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O.P.No.358 of 2023
and
A.No.2375 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 25.11.2025

Orders Pronounced on : **07.01.2026**

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

O.P.No.358 of 2023
and
A.No.2375 of 2025

Mr. G. Sivasankar

... Petitioner

Versus

Mrs. Runa

... Respondent

Prayer : Original Petition filed under Section 25 of Guardian and Wards Act, 1890 r/w Order XXI Rule 2 & 3 of the Original Side Rules r/w Clause 17 of the Letters Patent, prayed to Grant Custody of the Minor. S. Vihaan, aged 6 years to the petitioner.

For Petitioner : Mr. G. Appavoo

For Respondent : Mr. V.B. Krishnakumar

ORDER

This Original Petition has been filed by the petitioner seeking custody of the minor child, namely, S. Vihaan, aged about 6 years.



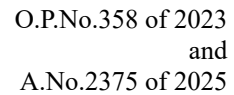
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2. The case of the petitioner is that the petitioner and the respondent are husband and wife, and their marriage was solemnized on 03.02.2017 as per the Hindu rites and customs. Out of the said wedlock, the minor child, namely, S. Vihaan was born on 06.08.2018. When the child was about three months old, the respondent had taken the child to her parental home and has been residing there along with her parents.

2.1 When the petitioner went to see the child on second birthday, a complaint was lodged against him alleging that he attempted to kidnap the child. The petitioner also lodged a complaint against the respondent. Thereafter, the respondent filed a complaint under the Domestic Violence Act, which was taken on file as D.V.C. No.23 of 2021 before the Additional Mahila Court, Alandur and the same is pending.

2.2 The petitioner had also filed a divorce petition in H.M.O.P. No.132 of 2021 before the Sub Court, Alandur, which is also pending. Further, in order to harass the petitioner, the respondent filed a maintenance petition in M.C.No.391 of 2022 before the Family Court, Chennai, claiming maintenance, and the same is pending.



2.4 The respondent is wilfully and deliberately preventing the petitioner from seeing his son. The respondent residing at Thiruvannamiyur and the petitioner contends that the said environment is not suitable for the proper growth and welfare of the minor child. The petitioner states that his residential atmosphere is very conducive for the welfare of the child and hence has filed the present petition seeking custody of the minor child.

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care for the child. A quarrel arose between the parties on the child's birthday. It is admitted that the domestic violence case and divorce proceedings are pending. The respondent contend that the petitioner has never shown love and affection towards the child and has not paid any amount towards the maintenance of the minor child. The respondent further submitted that there are no grounds to deny her custody and that the petitioner is not a fit person to be granted custody of the minor child. Therefore, the petition is liable to be dismissed.

4. In order to prove his case, the petitioner examined himself as P.W.1 and marked Exs.P1 to P9. On the side of the respondent, she examined herself as R.W.1 and marked Exs.R1 to R8.

5. The learned counsel for the petitioner submitted that the petitioner is the father of the minor child, S. Vihaan, who is presently under care and custody of the respondent. It was contended that the respondent, without any valid reason, has refused to permit the petitioner to see the minor child. Being the father, the petitioner is entitled to seek custody of the minor child and is capable of providing all necessary care



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and support for the child in all respects. It was further submitted that the respondent is not in a position to provide a suitable and conducive atmosphere for the welfare of the minor child. Hence, the petitioner has filed the present petition seeking custody of the minor child. In support of his case, Exs.P1 to P9 were marked. Therefore, the petition is liable to be allowed.

6. Per contra, the learned counsel for the respondent submitted that the minor child is now under the care and custody of the respondent. It was contended that several litigations are already pending between the parties before various Courts. The petitioner has not paid any maintenance either to the minor child or to the respondent. The minor child is very comfortable with the respondent, who has been taking proper care of the minor child. According to the respondent, the present petition has been filed only to evade the consequences of the pending litigations. It was further contended that this petitioner has no genuine interest in the welfare or future of the child. Hence, there are no grounds to allow the petition and the same is liable to be dismissed.



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7. This Court has heard the learned counsel appearing on both sides and perused the records.

8. Upon hearing both sides, the following point arises for consideration :-

“ i) Whether the petitioner is entitled to the custody of the minor child, as prayed for?”

9. In the present case, there is no dispute regarding the marriage between the parties or the birth of the minor child, Vihaan, out of the said wedlock. It is also an admitted fact that the minor child has been in the custody of the respondent/mother from the age of three months, and due to some misunderstandings, the parties are living separately. At present, the minor child is aged about six years. After the child has been in the care of the respondent for the past six years, the petitioner has filed the present petition seeking custody of the minor child. There are no sufficient grounds urged by the petitioner to remove the custody of the minor child from the respondent/mother. It is an admitted fact that for the past six years, the minor child has been continuously in the care of the respondent/mother without any interruption. Though the petitioner, being



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the father, is entitled to seek custody of the minor child, it cannot be overlooked that the child has been brought up by the respondent/mother for the last six years.

10. It is well settled principle of law that in matters relating to custody of a minor child, the welfare of the child is of the paramount consideration. Since the respondent/mother has been taking care of the minor child from the age of three months, it would not be proper to separate the child from the mother at this stage. This Court also interacted with the minor child. During such interaction, the minor child expressed his unwillingness to go with the petitioner/father and stated that he is very comfortable with the respondent/mother. In view of the expressed wish of the minor child, this Court is not inclined to grant custody of the minor child to the petitioner against the child's willingness. Therefore, the petitioner is not entitled to the custody of the minor child. Without any valid and compelling reasons, the minor child cannot be separated from the respondent/mother. The petitioner, though examined as P.W.1 has not adduced sufficient evidence to warrant removal of custody of the minor child from the respondent/mother. The respondent has also deposed in



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support of her case. In the absence of sufficient material to show that the welfare of the minor child would be better served by granting custody to the petitioner, this Court finds no merits in the petition. Hence, the custody of the minor child need not to be disturbed. However, considering the fact that the petitioner is the father of the minor child, he is entitled to visitation rights.

11. In the result, this Original Petition is dismissed insofar as the prayer for custody of the minor child Vihaan is concerned. However, the petitioner is granted visitation rights.

(i) The respondent/mother is directed to produce the minor child before the Child Care Centre, attached to the Family Court, Chennai, on the first and third Saturday at 10:30 A.M., to 01:00 P.M. Thereafter, the petitioner/father shall handover the child back to the custody of the respondent/mother.

(ii) During the visitation, the petitioner is permitted to provide eatables, toys, and other items, as per his wish.



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12. With the above observations and directions, this Original Petition is dismissed. Consequently, the connected application is also closed.

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Speaking/Non-Speaking Order : Yes/ No
Neutral Case Citation : Yes/ No
Index : Yes/ No

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P. DHANABAL, J.

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Pre-Delivery Order in

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