

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE,
KANCHEEPURAM DISTRICT AT CHENGALPATTU.**

Present : **Tmt.J.Mavis Deepika Sundaravadhana, M.A., M.L.,**
Principal District Judge, Chengalpattu.

Thursday the 23rd day of February 2023

I.A.No.2/2022
in
GWOP.No.189/2021

Bharathkumar KJ

. . . Petitioner.

/Vs/

Jayasree Sampathkumar

. . . Respondent.

This petition came up before me in this court for final hearing on 01.02.2023, in the presence of Tvl.Krishna Ravindran, A.Charles Darwin, P.Janarthanan and S.Praveen Kumar, Advocates for the petitioner and Tvl.K.Bharathi, M.Shankar, U.Vignesh and A.Kannan, Advocates for the respondent, upon hearing the arguments of both side counsel, perusing the entire records and having stood over for consideration till this day, this court delivers the following,

ORDER

This is an application filed by the petitioner under Section 12 of Guardian Wards Act to grant temporary custody of the minor child Swaksha Bharathkumar to the petitioner and consequentially direct the respondent to handover the minor child Swaksha Bharathkumar to the petitioner immediately.

2. The case of the petitioner in brief :

The petitioner's daughter was born on 21.4.2014 in the United States of America, at Fairview Hospital, Burnsville, Minnesota 55337 and is

a citizen of the United States of America. It is pertinent to state that the petitioner's daughter has been in his permanent care and custody since her birth. The petitioner is a post graduate in Information Technology holding MCA degree and working as a Project Manager in Tata Consultancy Services from December 2007 and migrated to USA on deputation and was working there from November 2010 to April 2018 for 7 years under LIA Visa. The respondent was also working in USA since the year 2012. The petitioner started noticing some strange behaviour by the respondent. The respondent would go without talking to the petitioner for many days and even months at a time and when prodded upon, she would ask him not to disturb her. As and when the respondent comes out of her silence, she would behave normally for a few months. The petitioner and respondent met Dr.Vasanatha Jayaram, MBBS, DPMj, DNB and upon evaluation, the Psychiatrist had prescribed some anti-depressant medicines for the respondent. The respondent expressed to have privacy and wanted to shift to 1st floor and accordingly Psychiatrist also advised to shift to 1st floor on her demand. It is pertinent to state that even after shifting the house, the behaviour of the respondent remained the same as the respondent continued to seclude herself and the child in one room of the house for the duration of the entire day. The only time the respondent ventured out of the room was when she had to prepare food and once the food was prepared she would consume the same inside the room with the child. She would not let the child out of the room even to talk with the petitioner. If the petitioner want to talk to his daughter, he had to go to another room to see her and during their interaction, the respondent would constantly disturb the interactions. The respondent never let the minor daughter out of her sight even when she has to take a bath or use the bathroom. This act of the respondent is absolutely abnormal, unhealthy and disgusting the seriously affects the mind of the child. In general the

respondent is a very unhygienic person and maintain herself and the house in very poor condition. No sane person would put a child through such trauma. In light of the fact and circumstances, it is fit for granting custody of the minor child to the petitioner as the well-being of the child is of paramount importance and though the respondent is the mother, she is unfit to take care of the child alone at her present mental state. With great difficulty the petitioner has secured admission for the child at Dr.C.L.Mehta Sishya OMR School and it would be most conclusive for the child to be in Chennai along with petitioner. The petitioner is ready to live with the respondent and take care of her and the child and is willing to do whatever is required to protect the well being of the respondent and the child.

3. The counter filed in main OP is adopted as counter in this interlocutory application.

4. The averments of counter in brief :

The respondent has already filed HMOP.No.214/2022 before the Sub Court at Alandur seeking divorce on the grounds of cruelty and the same is pending. Further the respondent also filed M.C.No.19/2022 for seeking maintenance for the respondent and their minor child from the petitioner before the Mahila Court at Alandur and the same is also pending. The child B.Swaksha is now eight years old, studying 3rd Std at Dr.C.L.Metha Sishya OMR School (Trust) at Thuraipakkam in Chennai and she is in the custody of the respondent. The respondent gave a total sum of Rs.30,03,597/- to the petitioner in several payments on different days, toward the construction of a house in Chennai by the petitioner's family. But the petitioner did not bother to repay it to the respondent. Also he started harassing the respondent insisting that she should get out of the matrimonial house. Hence, with no other go the respondent in turn demanded the petitioner to repay the above said amount. After repeated demands the petitioner returned the amount to

the respondent by online money transfer on 01.2.2020, 04.02.2020 and 10.02.2020. But after returned the amount, the petitioner used to constantly scold the respondent that she has been staying in their house without paying any rent. The petitioner even without any provocation used to scold the respondent as "தண்டச்சோறு", "எச்ச சோறு". To save the marriage, she asked the petitioner to come for counselling but he refused to it. However, during 2020, both the respondent and the petitioner went for psychiatric counselling. The psychiatrist advised the respondent and the petitioner to live in a separate matrimonial house and not to live with the petitioner's parents as joint family. But the petitioner, instead of setting up a separate matrimonial house, chose to live with the respondent in a house on the first floor of the house already they were living. The petitioner used to stay all the time on the ground floor house with his parents and not with the respondent and the child on the 1st floor house. He used to inject negative thoughts about the respondent to the child. During May 2021, the petitioner forced the respondent to get out of the house. The respondent informed the petitioner's harassment to her brother who in turn lodged a complaint with Thuraipakkam Police Station on 22.5.2021. Even during the police inquiry the petitioner and his family members told the respondent to get out of the matrimonial house, but insisted that the child should be in their custody. The police specifically inquired the child where the child told the police that she wanted to live with the respondent. The petitioner's father insisted that the respondent's brother Balaji should give it in writing that the respondent is taking the custody of the child. Accordingly the respondent's brother gave it in writing to the petitioner. The respondent was solely responsible for taking care of household activities including purchase of groceries, taking care of kid's needs along with cooking and office work. This court has already ordered mediation in the above

GWOP to mediate on the child custody where the child has categorically refused to go with the petitioner and wanted to be only in the custody of the respondent. Hence, prayed for dismissal of petition.

4. The point that arises for consideration is whether the application is liable to be allowed.

5. Point :

This petition is filed by the petitioner / husband in GWOP praying to grant temporary custody of the minor child Swaksha Bharathkumar to the petitioner. The petitioner / husband alleges that the respondent / wife, except the time of cooking she used to seclude the child and herself in her room and do not leave the child with petitioner / husband and even if at times the petitioner / husband with the child, she would interact between them. The petitioner / husband alleges that the abnormal behaviour of the respondent / wife would affect the child and hence, prays to grant interim custody of the child to him.

6. On the other hand, the respondent /wife alleges that the petitioner / husband always insisted her to leave the matrimonial home and he do not have matrimonial life with her. It is further alleged by the respondent / wife, that after police complaint the respondent / wife has taken the custody of child as per the child's wish and she is fully taking care of her child and hence she has filed HMOP.No.214/2022 before the Sub Court, Alandur, for divorce on the grounds of cruelty and also filed M.C.No.19/2022 seeking maintenance for her and for the minor child from the petitioner. The MC cases alleged to be pending before the Mahila Court, Alandur and both the cases are now reported to be pending.

7. Supressing the fact, about pendency of HMOP petition for divorce and the Maintenance case before other courts, the petitioner / husband has come forward with this application. It shows that the petitioner /

husband has not come to court with clean hands. Only after a final decision in HMOP petition and Maintenance case, the custody of the child shall be decided. Therefore the prayer of interim custody of child is premature, cannot be granted to the petitioner / husband. Moreover, the main GWOP is also to appoint the petitioner / husband as guardian of the minor child and for custody of the minor child. Hence, for the reasons stated above the interim custody cannot be granted at this stage. Therefore the petition has to be dismissed.

8. **As the result, petition is dismissed. No costs.**

Dictated by me to the steno-typist, computerized by her directly, corrected and pronounced by me in open court, on this the 23rd day of February 2023.

Principal District Judge,
Chengalpattu.

Both side witnesses and exhibits :
Nil.

Principal District Judge,
Chengalpattu.