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O.P.No.5 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2025

CORAM:

THE HON'BLE MR. JUSTICE K.KUMARESH BABU

O.P.No.5 of 2025

R.Raghavi

...Petitioner

Vs.

R.Venkateswaran

... Respondent

PRAYER

This Petition has been filed praying for

- a) appointing and declaring the petitioner as the only “Legal Guardian of the person of the Female Minor Child R.V.Shastavee”;
- b) also to have the “Sole and Permanent Custody of the Minor Female child, R.V.Shastavee” aged about 4 years to the petitioner;
- c) to issue direction granting permission to the petitioner to remove the Minor female child, R.V.Shastavee from the limits of its jurisdiction.

For Petitioner : Mr.Prakash Goklaney

For Respondent : No appearance

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ORDER



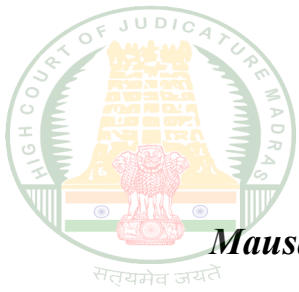
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This Petition has been filed seeking to appoint and declare the petitioner as the legal guardian of the minor child and to have the sole and permanent dcustody of the minor Female child, R.V.Shastavee” aged about 4 years.

2. Heard Mr.Prakash Goklaney, learned counsel appearing for the petitioner.

3. Mr.Prakash Goklaney, learned counsel appearing for the petitioner would submit that the instant petition has been filed to appoint the petitioner, the mother of the minor as the legal guardian and also to have the permanent custody of the minor female child. He would submit that the respondent even though had filed a counter did not make any submissions as to the petitioner being appointed as the natural guardian. In fact, the respondent had admitted in the mutual consent decree where he had relinquished the right of custody of the minor child. However, he had pleaded that since he had not seen his daughter for the last three years, he would want to protect his visitation rights.

4. Further relying upon the judgment of the Gujarat High Court in



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Mausami Dilipkumar Bhatt Vs. Maunang Lalitkumar Gor reported in

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2025 SCC OnLine Guj 894 the learned counsel for the petitioner would

contend that when he had relinquished his right of custody before the Family Court and recording the relinquishment of right, the Family Court had also granted divorce on mutual consent on 20.06.2024, he has not thereafter attempted to meet the child, however when the present petition had been filed as the petitioner has chance of job opportunity in abroad, which also would enhance the better future of the minor child, the present claim for visitation is being sought to be made with an intention to prevent the petitioner from going abroad. Therefore, he would submit that the affidavit filed by the respondent consenting for the petitioner to be appointed as the natural guardian and seeking visitation rights need not be taken on record.

5. I have considered the submissions of the learned counsel appearing for the petitioner. Even though the respondent entered appearance, he had not appeared for the hearing today and on the hearing earlier also he was not represented before this Court.

6. In the counter filed by the respondent he had admitted of the



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consent decree having been passed on mutual consent. He had not denied that he had given up the right for seeking custody of the minor child. He had only sought to have visitation right over the minor. In the mutual consent agreement the respondent had specifically, not only given up his right of custody over the minor, but has also assured that he will not have any right of claim over the child on any ground at any point of time.

7. By applying the principles of the judgment of the Gujarat High Court, which this Court has agreed to be a correct position of law in O.P.No.556 of 2024 dated 05.08.2025, this Court is of the considered view that having waived his statutory right which was available to him under the Hindu Marriage Act, the Family Courts Act and Guardians and Wards Act he cannot be allowed to seek revival of such statutory right. However, it is always open for him to approach the Court before which he had waived his right for modification of the order.

8. Considering the averments in the affidavit this Court is of the view that there is no necessity to record the evidence in this case. Based upon the facts admitted by the respective parties, the petitioner is



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appointed as the sole guardian of the minor child. She is also entitled to take the child with her anywhere subject to her avocation. This Court grants permission to the respondent to approach the petitioner if he desires to visit the child at any relevant point of time. However, he cannot insist on personal visitation if the child is away from India.

9. With the aforesaid directions, this petition is disposed of. There shall be no order as to costs.

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dsa

Index :Yes/No

Speaking/ Non-speaking order



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K.KUMARESH BABU, J.

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