



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.316 of 2017 (PD)

and

C.M.P(MD)No.1580 of 2017

Annoncia

....Petitioner/Respondent

Vs.

Jayasankar

....Respondent/Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to call for the records relating to the impugned fair and decreetal order, dated 04.01.2017 and made in I.A.No.44 of 2016 in G.O.P.No.30 of 2016, on the file of Principal District Judge, Pudukkottai, set aside the same and allow this Civil Revision Petition.

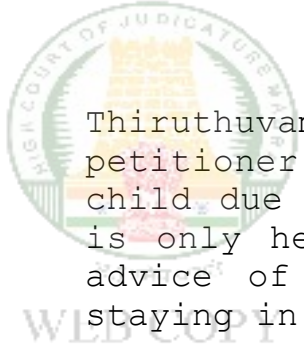
For Petitioner : Mr.S.Srinivasa Raghavan
For Caveator/
Respondent : Mr.M.Ponniah

ORDER

The petitioner has filed this Civil Revision Petition to set aside the impugned fair and decreetal order, dated 04.01.2017 and made in I.A.No.44 of 2016 in G.O.P.No.30 of 2016, passed by the Principal District Judge, Pudukkottai.

2.The petitioner is the wife and the respondent is the husband. The respondent filed G.O.P.No.30 of 2016 before the Principal District Court, Pudukkottai for custody of minor child during Saturday and Sunday and during festival holidays. According to the respondent, due to the misunderstanding between the petitioner and the respondent, the petitioner left the matrimonial home without any valid reason and took minor daughter along with her. The petitioner is not permitted the respondent to visit the child. Pending O.P., the respondent filed I.A.No.44 of 2016 for visitation right of minor child on every Sunday between 8.00 a.m., to 5.00 p.m.,

3.The petitioner opposed the said application on the ground <https://hds.ces.gov.in/dsemit/> has no love and affection for the minor child. The respondent has stated that the petitioner is not allowing the respondent to visit the minor child on the advice of one



Thiruthuvam. The petitioner denied the allegation that the petitioner is refusing to allow the respondent to visit the minor child due to the ill-advice of Thiruthuvam. The said Thiruthuvam is only her paternal uncle. The petitioner is not acting on the advice of Thiruthuvam. The petitioner and her minor child are staying in a hostel and prayed for dismissal of the application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and considering the fact that the respondent is taking steps for the past three years for getting visiting right of his minor child, ordering visitation right to the respondent. The learned Judge directed the petitioner to hand over the child to the respondent at 10.00 a.m., on every Sunday and the respondent is directed to hand over the minor back to the petitioner at 5.50 p.m.

5.Against the said order of ordering visitation right to the respondent made in I.A.No.44 of 2016, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the learned Judge without ascertaining the wish of the minor, has ordered visitation right to the respondent and failed to see as per the Rules of Hostel a minor child can be taken out of the hostel on every Sunday only from 10.00 a.m., to 1.00 p.m., and both the parents might accompany the minor child. The learned Judge failed to see that the petitioner is living in a place 50 kms away from the hostel where the minor child is staying. The learned Judge has not specified the place from which minor child has to be handed over to the respondent and the place in which, the respondent must hand over the child back to the petitioner.

7.The learned counsel appearing for the caveator/respondent submitted that the petitioner is preventing the respondent from visiting minor child. The respondent has all love and affection to the minor child. As a father he is entitled to have visitation right of his minor child. The learned Judge considered all these aspect and has given visitation right.

8.I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the caveator/respondent and also perused all the materials available on record.

9.From the materials it is seen that there is no dispute that the petitioner and the respondent are husband and wife and minor daughter born in the wedlock. Due to some misunderstanding, they are living separately. This will not be a reason for depriving <https://hccservices.courts.gov.in/hccservices> the love of her father. A child must have both love and affection of father and mother. In the counter affidavit, the petitioner has stated that both petitioner and her child are



living together in a hostel. Now the learned counsel for the petitioner has made a contrary contention that the petitioner is living 50 kms away from the hostel where the minor child is staying. The fact that the petitioner is residing 50 kms away from the hostel cannot be the reason for setting aside the order of the learned Judge. The learned counsel for the petitioner stated that as per Rules of Hostel minor can be taken out from the hostel only on Sunday between 10.00 a.m., and 1.00 p.m. Considering these facts, the order of the learned Judge is modified directing the Managing Trustee, Mahalir Vidiyal Trust, Girls Hostel to hand over the minor child at 10.00 a.m., at hostel to the respondent and the respondent is directed to hand over back the child to the Managing Trustee, Mahalir Vidiyal Trust, Girls Hostel at 12.50 p.m., in the hostel premises. The respondent shall produce a copy of this order to the Managing Trustee, Mahalir Vidiyal Trust, Girls Hostel for complying this order.

10. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To
The Principal District Judge,
Pudukkottai

+1cc to Mr.M.Ponniah Advocate Sr.No.9321

+1cc to Mr.S.Srinivasa Raghavan, Advocate SR.No. 9778

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21.02.2017