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OP No. 209 of 2



Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-10-2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

OP No. 209 of 2025

CNR: {HCMA010637112025}



Case QR

..Petitioner(s)

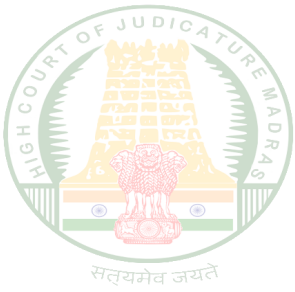
Vs

..Respondent(s)

i) declaring the petitioner (Mother) as the sole guardian of the person of the above named minor child ~~XXXXXX~~ born on 22.08.2018 ii) granting permanent custody of the minor child ~~XXXXXX~~ (born on 22.08.2018) to the petitioner iii) granting permission to take the minor child outside the jurisdiction of this Hon'ble Court.

For Petitioner(s): Mr.P.Amarnath

For Respondent(s): Respondent Ex-parte On Dt: 08/1/2026



ORDER

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This Original Petition has been filed under Sections 3, 7, 10, 25 and 26 of the Guardians and Wards Act, 1890 read with Order XXI Rules 2, 3 and 11 of the Original Sid Rules and Clause 17 of the Letters Patent by the mother of minor ~~Amarnath~~, born on 22.08.2018.

2. I have heard Mr.P.Amarnath, learned counsel for the petitioner.

3. The respondent, despite service of notice, has neither chosen to appear in person nor through counsel and the respondent is called and set exparte.

4. Admittedly, the petitioner is the mother of the minor ~~Amarnath~~ who was born on 22.08.2018 and the respondent is the father of the said minor girl child. The petitioner and respondent are separated by order of dissolution of marriage by order dated 14.03.2024 in CrI.O.P.No.7021 of 2022.

5. Admittedly, the petitioner/mother is employed as a Senior Specialist in Canada and the Guardian Original Petition itself has been filed through her father Mr.Bakkiam. The original Power of Attorney executed by the petitioner in favour of her father has been marked as Ex.P.1 and it is only based on the said power of attorney that the Guardian Original Petition itself has been filed



and evidence has also been adduced by the father as P.W.1.

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6. It is seen from the records and also from the evidence adduced that the minor is presently under the care and custody of the maternal grand parents ie., P.W.1 and his wife.

7. The prayer in the Guardian Original Petition is to appoint the petitioner/mother as a sole guardian of the minor ~~xxxxxx~~, born on 22.08.2018; grant permanent custody to the mother and also grant permission to take the minor child outside the jurisdiction of this Hon'ble Court.

8. I have gone through the entire records including the evidence adduced by P.W.1, oral and documentary.

9. Learned counsel for the petitioner has taken me through the proof affidavit of P.W.1, grand father of the minor and also various documents that were exhibited through P.W.1 viz., P.1 to P.14.

10. Mr.P.Amarnath, learned counsel for the petitioner states that the respondent, despite being granted visitation rights, has not been interested to see his own child, excepting for a couple of instances when he chose to exercise his visitation rights immediately after the order came to passed in the year 2024 and



not any time thereafter.

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11. Admittedly, the petitioner/mother had custody of minor when the petitioner was at Hyderabad in the matrimonial home and she came to Chennai with her minor child and stated living with her parents at Old No.2, New No.5, Kannagi Street, M.G.R.Nagar, K.K.Nagar, Chennai-78. Thereafter, there has no re-union between the petitioner and the respondent.

12. The petitioner initiated proceedings under Protection of Women from Domestic Violence Act 2005 against the respondent in DVC No.53 of 2019. The respondent/husband filed OP No.768 of 2019 before the Family Court, Kukatpally, Hyderabad, praying for restitution of conjugal rights.

13. The petitioner moved transfer application before the Hon'ble Supreme Court and O.P No.768 of 2019, filed by the respondent/husband for restitution of conjugal rights was transferred to the file of III Additional Family Court, Chennai and re-numbered as HMOP No.5060 of 2023.

14. In the meantime, the petitioner/wife has also filed an application for divorce in HMOP No.3185 of 2021 alleging cruelty which came to be numbered on the file of VI Additional Family Court, Chennai.



15. Despite having filed a petition for restitution of conjugal rights, the respondent/husband filed yet another petition in HMOP No.4136 of 2022 and sought for divorce. Several criminal cases were pending between the petitioner and the respondent.

16. In December 2022, the petitioner/mother of the minor, who was then employed in Chennai, was transferred and posted to Canada and leaving the minor child in the custody of her parents, she left to Canada and ever since, the maternal grand parents are taking care of the minor child.

17. Pending various cases, the respondent/father of the minor has filed CrI.O.P.No.7021 of 2022 to quash the proceedings in CC No.2328 of 2021 filed under Section 498(A) IPC. When the matter was heard by this Court on the criminal side, this Court was of the opinion that since both the husband and wife were ultimately seeking divorce, the matter can be given a quietus and the parties were directed to file separate affidavits consenting for dissolution of marriage and pursuant to the same, this Court granted a decree for divorce even in the criminal proceedings in CrI.O.P.No.7021 of 2022.

18. In view of the said order, the divorce petitions as well as the restitution petition, filed by the respondent/husband have become infructuous. In fact, the petitioner reported to the VI Additional Family Court and sought for

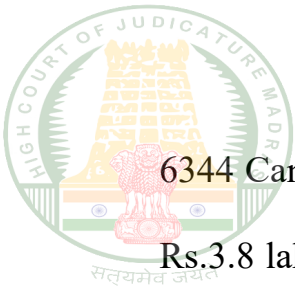


withdrawal of HMOP No.3185 of 2021 filed by her for divorce, in view of the divorce being granted by this Court in Crl.O.P.No.7021 of 2022. However, the respondent has not withdrawn both the cases filed by him, one for restitution of conjugal rights and another for dissolution of the marriage.

19. The petitioner also appeared before the XXIII Metropolitan Magistrate, Saidapet, Chennai and ensured that the DVC proceedings in DVC No.53 of 2019 were also closed. It is the specific case of the petitioner as well as P.W.1 that the respondent/father of the child, chose to see the child only on two occasions viz., 15.06.2024 and 06.07.2024 before the Child Care Facilitation Centre situate in the Family Court Building Complex at Chennai and even during these two visits, the respondent was not interested in bonding with the minor child. Thereafter, he has not made any attempts to visit the minor child.

20. It is also the case of the petitioner that the petitioner has now been granted permanent residency by the Government of Canada on 03.12.2024 and she is now financially well stable and she is well equipped to take care of the best interest and welfare of the minor child ~~XXXXXX~~.

21. The petitioner has filed satisfactory documentary evidence regarding her employment in L & T Info Tech in Canada and also drawing a total pay of



6344 Canadian Dollar per month, which approximately works out to more than Rs.3.8 lakhs per month. The petitioner has been able to satisfactorily prove that she is capable of taking care of the minor, including meeting all maintenance and educational expenses of the minor child.

22. On the contrary, the respondent/father has not shown any interest to even see the child despite being given visitation right. The respondent has also not chosen to contest the present petition.

23. It is also brought to my notice by Ex.P.13 that the respondent/father has advertised in Tamil Matrimony.com on 25.10.2025 stating that he is a divorcee and he has no children, which clearly confirms the fact the respondent/father has disowned his own minor child and having projected himself to be a divorcee with no children, I do not see the respondent/father to be in any way competent to be a guardian or act in the best interest of the minor child.

24. In view of the above, I have no hesitation to allow the petition. Accordingly, O.P.No.209 of 2025 is allowed and the petitioner is appointed as permanent guardian of minor ~~Aashika~~, minor girl, born on 22.08.2018. The petitioner is also granted permanent custody and she is also granted liberty to take the minor girl ~~Aashika~~ to Canada, where the petitioner presently resides



and employed.

No costs.

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Index: Yes/No

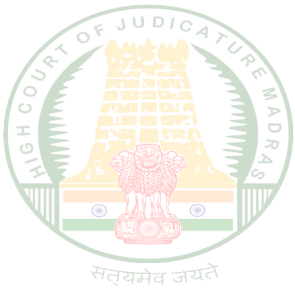
Speaking/Non-speaking order

Neutral Citation: Yes/No

SR

To

The Sub Assistant Registrar,
Original Sides,
High Court, Madras



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P.B.BALAJI, J.

SR

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