petition filed on the ground of cruelty, ought not to have given much space for discussing Ex.P.8. Nonetheless, even on eschewing those portion, we find that the findings of the Family Court regarding other incidence are probable view and it cannot be held as perverse.

30. We also find the Family Court failed to protect the interest of the minor child, as *parens patriae*. It should have made some arrangements for the maintenance of the child. This is an area where we concern not only in this case but in many cases, when we find even when spouses seek for mutual divorce, the future of the children is often left untouched, without ensuring a secure future for them. In many instances, Family Courts grant divorce but only in few cases, the custody and maintenance of the children been considered, even if there is no prayer for the relief. Courts must always bear in mind that, as *parens patriae*, we owe duty to protect the interest of child of broken marriage. Granting divorce without considering the welfare of the child is ranked injustice.

31. Therefore, we suggest the Family Courts in the State, whenever there is a dispute between the parents, Courts while granting any relief sought by the parents, even if no maintenance, alimony or custody of the Child is sought from



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the other side, in exercise of *parens patriae* jurisdiction, the Courts should ensure the interest of the minor child and pass appropriate order.

32. In this case, considering the fact that both husband and wife are well-educated, post-graduate Doctors having sufficient income as well as assets, so commensurating their status, the child has to be brought up by giving quality education, Standard of living and comfort particularly, the child been an IVF child and the respondent is the biological father, he cannot abdicate his responsibilities getting divorce making allegations of cruelty against the wife and himself cause desertion of his child.

33. The Hon'ble Supreme Court has consistently held that parents have a fundamental legal and moral responsibility to maintain their children until they reach the age of majority, regardless of marital disputes or the parents' own financial status. The Court's responsibility is to ensure the child's best interest is paramount, meaning a child's welfare, education, and comfort should not suffer due to parental conflict. In custody and maintenance cases, the Court will prioritize the child's needs by considering factors like comfort, health, education, and a stable, loving environment. The Family Court while granting divorce ought to have taken note of the fact that the child with the mother is not



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provided with any financial assistance from the father. Adequate financial assistance ought to have been granted even though there was no pleadings. Unfortunately, the parties as well as the Court had focused only on the allegations, refute and counter allegations.

34. We are duty-bound to emphasis that the father, has a duty to maintain the female child till her marriage. This obligation remains regardless of the parents' marital status or the mother's earning capacity. The child has a right to be maintained at a standard that is consistent with the parent's social and economic status. The child should not suffer because of disagreements between parents or for her mother being the guardian choosing not to file any petition for the maintenance of the child. Even in cases, there is no pleadings or separate petition for maintenance of the child, Court being *parens patriae* of the minor child before granting divorce, should consider the welfare of the child and direct the parties to provide adequate financial assistance for the well being of the child, and should ensure, whenever a decree of divorce is granted (either after contest or by consent), financial support order for the minor children must be part of it. As the Hon'ble Supreme Court said in *Apurva @ Apurvo Bhuvanbabu Mandal -vs- Dolly and others* reported in *[(2024) LiveLaw (SC 977)]*, 'the right to maintenance is commensurate to the right to



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sustenance. This right is a subset of the right to dignity and a dignified life, which in turn flows from Article 21 of the Constitution of India. In a way, the right to maintenance being equivalent to a fundamental right will be superior to and have overriding effect than the statutory rights afforded to Financial Creditors, Secured Creditors, Operational Creditors or any other such claimants encompassed within the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the Insolvency and Bankruptcy Code, 2016 or similar such laws.'

35. Therefore, this Court, in exercise of its *parens patriae* jurisdiction, we direct the respondent/husband to deposit a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) within two months today, in the name of his minor Child/Pujyasree, in any Nationalised Bank appointing the mother as guardianship and kept in deposit, till she attains the age of majority. The interest accrued be permitted to be withdrawn by the mother and shall be utilized for the child welfare. The mother/appellant herein is permitted to withdraw the interest on every quarterly basis to use for the need of the child. That apart, the respondent/Husband is directed to pay a sum of Rs.40,000/- (Rupees Forty Thousand only) every month towards the education and other expenses for the minor child. This amount to be received by the appellant on



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behalf of the minor daughter/Pujyashree. This direction is independent of right of the appellant and her child seeking maintenance, if they desire in future.

There is a specific allegation against the respondent that he has never visited the child or seen the face of the child, whereas the respondent alleges that the appellant has not allowed him to see the child. Such allegations and counter-allegations may satisfy the egos of the parties but not the interest of the child. Therefore, this Court grant the respondent to have right of visitation of his daughter/Pujyasree, twice a month, any given day for five hours each. The appellant shall facilitate visitation of the minor child by her father, the respondent herein.

36. This Court hopes the parties will realise that they have brought a little angle with Scientific Assistance to this world in pursuit to the endeavour to bear a child. The said child cannot be left to grow under single parent. They both have equal responsibility to give love, care, protection and utmost comfort equal what they enjoy. The directions issued by this Court hope will provide what the minor child deserves.

37. With these observations and directions, this *Civil Miscellaneous Appeal stands dismissed*. There shall be no order as to costs.



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(Dr.G.J, J.) & (M.S.K, J.)
28.11.2025

Index :Yes.
Neutral Citation :Yes/No.
Internet :Yes.
bsm

To,

1. The II Additional Principal Family Court, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.

Dr.G.JAYACHANDRAN, J.
&
MUMMINENI SUDHEER KUMAR, J.
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Pre-delivery judgment made in
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