

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **15.11.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2932 of 2015 and
M.P.No.1 of 2015

Sabitha

...Petitioner

versus

K.Nagaraj

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order of the learned Subordinate Judge, Tiruppur dated 29.04.2015 in I.A.No.95 of 2013 in O.P.No.309 of 2011.

For Petitioner : Mr.E.D.Sethupathi

For Respondent : Mr.A.V.Raja

ORDER

The respondent filed a petition in HMOP No.309 of 2011, praying for a decree of divorce on the ground of cruelty and desertion. The petition was opposed by the petitioner by filing counter affidavit.

2. The respondent filed an application in I.A.No.95 of 2013, directing the child to undergo DNA Test. The application was allowed by the Trial Court taking into account the no objection given by the

counsel for the petitioner. The order is under challenge in this Civil Revision Petition.

3. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

4. The order passed by Trial Court indicates that the counsel filed a counter affidavit on behalf of the petitioner and submitted that the petitioner has no objection to send the child for DNA Test.

5. The Trial Court placed reliance on the counter affidavit filed by the counsel. The counsel was expected to appear and plead on behalf of the petitioner. The counsel, in a matter of this nature, was not expected to file a counter on behalf of the party. This is more so on account of the fact that without the permission of the petitioner, the counsel filed the counter affidavit, wherein, it was indicated that the petitioner has no objection to allow the application in I.A.No.95 of 2013. I am therefore of the view that the Trial Court was not correct in allowing the application.

6. In the result, the order dated 29 April 2015 is set aside. The application in I.A.No.95 of 2013 is restored to file. The petitioner is given four weeks' time from today to file counter affidavit in I.A.No.95 of 2013.

7. The learned Subordinate Judge, Tiruppur is directed to decide the application in I.A.No.95 of 2013 afresh on merits and as per law.

8. The Civil Revision Petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

15.11.2016

Index:Yes/No
svki

To

The Subordinate Court, Tiruppur

K.K.SASIDHARAN, J.

(svki)

C.R.P.(P.D.) No.2932 of 2015

15.11.2016