

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.317 of 2016

and

C.M.P.No.1715 of 2016

Suchit K.Nair

... Petitioner

vs.

Uma Priyadarshini

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of the Subordinate Judge, Poonamallee dated 27.10.2015 made in I.A.No.233 of 2015 in I.A.No.72 of 2015 in O.P.No.368 of 2014.

For Petitioner : Ms.K.Sumathi

ORDER

The learned trial judge passed an order granting visitation rights to the petitioner herein to see the child on the second and fourth Sundays of every month. Complaining that the order has been violated by the respondent, the petitioner herein filed a petition in I.A.No.233/2015 for taking action against the respondent for the

violation of the order granting interim visitation rights to the petitioner herein. However, the petitioner seems to have quoted Section 12 of the Contempt of Courts Act, 1971, as one of the provisions under which he prayed for punishment of the respondent for violation of the order of the trial court.

2. Under the provisions of the Contempt of Courts Act, 1971, the Subordinate Courts do not have the power to punish any one for contempt. There is a provision under Order 39 Rule 2A of the Civil Procedure Code, which can be resorted to, besides seeking execution of the interim orders. The learned trial Judge seems to have been misled by the incorporation of Section 12 of the Contempt of Courts Act, 1971, as one of the provisions under which the said petition came to be filed.

3. The learned trial Judge did not advert to the question whether the trial court had jurisdiction to entertain the application under the provisions of the Civil Procedure Code or any provision other than the provisions under the Contempt of Courts Act, 1971, and the same led to the dismissal of the petition in limini as not maintainable. Such an order cannot be sustained and this court is of the view that it is a case in which the order can be set aside even without notice to the other side.

4. Accordingly, the civil revision petition is allowed. The order dated 27.10.2015 made in I.A.No.233 of 2015 in I.A.No.72 of 2015 in O.P.No.368 of 2014 is set aside. I.A.No.233 of 2015 is remitted back to the trial court to pass orders, after giving an opportunity to the petitioner to delete the unnecessary/inapplicable provision and to include the appropriate provisions of law and then deal with the matter. There shall be no order as to cost in the civil revision petition. Consequently, the connected miscellaneous petition is closed.

09.02.2016

Index : Yes/No
Internet : Yes/No
asr

To

1.The Subordinate Judge, Poonamallee

P.R.SHIVAKUMAR, J.

asr/-

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