

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.196 of 2017
& C.M.P. 855 of 2017

Thara Sundar

.. Petitioner

Vs.

Samuel Sudhan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 16.12.2016 in I.A.No.137 of 2016 in O.S.No.22 of 2015 on the file of Family Court, Pondicherry and consequently dismiss the I.A.No.137 of 2016 in O.S.No.22 of 2015.

For Petitioner : Mr.Ravi Paul, Senior Counsel for
Mr.S.D.Venkateshwaran

For Respondent : Mr.J.Saravanavel

ORDER

This Civil Revision Petition has been filed to set aside the order dated 16.12.2016 in I.A.No.137 of 2016 in O.S.No.22 of 2015 on the file

of Family Court, Pondicherry and consequently dismiss the I.A.No.137 of 2016 in O.S.No.22 of 2015.

2. The petitioner, who is the wife has filed O.S.No.22 of 2015 on the file of Family Court, Puducherry against the respondent for dissolution of marriage solemnized between the petitioner and the respondent on 04.02.2006 at AG Church, Saidapet, Chennai. In the wedlock a male child, namely, Ebi John was born on 18.10.2007. Due to the misunderstanding, both the petitioner and the respondent are living separately. The respondent filed I.A.No.137 of 2016 praying to have custody of his son, Ebi John on every sunday from 9.00 a.m. to 6.30 p.m., and on festival occasions and on his son's birthdays for the purpose of visiting him.

3. According to the respondent, as a father, he has love and affection for his son and the petitioner is preventing the respondent from seeing his son.

4. The petitioner filed counter and submitted that the respondent has no love and affection for their son. He never took any attempt to

visit the son from 2014, when she left the matrimonial home. Only when the petitioner filed O.S.No.22 of 2015 for dissolution of marriage, the respondent filed the present I.A., as a counter blast for the said suit. The respondent is in the habit of using abusive words in the presence of minor child, which affects his mind. The intention of the respondent is to poison the mind of the child against the petitioner.

5. Before the learned Judge, no oral and documentary evidence were let in by both the parties.

6. The learned Judge considering the materials on record and taking into consideration that the respondent is the father of minor child, permitted the respondent to have the custody of the minor child on every sundays from 9.00 a.m. to 5.00 p.m., and directed the petitioner to handover the minor child in a common place at Bharathi Park, opposite to Puducherry Assembly, Puducherry until further orders and permitted the respondent to take the child at 9.00a.m., at the above place without fail and allowed the respondent to have the custody of the child up to 5.00 p.m., in that park and directed the petitioner not to prevent the

respondent from affording money, gifts, eatable, clothes etc., to his minor child during the visitation hours.

7. Against the order in I.A.No.137 of 2016 in O.S.No.22 of 2015 on the file of Family Court, Pondicherry, the present civil revision petition is filed.

8. The learned senior counsel appearing for the petitioner contended that the learned Judge has not applied his mind while deciding the application. The learned Judge has failed to see that the parties are Christians and Hindu marriage Act is not applicable to the parties of this case. The paramount interest of minor is only consideration and it will not be in the best interest of minor, if custody of minor is given to the respondent on every Sundays from 9.00 a.m. to 5.00 p.m.

9. Per contra, the learned counsel appearing for the respondent submitted that the respondent is father and natural guardian of minor and he has love and affection for the minor child. The petitioner prevented the respondent from seeing his minor son. The learned

Judge considered all the materials and has rightly permitted visitation right to the respondent on every Sundays, even though the respondent has also prayed for visitation right during festival days as well as on birthday of minor child.

10. Heard the learned senior counsel appearing for the petitioner, learned counsel appearing for the respondent and perused the materials available on record.

11. It is admitted that the minor child is the son of the respondent and the petitioner and according to respondent, the petitioner prevented him from seeing the child. According to the petitioner while minor is in the custody of the petitioner, the respondent did not make any attempt to see his child from 2014 and moreover the parties are living separately. These contentions have no merits. The respondent, being father of minor son has every right of seeing the child and for visitation right, pending disposal of the above original suit, filed by the petitioner. The objection of the petitioner is that the respondent is using abusive language in the presence of minor son, which will affect the minor. The respondent has not prayed for permanent custody of the minor. He prayed only visitation

rights and learned Judge has granted visitation rights for one day, in a week, i.e., Sunday from 9.00 a.m. to 5.00 p.m., to the respondent.

12. Further, the contention of the learned senior counsel for the petitioner is that the learned Judge has granted visitation rights considering the provisions of Hindu Marriage Act, which is not applicable to the parties, who are Christians. Therefore, the impugned order is vitiated for non application of mind is untenable. A reading of the impugned order shows that the leaned Judge has considered the right of the respondent to have visitation rights and also objection of the petitioner and passed impugned order by giving valid reasons. Quoting wrong provision of law will not vitiate the entire order.

13. Now, both the learned senior counsel for the petitioner and the learned counsel for the respondent submitted that both the petitioner and the respondent have agreed that the respondent can have custody of minor child from 10.00 to 1.00 P.M. and taking him out for outing and shopping. Accordingly, the order made in I.A.No.137 of 2016 is modified only with regard to the interim custody of minor child to the respondent i.e., once in a week, on sundays from 09.00 a.m. to 5.00

p.m. to the effect that once in a week, on sundays from 10.00 a.m. to 1.00 P.M. and take the minor child for outing and shopping during that time.

In the result, this Civil Revision Petition is disposed of with the above modification. Consequently, connected Miscellaneous Petition is closed. No costs.

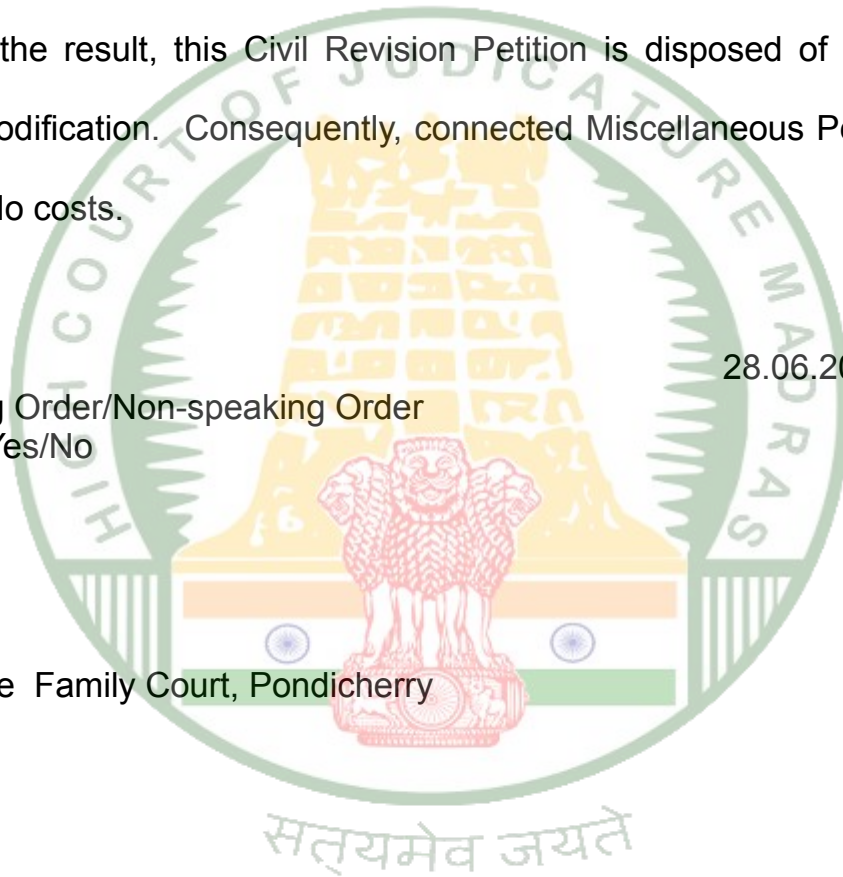
28.06.2017

Speaking Order/Non-speaking Order

Index :Yes/No
ssd

To

The Family Court, Pondicherry



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V.M.VELUMANI, J.

ssd



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