

A.Nos.335 & 703 of 2021
and A.No.2011 of 2021
in O.P.No.443 of 2021

KRISHNAN RAMASAMY, J.

The applicant and respondent got married in the year 2009 and in their wedlock, two children were born to them. Thereafter, matrimonial disputes arose between the parties. According to the applicant/wife, she was subjected to harassment and also thrown out of the matrimonial home on 12.04.2021 by the respondent/husband while retaining the custody of the minor children with him, which prompted the applicant to knock the doors of the Courts by filing various petitions and applications, seeking for dissolution of marriage, custody of the minor children and visitation rights etc. The main O.P.No.443 of 2011 has been filed, seeking for appointment of the applicant as a fit and proper person to be guardian of the minor children and also for grant of sole and permanent custody of the minor children. The present applications have been moved by the applicant for the following reliefs, viz.,

2. The Application Nos.335 and 703 of 2021 have been filed by the applicant, praying to pass interim order of injunction, restraining the respondent and his men from secreting and moving the children Ajitesh K.Iyer and Akilesh K.Iyer, out of the jurisdiction of this Court and also out of the custody of the applicant/petitioner, pending disposal of the main OP.

3. This Application in A.No.2011 of 2021 has been filed by the applicant, praying to pass interim order, directing interim custody of the minor children viz., 9 years old Ajitesh and 6 years old Akilesh to the applicant, pending dispossal of O.P.No.443 of 2021.

4. During the pendency of the OP, this Court, by order dated 26.05.2021, granted visitation right to the applicant to visit the minor children who are living with the respondent on every Saturday and Sunday between 10.00 a.m. and 6.00 p.m. Thereafter, by order dated 26.08.2021, this Court directed the respondent to hand over the custody of the minor children to the applicant on every Friday at 5.00 p.m. and allow them to be with her till 7.00 a.m. Monday and thereafter, the applicant shall leave the children back at the respondent's place. While passing this order, the Court has observed that the parties shall extend the utmost cooperation for the smooth working of the present arrangement and not to create any impediments or hurdles prejudicial to the interest of the parties and further, they shall not create any situation that may affect the tender minds of the children as the arrangement is worked out and put in place only towards securing the larger well being of the children. According to the applicant, the respondent has not obeyed the orders of the Court and failed to handover the custody of the children.

5. Further, again, by detailed order, dated 17.09.2021, this Court has observed as follows:

"26. In the light of the above discussion, the following directions are issued :

(a) The custody of the children with the applicant is granted from Thursday evening 5 p.m. to Monday morning 7 a.m. every week.

(b) The applicant/mother is permitted to take the children for counselling to the child psychologist referred to in paragraph 4 of the Memo, dated 16.09.2021 during the time when the custody of the children with her under this arrangement.

(c) The applicant/mother is also permitted to approach the School authorities to interact with them in order to ascertain the performance of the children in their educational pursuit. In the event of the applicant/mother approaching the School authorities, the School authorities are directed not to cause any impediment to the applicant for her interaction with her children, as she be be allowed to ascertain from the school management in relation to her children's conduct and performance.

d) As far as the handing over of the custody of the children during Dasara Holidays from 09.10.2021 to 18.10.2021 is concerned, this Court is of the view that the respondent/father cannot be completely denied of his custody during the Dasara Holidays. At the same time, the holidays for children is meant for their enjoyment and leisure, free from the grind of School activities. In the said circumstances, having regard to the fact that the children have been with the father for considerable length of time over the years, their enjoyment in the Company of their father cannot be truncated and given in the exclusive company of the mother for the entire period of holidays.

(e) In order to be fair to both the parents and in view of the extension of custody by one more day (Thursdays), the applicant/mother would be having the custody of the children from 07.10.2021 till the morning of 11.10.2021, immediately followed from the evening of 14.10.2021 until the morning of 18.10.2021. By this arrangement, the applicant/mother has been entrusted with the custody of the children eight days leaving out only five days for the father. In that view of the matter, the direction sought for exclusive custody of the children by the mother for the entire Dasara holidays, may not be fair and equitable, both from the perspective of the father and also of the children. This prayer is therefore not acceptable and the same is rejected.

"27. The above arrangement will be in force for next eight weeks and it will be further reviewed at the instance of either parties on due expiration of the period of this arrangement or even earlier, if any necessity arises as such.

6. However, it appears that the respondent once again has failed to comply with the order of this Court. The grievance of the applicant is that she did not spend time with her children during Pooja holidays and despite her Email reminders, the respondent remained defiant of Court orders. Taking note of the same, this Court vide order, dated 12.01.2022, has observed as under:

This is an unfortunate case where the spouses are at war and children are caught in the crossfire. The spouses are learned counsel practising in this Court. 2. Earlier, there was an order by this Court directing the respondent (husband of the petitioner and the father of the children) to hand over the children to the petitioner/wife during the Puja Holidays, 2021. **For variety of reasons that could not happen.**

7. According to the learned counsel for the applicant, right from the inception, despite the orders of this Court, directing the respondent to leave the children to the petitioner,

failed to comply with the same and even after dropping them, immediately, after few minutes, the elder son used to cry and make phone calls to his father/respondent, who in turn rushes to the place and takes the children along with him. This is because the respondent has tutored and instigated the children to act against the wishes of the applicant/mother and thereby, deprived the applicant to have access to her children and enjoy the happy moments by spending time with her children. He would also submit that the respondent used to blame the children stating that the children are not willing to go with the mother and resisting to stay with her.

8. Taking note of the same, even this Court vide order dated 27.01.2022, directed the children to be examined by a Psychologist and when the applicant having obtained the appointment of the Psychologist and informed the same through Email to the respondent/husband and requested him to send the children, the respondent has not taken any initiative to send the children. Therefore, the learned counsel for the applicant would submit that the respondent has blatantly violated the orders of this Court on numerous occasions and remained to be defiant. All along, the applicant has been approaching this Court and though getting orders for visitation of rights for short period, the respondent has not been complying with the orders of the Court and thereby depriving of the visitation rights of the applicant to spend with her children. Further, this Court's order directing the children to be examined by a Psychologist in the interest and welfare of the children, has been thwarted by the respondent by corrupting the tender minds of the children to have bad opinion about the applicant/mother.

9. The learned counsel would further submit that the respondent, by denying the total access of the applicant to her children is only tormenting the tender children to their detriment and in violation of the orders passed by this Court. Even the respondent has changed the school of the children for four times with clear motive of moving them far away from the applicant and also shifted the residence to Moduravoiyal with the children. He would also submit that the respondent has failed to value the mother's role in every child's life and failed to act as responsible father having acted against the welfare of the children. Therefore,

the learned counsel would pray this Court to grant interim custody of the minor children till the disposal of the OP in the interest and welfare of the children.

10. On the other hand, the learned counsel appearing for the respondent would submit that the applicant, being mother of the children, never bothered about her children since from the date of their birth and the happiness of the children became horrible trite at the instance of the termagant mother/applicant. According to the learned counsel, the respondent has purchased two flats and vacant lands and made various investments for betterment of future of life of the children and to meet their higher education expenses as such, the respondent has caliber to bring up the children without any financial difficulties, whereas, the applicant has no such income and that the respondent pays utmost care, love by spending his time with the children with much love and affection round the clock. The learned counsel would submit that even the parents of the applicant repugnantly estranged their daughter, the applicant herein because of her trait of dominating superiority, bombarding language towards all her inhabitants. He would also submit that the respondent is always most cautious whenever issues come with the applicant for the children not to be branded as children of divorcee, but the applicant always threatens the respondent that she need divorce and files case without having a feeling of mother who have two children and their life.

11. The learned counsel would submit that the applicant is greedy and longing for high profile and dedicating to the profession and for which, she estranged herself from bonding relationship from her parents, husband and children and the children are under the custody of the respondent right from their birth and he is looking after them well without any inconvenience. Further, the applicant is not financially sound to bring up the children and she is residing alone by staying in a service apartment and she is unable to maintain the children even if interim custody of the children is given to her by attending their daily needs and engaging a maid for parenting the children would not be betterment of the welfare of the children. Even father of the applicant is worried about her daughter and grandchildren future because of the attitude of the applicant, having dragged the children for legal recourses. The

applicant, instead of joining the matrimonial home as there is no obstacle for her from visiting and spending with children and lead marital life peacefully, she opted to grab the children from the affectionate father.

12. The learned counsel for the respondent would also submit that since the children have been under care and custody of the respondent, if they are given to the custody of the applicant, the applicant, who is busy and given much importance to her profession, will not pay much attention towards the children and leave them under the stewardship of maid which would augur not well to the minor children who are all entirely depending upon the respondent in the absence of their mother for the past more than five years. Therefore, the learned counsel for the respondent would urge this Court to dismiss the applications in the interest and welfare of the children,

13. Heard the learned counsel appearing for the parties and perused the entire materials available on record.

14. Having heard the learned counsel on either side and on going through the entire materials placed on record, this Court finds that the applicant/wife and respondent/husband, after their marriage, were blessed with two children and thereafter, when the applicant/wife tried to start her professional career as a lawyer after completion of her Law degree, disputes arose between them since the respondent/husband has not shown any interest and encouraged the applicant/wife, but insisted her to be in home and look after the children. The respondent/husband, due to differences of opinion, was alleged to have sent out the applicant/wife from matrimonial home by retaining the custody of the children and since then, both of them are living separately. Thereafter, the applicant/wife has been approaching the Family Court and this Court by filing various applications and petitions, seeking for divorce, custody of the children, visitation rights, etc.

15. This Court, taking into consideration the facts and circumstances, especially the applicant/mother is not having the custody of the children and in order to ensure the well-

being and robust growth of the children be unaffected by the estranged and strained relationship of the parents and the young children require the attention of the applicant/mother, by various orders granted for visitation rights to the applicant/mother and directed the respondent/father to hand over the custody of the children by dropping them at the residence of the applicant/wife, who is residing across the road in the same locality where the respondent/father and children are also living. Despite the specific directions of this Court to the respondent/husband to co-operate and handover the custody of the minor children, it has been complained by the applicant/wife that the respondent has failed to comply with the orders/directions of this Court in letters and spirit. According to the applicant/wife, the respondent/husband knowing full aware of the directions of this Court to handover the custody of the children on every weekend, i.e. from Saturday to Monday morning, however, in order to deprive her custody right, used to plan to take the children to a temple on Saturday and to his sister's home make the children to stay with him. Further, the respondent has even indulged in parental alienation and tutored the children to act and behave contrary to the wishes of the applicant/mother and according to the applicant, the respondent has updated the children everything about the Court proceedings and disputes between them, which prompted the elder son to act against the mother and used to resist to stay with her and on one occasion, he restrained himself to go with his mother and demanded the mother to withdraw the case filed against his father. Without parental alienation, this could not be possible for a tender aged child to insist and demand his mother to withdraw the case and impose condition that unless she withdraws the case, he would not come to his mother.

16. In fact, my predecessors who while passing the orders, expressed displeasure towards the attitude of the respondent in the matter of compliance of the directions of this Court. In the order, dated 17.09.2021, it has been observed as under:

"18. In the light of the above factual scenario, as the grant of visitation rights during the week-ends did not fructify in its letter and spirit, allegedly due to the furtive attempts by the respondent/father working against the implementation of the visitation rights as ordered

by this Court on 26.08.2021, this Court is constrained to look up to the legal precedent as to how a situation of this nature is to be dealt with. In the quest, this Court finds that the decision cited by the counsel for applicant encapsulates similar situation offering plausible legal solution."

17. In the order, dated 12.01.2022, this Court has observed as under:

"This is an unfortunate case where the spouses are at war and children are caught in the crossfire. The spouses are learned counsel practising in this Court. 2.Earlier, there was an order by this Court directing the respondent (husband of the petitioner and the father of the children) to hand over the children to the petitioner/wife during the Puja Holidays, 2021. **For variety of reasons that could not happen.**

18. Further, since the respondent has not complied with the orders of this Court, the applicant has moved contempt petitions in Cont.Petn Nos.907 and 908 of 2022 before this Court, wherein, vide order, dated 10.06.2022 this Court has observed as under:

"Pursuant to the earlier direction of this Court dated 09.06.2022, the respondent/father has brought the children to the Court and the petitioner/mother has taken the custody of the children also. In fact, by order dated 17.09.2021, the respondent/father was supposed to have handed over the custody of the minor children on every Thursday evening at 5.00 pm, to remain physical custody till the following Monday morning. **However, this order has not been complied with since he had not handed over the custody of the minor children to the petitioner.**

2. Since already this Court by order dated 17.09.2021, has specifically directed the respondent/father to hand over the minor children on every Thursday evening at 5.00 pm to Monday morning 7.00 am every week, the respondent/father has to comply with the order of this Court in letter and spirit. After taking custody of the children, it is incumbent upon the petitioner/mother to take care of them. Therefore, it is made clear that pursuant to the order of this Court dated 17.09.2021, the respondent/father shall comply with the same without any default.

3. **Today, this Court witnessed the high drama that had taken place when the petitioner/mother was taking custody of the children. This drama clearly appears to have taken place only due to parental alienation when the children were not in the custody of the petitioner/mother.** It is made clear that no parent, viz., either father or mother shall indulge in parental alienation during the custody of the minor

children with him/her. It is duty of the respective parents to make the children aware of the rights of the parents to have their custody and to spend time with them without any protest, otherwise it would be considered that the concerned parent is indulged in parental alienation and incapable of bringing up the children in a well considered manner.”

19. Even in his reply E-mails dated 23.10.2021, 20.01.2022 and 18.3.2022 sent to the applicant/wife, the respondent/husband has stated as under:

“ Hope it will take some time for them to understand the situation. **If I force them further then, it will evoke a sense of dread in their minds.** We all need to understand that they are not inanimate objects.”

“... **The children are relented and not willing which is beyond my hands**”

“**Please do not come to me again asking children. They are your children and you can take them any time. Prepare yourself how to love, show your love and draw them.**”

“... **Kindly do not expect me to convince/force them, since there is no specific role mentioned in the order for me. Still I can make them available at y home for the appointment time. It is a problem between you and your children and you know well why they are not coming to you.** To hide your mistakes, you are spoiling their life from this young age.”

20. A perusal of the above, it is clear that the respondent has just throwing the blame on the children stating that the children themselves are not interested to go and stay with the mother and that he cannot force them and it is beyond his hands and in the Court orders, there is no specific role mentioned directing the respondent to act in the matter of convincing and handing over the children to the applicant. Even, when a high drama took place in the open Court while handing over the custody of the children to the applicant since the children were very much reluctant to go with their mother, the respondent has not taken any initiative either to convince them or atleast to assure them that he also accompanies to them till the residence of the applicant. This would clearly prove the aspect of parental

alienation on the part of the father of the children. The inability to advice and persuade the children, further evident the respondent's inability and incapability to maintain and keep the custody of the children any more.

21. In fact, the respondent even expressed magnanimously to his wife stating that *“they are your children and you can take them any time”* and even in counter, he stated that there is no restriction towards the entry of the applicant and she is always at liberty to come home and spend with them. When the respondent is so kind and generous having known the importance of a mother's love and affection which is essentially required for his children, this Court fails to understand as to what prevented him to make the children aware of the Court orders, convince and take them along with him and visit the applicant's house since there was no restriction from applicant and allow them to spend and enjoy the time with their mother and see that they get love and affection of their mother. But instead of doing so, the respondent just used to wash off his hands, by just dropping the children at the residence of the applicant and when the children make call or resist to join their mother, immediately he used to rush and brings them back and sometimes, even he evades to hand over the children.

22. To turn a child against a parent is to turn a child against himself. Parental alienation is inhuman and it is menace to a child, who direly needs two hands to hold both the mother and father till he/she walks throughout the life or at least till he/she attains majority. In fact, hatred is not an emotion that comes naturally to a child against his/her mother/father unless it is taught by the person whom the children believes. A parent indulging in parental alienation, means, he/she is polluting the tender mind of the innocent child by potraying the mother/father as a villian, which would have a considerable impact on him/her throughout his/her life and he/she develops ill feelings towards the parent and started hating his own father/mother.

23. This Court, on occasions, has witnessed the behaviour of the children in open Court while entrusting the interim custody or visitation rights to one of the parents, not only

expressing sheer protest to join the parent but also questioning the parent as, who is he/she? This is only because of parental alienation. But due to the parental alienation, the child is not in a position to express it openly in front of the alienated parent. In reality, the child would react otherwise when he/she happens to see a family living together happily with children and the child may feel much envy and curse his/her fate, which means the child needs love and affection of both the parents. In the present case also, this Court witnessed high drama when the children were being handed over to the applicant/mother. If the children continue to hate their mother due to parental alienation, it will cause mental and physical disorders including psychological pain, anger and depression, which in the opinion of this Court, would certainly cause harm to the welfare of the children.

24. If the respondent is incapable to teach or persuades the children to love their own mother, then there involves a serious parental alienation which is not good for the welfare of the children. Welfare of the child is paramount consideration, but being with the parent who is not ready to teach and persuade his children to love their own mother, cannot be accepted. It is pertinent to note that the applicant and respondent are just separated from being husband and wife, but they will always be the father and mother for their children. The said relationship of father and mother will not be changed despite the parents re-marry with any other.

25. The respondent/father who possesses the custody of the minor children with him, must understand and feel the same pain and suffering undergoing by the applicant/mother, who all along lost the company of her children. It is not fair on the part of the respondent in not accommodating the children to spend with their mother and allowing the mother to spend with her children despite the orders of this Court granting visitation rights to the applicant/mother.

26. Children have a fundamental right and need for an unearthened and loving relationship with their father and mother and denying the said right of the children, would

amount to child abuse. In the present, the respondent, without justification, has been indulging in such child abuse. For the parent who didn't get the custody, the loss is irreconcilable. Only when there is healthy co-parenting, the children will lead a happier childhood instead of becoming an emotionally broken adults who will in turn become not understanding and unsympathetic citizens.

27. The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured only by money and by physical comfort. Welfare is an all-encompassing word. It includes material welfare; both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living. While material considerations have their place, they are secondary matters, the primary considerations of matters are the stability and the security, the loving and understanding, care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents.

28. In this case, prima facie it appears that the respondent poisons the minors' minds against the mother and acted against the welfare of the minors. Tutoring of the children by the respondent to keep them in his custody will result in nurturing hatred towards their mother, which will certainly affect the welfare of the children.

29. In such view of the matter, for the healthy growth of the minor children, it would be appropriate not to continue their custody with the respondent. If their custody continues with the respondent, certainly, there is very high probability that they will be influenced to such an extent that they will never want to return to their mother, it will cause mental and physical disorders including psychological pain, anger and depression, which would certainly cause harm to the welfare of the child.

30. A parent, in whose custody, the children are staying, it is the prime duty of the said parent, having custody of the children, to teach the children about the importance of the other parent and how to move with the said parent, who is none other than their mother/father

and co-operate with the other parent who visits to see the children. Due to indifferences, separation may be between the wife and husband only, but it does not mean that children should also be separated from their own parents.

31. Marriage may come to an end between the spouses, but not their relationship as father and mother to their children. For every child, father and mother are eternal even though either of parents may re-marry to any other.

32. Therefore, it is incumbent upon a parent under whose custody the childre are staying, to encourage co-perenting and teach the children good about the other parent despite having personal hatred feelings towards him/her and allow the children to move freely with their parent since the quality of the relationship between the co-parents have a strong influence on the mental and emotional well-being of the children. If the parent fails to discharge his/her said obligation, it will be construed that he/she is not capable of retaining the custody of the children as it will have great impact on the welfare of the children since they will suffer the absence of their parent silently by recollecting the memories which they spent with their mother/father.

33. Denying the right of the innocent children to spend with the separated parent by the parent who retains the custody of the children amounts to causing mental cruelty to the children, in which case, there is no healthy environment in which, they would grow.

34. In the present case, as discussed above, the respondent/father has failed in his duty to teach the children about the importance of the mother and not allowed them to get the love and affection of their mother. Further, he has not complied with the directions of this Court and in fact, this Court witnessed high drama when the custody is being handed over to the applicant/mother in open Court and during the correspondence by way of Email, the respondent/father has stated that it is not his responsibility to convince the children to move with their mother as there was no specific order passed by this Court to act in such manner that he should teach and convince the children. This attitude shows how arrogant the

respondent/father is and further, he tutored the children to move with their children indifferently. Therefore, this Court is of the view that the respondent/father is not capable of maintaining the children in a considered manner and if the children are allowed to continue their stay in his custody, certainly, it would be against their interest and welfare and there is every likelihood of the respondent spoiling the minds of the children through out their future, by which, the children will start to hate their mother and it is not a healthy atmosphere for the children to grow in such a conducive manner. . In such view of the matter, this Court is of the view that it is no longer safe to allow the custody of the children with the respondent/father, for the present.

35. At present, the children are residing with their father/respondent in a flat in an apartment where, the grand parents, who are none other than the parents of the applicant/mother are also residing in another flat and whenever, the respondent/father used to go out for his professional assignments, the children used to go and stay with their grand parents, who in turn, are taking care of the children. Such being the position, while handing over the custody of the children to the applicant/mother, this Court feels it appropriate to direct the applicant/mother to keep the custody of the children along with her either by staying with her parents in the same building or at the petitioner's flat at least for a month from the date of taking the custody of the children without disturbing their schooling and other arrangements.

36. A mother of fortune is none other than the applicant herein. The respondent, who is well educated and that too a practicing lawyer, having every knowledge about the Court's orders and the consequences of failure to comply with the same, giving scant regard to the orders of this Court and indulging in parental alienation. The respondent's conduct in disobeying the orders passed by the courts discloses that he has no respect or any regard for the rule of law.

37. In view of the facts as noticed, this Court is of the considered view that the children should not be permitted to stay with their father any more, who indulges in parental alienation, inculcates fear and apprehension in the minds of minors, against his mother and thwarts Court orders with impunity. Therefore, continuing the custody of the children with the respondent, may result in a degree of trauma. However, the daily trauma the child appears to undergo while being tutored against his mother would be far in excess of the trauma likely to be faced while staying with their father, for the present.

38. Before parting with the case, this Court would like to stress and impress upon the persons, who have tied the marital knot that the concept of marriage is not for mere satisfying the carnal pleasure, but it is mainly for the purpose of progeneration, which leads to the extension of the familial chain. The child born out of the said wedlock is the connecting link between the two individuals, who have been united over a sacred oath, taken by both. Any act in contravention of the oath on the touchstone of law is nothing but an act with which the hands of the binder of the link is severed. Custody of the binder, thereafter on the legal principles would render the child, who was brought into this vicious world through the act of the two individuals for their pleasure is made to suffer for no fault of his.

39. Though Courts are mindful of the interest of the child, yet, it to be lamented that the law leaves the child with only one hand, rather than the two with which the child would merrily hold his parents. Law can satisfy the ego, but it can never the satisfy the requirements of the child, as the framers of the law were only conscious of the welfare of the child and not on the mental turmoil that would be faced by a child in such a calamitous situation.

40. Children are the greatest gift to humanity. Mankind has the best hold of itself. The parents themselves live for them. They embody the joy of life in them and in the innocence relieving the fatigue and drudgery in their struggle of daily life. Parents regain peace and happiness in the company of the children. Parents are the best judge on the mental

turmoil that their child faces and when they become the perpetrator of the said holocaust, the 'home' a heavenly abode, turns into a 'house', which is just built with brick and mortar, whereas a 'home' is build with love and affection of all the persons who reside in the said heavenly abode.

41. Division between parents is unfair and confusing and weakens the foundations of the family. Those to whom a child should look for guidance must be united in the guidance they give. Before breaking a familial bond, due to *ego*, a little introspection on the welfare of the child would let the couples to shed the *ego* and one the 'e' is let to 'go', miracles happen and the *house* turns into a *home*, which would be a better place to live.

42. In the present case, the parents were separated only due to misunderstandings that arose between the two, when the applicant/wife sought the respondent/husband to extend his supportive hand to her professional career, while the respondent/husband insisted upon her to be at home and look after the needs of the children and the household chores. This misunderstanding sparked the couple to take divergent views and they started living separately for more than four years, in the process, wasting their time, energy and money in instituting litigations before various fora, ignoring their obligation towards their children, that of co-parenting. There is still time for them to rectify their mistakes by setting aside their personal indifferences, not for themselves, but in the interest of the welfare of their children. Being parents means sacrificing their future for the sake of their children's future. However big a sacrifice that is made by one or both the parents is not enough unless and until that makes the children's lives peaceful and secure.

43. Having given birth to the children, no parent should get frustrated of any issue atleast until they attain majority, even if his/her ambition fails, but on the converse, they should mould and shape their children's future keeping in mind the ambitions their young ones have. Both parents should start to live for the sake of their children by reconciling their differences and resolving the disputes that have arisen between them. They should be mindful of their responsibility towards their children, so as to bring them up as responsible citizens who would be in a position to contribute to the society in the years to come.

44. From birth, children depend upon their parents, whose prime duty is to protect their children's rights at least until their kids grow up and are old enough to make their own way in this world. If one observes Nature around us, we witness how animals, birds and all creatures of God feed their young ones, teach them how to move about, look after them by staying with them and protecting them from predators until they are strong enough to look after themselves.

45. While so, it is very unfortunate that being well educated and civilized like the estranged couple in the case on hand, being parents to their childrens who are God's precious gifts, are giving least importance to the well being of their children and are failing to discharge their parental duty by constantly fighting each other, that too for years together, which would have a considerable impact on the psyche of the children all throughtout their lives.

46. Generally, Courts will pass orders after hearing both sides and on perusal of oral and documentary evidence. In matters relating to custody of children, primarily, the Court will consider the welfare of the children and decide which parent is suitable to look after the child in a better manner by providing them all necessary facilities and comforts. However, what the Court cannot evaluate is to find out whether the child feels happy with one or other parent in whose it's custody is being handed over, while losing the companionship of another parent. Ultimately, the child is the silent sufferer, having lost the love and affection of other parent.

47. In order to know the preference or choice of the child, even when the Court interacts with the child, due to parental alienation at the instance of one parent, the child is not in a position to express on it's own view, except expressing a dislike of the other parent.

48. Therefore, in order to enable the child to get the love and affection of the parent who does not have the custody of the child, this Court has permitted visitation rights and even directed both the parents to move amicably by keeping aside their personal indifferences and create a healthy atmosphere so that the child can enjoy the moments of their lives by spending time with both parents. One such order passed by this Court in O.A. No.633 of 2021 etc. dated 13.07.2022 is extracted as under:

6. Marriage is a sacrosanct and holy union of two individuals and a child is the fruit of marriage. Bringing up a child is a duty for both parents.

7. Separation is a misfortune, not much for spouses, but great for the children born to them, who are the ultimate sufferers undergoing emotional pain and mental trauma silently. During separation, both spouses are not required to treat each other with equal respect or with love, but humanity demands to be nice to the other in front of their children.

8. Every child has a right to access both parents and get the love and affection of both parents. Whatever be the differences between the spouses, the child cannot be denied company of the other spouse.

9. Taking into consideration the concern and eagerness of estranged parents to see his/her child, this Court permits him/her to have access and spend some time with the child. But unfortunately, taking advantage of custody of the child, some spouses, having developed animosity towards the other, giving scant regard to the orders/directions of this Court, used to misbehave and indulge in ill-treating the spouse who visits to see his/her child which leads to quarrelling each other in front of the child, by which, the child gets extremely disappointed rather disturbed. Further, this creates a sensation of panic within the child and he/she feels frightened and helpless. These feelings of vulnerability and insecurity can shape a child's personality and last a lifetime.

10. Further, this Court also came across the instances wherein some parents are even indulging in parental alienation which drives the child to behave indifferently with the visiting parent, which is an inhuman act which deliberately poisoned the minds of the children against the mother/father to whom, they formerly loved and needed.

11. Every child has a right and need for an unthreatened and loving relationship with both the parents. To be denied that right by one parent, without sufficient justification, is itself a form of child abuse. Severe effects of parental alienation on children are self hatred, lack of trust, depression etc., as the children lose the capacity to give and accept love from a parent. Hatred is not an emotion that comes naturally to vast majority of children; it has to be taught. A Parent who would teach a child to hate or fear the other parent represents a grave and persistent danger to the mental and emotional health of that child. Alienated children are no less damaged than other child victims of extreme conflict, however abusive that relationship may be.

12. Therefore, in the interest and welfare of the children, it is the prime duty of both the parents to act and behave friendly before their child so that the child feels secured and enjoys the moments in the company of both parents which develops positive feelings in him and at the same time, parents regain peace and happiness in the company of the children.

13. This Court expects that the spouses would comply with the orders/direction of this Court in the matter of visitation rights granting in favour of the spouses, without any deviation and only due to parental alienation, sometimes, the children are not willing and co-operating to see their mother/father, in which case, it is the obligation of the parents to explain the visitation rights of the abandoned parent and convince the children to move and spend with their mother/father. In the event there is failure on the part of the spouse who possesses the custody of the child, he/she will be held responsible for non-compliance of the order and ultimately, it would be considered that he/she is incapable of maintaining the child in his/her custody.

14. The spouse shall treat other spouse, though not as wife/husband due personal indifferences, but atleast treat him/her as a guest by paying more attention than wife/husband since in our customs and practice, a guest is treated as "Athidi Devo Bhava (Guest is God)" and show kindness and empathy towards the guest who is none other than the parent of the child and respect him/her in front of the child."

49. Children have two hands to hold both the mother and father till they walk throughout the life at least till they attain majority. This Court hopes and trusts that both the applicant- mother and respondent – father, being highly educated, cultured with all modern outlook and well off, would maintain cordial relations and conduct themselves decently, courteously and extend full cooperation for the well being of minor children and take earnest efforts to join together by burying their ego and personal indifferences and start to live together along with their children and turn the house into a beautiful home if both of them want to see the real happiness of their children and for their bright future.

50. In view of the above discussion, this Court passes the following order/directions,

i) The respondent/father is directed hand over interim custody of the minor children, viz., Ajitesh K and Akilesh K to the applicant/mother within a period of one week from the date of this order. This interim custody shall continue till the disposal of the main O.P.

ii) In case the respondent fails to hand over the custody of the minor children to the applicant/mother within the time stipulated by this Court, the applicant/mother is at liberty to approach the concerned Asst.Commissioner of Police, D1 Police Station, Triplicane and seek necessary assistance and in such case, the Asst.Commissioner of Police shall provide assistance to take the custody of the children be handed over to the applicant/mother from the respondent/father.

iii) Taking note of the fact that presently, the children are residing with their father/respondent in a flat in an apartment at Triplicane at Flat No.S.1, Second Floor, No.172/50, Bells Road, Chepauk, Triplicane, Chennai – 600 005, where, maternal grand parents of the children, who are none other than the parents of the applicannt/mother are also residing in another flat and whenever, the respondent/father used to go out for his professional assignments, the children used to go and stay with their grand parents, who in turn, are taking care of the children, while handing over the interim custody of the children to the applicant/mother, this Courts directs the applicant/mother to keep the custody of the children along with her by staying with her parents in the same building or at her flat atleast for one month from the date of taking the custody of the children and thereafter, she can stay in a separate flat along with her children without disturbing their schooling and other arrangements.

iv) The respondent/father is at libery to approach this Court, seeking for visitation rights after two moths from the date of this order.

v) The School authorities, where the petitioner's children are studying, are directed to permit the applicant/mother of the children to pick up and drop the children and to attend all other requirements of the children in the School.

51. Accordingly, these applications are disposed of on the above terms. No costs.

Suk

16.09.2022

KRISHNAN RAMASAMY, J.

suk

A.No.2011 of 2021 in O.P.No.443 of 2021

16.09.2022