

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3943 of 2013
& M.P.No.1 of 2013

S.Ganeshamoorthy

.. Petitioner

Vs.

G.Komala

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 24.09.2013 made in I.A.No.52 of 2013 in H.M.O.P.No.34 of 2013 on the file of the Subordinate Court, Vaniyambadi.

For Petitioner : Mr.J.James
For Respondent : Mr.K.Selvaraj

ORDER

The Civil Revision Petition is filed against the order dated 24.09.2013 made in I.A.No.52 of 2013 in H.M.O.P.No.34 of 2013 on the file of the Subordinate Court, Vaniyambadi.

2. The petitioner is husband and respondent is wife. The petitioner filed H.M.O.P.No.5 of 2013 for divorce, on the file of the Family Court, Coimbatore. Respondent filed H.M.O.P.No.34 of 2013 for restitution of conjugal rights on the file of the Subordinate Court, Vaniyambadi. Respondent filed I.A.No.52 of 2013 under Section 26 of the Hindu Marriage Act, for custody of her minor son namely, Mohanraj.

3. According to the respondent, minor son was born on 27.12.2010. The petitioner is working in a software company and he is not looking after the minor son properly. His mother is aged person and the respondent came to know that her minor son is being looked after by the neighbours of the petitioner. As a mother, she is entitled to custody of her minor son.

4. Petitioner filed counter affidavit and submitted that the respondent is mentally ill person and she is not having any income. Her parents are not employed. The respondent was ill-treating the minor son and she went to the extent of trying to strangle the neck of minor son. The petitioner has given complaint to the police in this regard. The petitioner has sufficient means to look after the minor son. It will be harmful to the minor son, if custody is handed over to the respondent and prayed for dismissal of application.

5. Before the learned Judge, both the petitioner and respondent did not let in any oral and documentary evidence.

6. The learned Judge considering the materials on record, averments made in the affidavit, counter affidavit and failure on the part of the petitioner to appear before the Court with minor child in spite of specific order issued by the Court and petitioner failed to prove the mental illness of the respondent by filing documents, allowed the application and directed the petitioner to hand over the minor son to the respondent.

7. Against the said order dated 24.09.2013 made in I.A.No.52 of 2013, the present Civil Revision Petition is filed by the petitioner/husband.

8. On 04.12.2017, both the petitioner and respondent along with their minor son appeared before this Court.

9. The learned counsel for the petitioner reiterated the averments made in the counter affidavit and contentions raised in the grounds of revision. The learned counsel for the respondent reiterated the averments made in the affidavit filed in support of the application.

10. Heard the learned counsel for the petitioner as well as the respondent and perused the materials available on record.

11. The contention of the learned counsel for the petitioner for denying the custody of the minor son to the respondent is that the respondent is mentally ill person and she ill-treated the minor son from the beginning and went to the extent of trying to strangulate his neck. She attempted to commit suicide in the house of the petitioner. The respondent and her parents are not having sufficient means to maintain the minor son and the petitioner has sufficient means to maintain the minor son.

12. The above said contentions are not sufficient to deny the custody of the minor son to the respondent, who is the mother of the minor son. Minor child requires care, love and affection of both the parents, especially, mother.

13. As per Section 6(a) of the Hindu Minority and Guardianship Act, 1956, the custody of the minor, who has not completed the age of five years, shall be with the mother. When the respondent filed application for custody of minor, the minor was only 2 ½ years old. As per Section 6(a) of the Hindu Minority and Guardianship Act, the mother is entitled to have the custody of minor in view of the tender age of the minor. While considering the custody or any guardianship of minor, the paramount interest of

minor is only criteria. The financial capacity of the father or mother will not be the sole ground for giving custody of the minor to the mother or appointing her as guardian.

14. In the present case, the petitioner has contended that the respondent is mentally ill person. The petitioner has not produced any document to substantiate this contention. Further, in spite of specific direction issued to the petitioner to appear before the Court with minor son, so that the respondent can see the minor son, the petitioner failed to appear before the Court with minor son. The learned Judge has recorded that the respondent was present in the Court for each and every hearing. The respondent also present before this Court on 04.12.2017.

15. The learned Judge considering these aspects as well as Section 6(a) of the Hindu Minority and Guardianship Act, 1956, held that custody of the minor shall be given to the respondent, who is mother of the minor.

16. As per Section 26 of the Hindu marriage Act, the Court has power to pass order in respect of the custody of minor, maintenance and education of minor children in the decree or in interim orders. The Court has also power to revoke or suspend such orders from time to time.

17. The learned Judge has exercised his power properly under Section 26 of the Hindu Marriage Act and directed the custody of the minor to be with the mother. In the circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned Judge dated 24.09.2013.

18. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

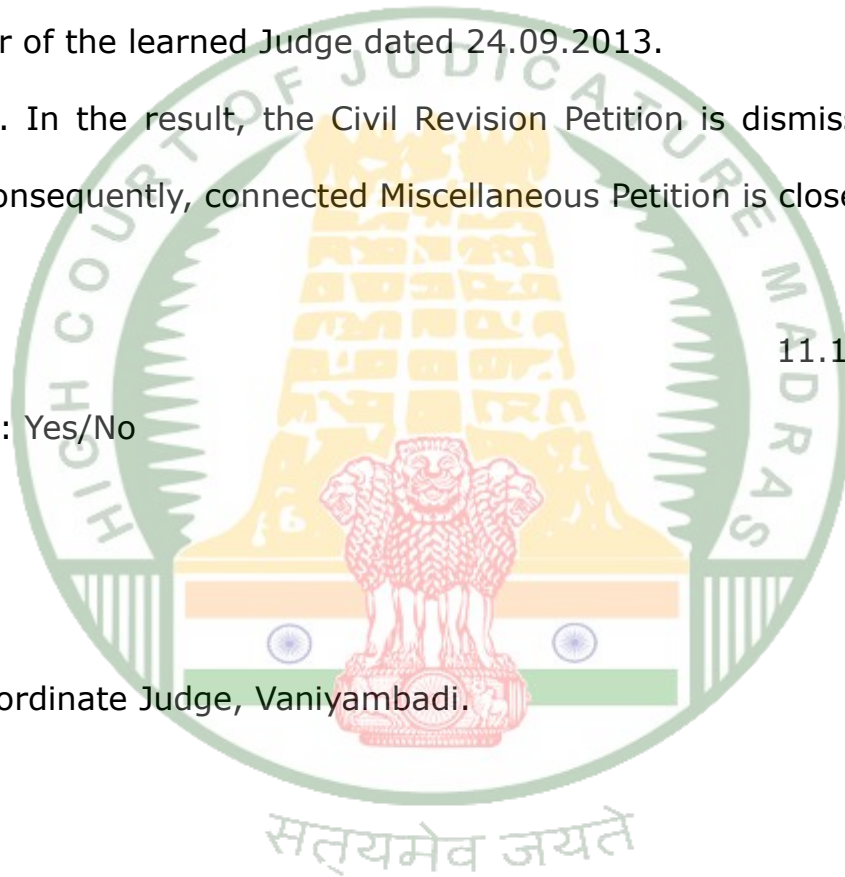
11.12.2017

Index : Yes/No

kj

To

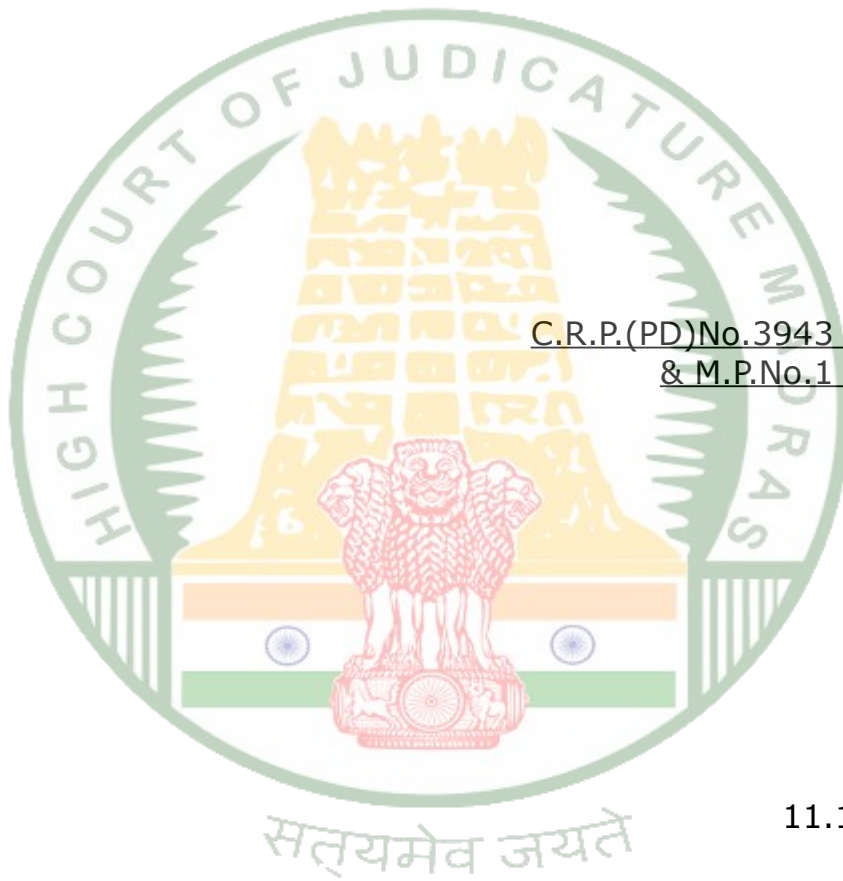
The Subordinate Judge, Vaniyambadi.



WEB COPY

V.M.VELUMANI, J.

kj



C.R.P.(PD)No.3943 of 2013
& M.P.No.1 of 2013

11.12.2017

WEB COPY