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O.S.A.No.206 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM

THE HONOURABLE MR. JUSTICE **PARESH UPADHYAY**  
and  
THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

O.S.A.No.206 of 2022  
and C.M.P.No.12450 of 2022

Richa Sharma .. Appellant

Vs

Ganesh Kasinathan .. Respondent

Appeal filed under Order XXXVI Rule 1 of OS Rules, 1994 and clause 15 of Letters Patent against the order dated 13.07.2022 made in Appl.No.3534 of 2021 in O.P.No.633 of 2021.

For Appellant : Mr.R.Harikrishnan

For Respondent : Ms.R.S.Akila  
for Ms.Sudha Ramalingam



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## JUDGMENT

(Delivered by *PARESH UPADHYAY, J.*)

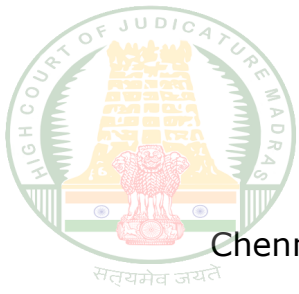
Challenge in this appeal is made to the order dated 13.07.2022 recorded on Application No.3534 of 2021 in O.P.No.633 of 2021.

2. The matter pertains to the claim of the father for the custody of minor daughter and / or his visitation right. This appeal is by the mother.

3. Notice was ordered on 29.07.2022.

4. Learned advocate for the appellant (mother) has made serious grievance that, the observations in the order under challenge more particularly from para : 10 onwards are less deciding rights of the parties, more – what the wife needs to do to her husband. It is submitted that, independent of the grievances against the order under challenge, the mother has now got an employment at Gurugram / Delhi and therefore she needs to stay there. Further, the admission of the daughter is also secured in the school there. It is submitted that, therefore it has become difficult for the mother to continue to stay at

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Chennai and that factor be kept in view while moulding relief. It is submitted that the impugned order be quashed and set aside.

5. On the other hand, learned advocate for the contesting respondent / father has submitted that, the grievance by the appellant/ mother is only to some observations made by learned Single Judge and the visitation arrangement is neither under challenge nor the same needs to be interfered with. It is further submitted that, in the event the mother shifts from Chennai to Delhi / Gurugram, it would be very difficult for the father to visit the child and that aspect may be taken into consideration. It is submitted that this appeal be dismissed.

6. Having heard learned advocates for the respective parties and having considered the material on record this Court finds as under:-

6.1 The marriage was solemnized in the year 2006.

6.2 The daughter was born on 13.11.2010.



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WEB COPY 6.3 Husband and wife are not staying together since the year 2017.

6.4 The daughter has been with the mother all throughout.

6.5 Father has visited the daughter periodically, sometimes under the orders of Court, sometimes independent of that, as per social arrangement. This arrangement has continued.

6.6 The litigation before the Court has seen more than one orders, one of which is dated 13.07.2022 which is under challenge. We have taken into consideration the contents of the said order, including the observations made therein, including what hospitality the mother (wife) should extend to the father (husband).

6.7 We find that, learned Single Judge, while attempting to facilitate visitation, is swayed away by what should be the conduct of the parties towards each other, including serving of snacks / tea to the other side. We find that, prescribing such stipulations and many of the



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observations are less relevant for deciding the rights of the parties, or to address the grievances of the parties. The same therefore call for interference.

7.1 The matter pertains to visitation right of the father qua her minor daughter, who stays with her mother.

7.2 Since the husband and wife are not staying together, the question of employment of the mother of the child may also be one of the relevant factors. As pointed out by learned advocate for the appellant / mother, parents of the mother are settled at Gurugram/ Delhi. The mother has got employment at Gurugram. Since there is dispute between husband and wife, the mother would want to stay with parents, and since she has also got employment at the place where the parents are staying, necessarily the daughter has to be with the mother at Gurugram. The study of the daughter also need to be taken care of. As it is indicated, she (the daughter) has got admission there (at Gurugram).



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**WEB COPY** 7.3 Conjoint consideration of the above circumstances would require that, the mother and the daughter – both, need to stay at Gurugram, which should not be permitted to be given the colour of defiance of any of the orders of this Court. For these reasons, the following order needs to be passed:-

8.1 The impugned order dated 13.07.2022 recorded on Application No.3534 of 2021 in O.P.No.633 of 2021 is quashed and set aside.

8.2 The intimation by the appellant mother, that she has got employment at Gurugram is taken note of and acknowledged, including to the extent that the daughter shall needs to stay with mother.

8.3 So far visitation rights of the respondent father is concerned, the father may explore the possibility of going to Gurugram if he so wishes, with prior intimation. In case of any difficulty, it is open to the respondent father, to approach appropriate forum.



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**WEB COPY** 8.4 This appeal is allowed in the above terms. No costs.

Connected civil miscellaneous petition would not survive.

**(P.U., J)**                      **(D.B.C., J)**  
26.09.2022

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To

The Sub Assistant Registrar,  
High Court, Madras.



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PARESH UPADHYAY, J.  
and  
D.BHARATHA CHAKRAVARTHY, J.

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