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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.04.2017
CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
C.R.P (MD) (PD) No. 620 of 2017
and
C.M.P (MD) No. 2775 of 2017

Vivek

.. Petitioner/ Petitioner/ Respondent

Vs.

Banu Lakshmi

.. Respondent/ Respondent/Petitioner

Prayer : Civil Revision Petition is filed Under Article 227 of the Constitution of India to set aside the fair and executable order dated 22.11.2016 passed in the application in I.A.No.312 of 2016 in H.M.O.P.No.992 of 2015 on the file of the Family Court, Madurai.

For Petitioner :: Mr. T.R.Jeyapalam

For Respondent :: Ms. A.Hafiza

O R D E R

This Revision Petition is filed against the order of the Family Court, Madurai dismissing the interlocutory application in I.A. No.312 of 2016 filed by the father, seeking visitation right of his daughter. The reason stated by the Trial Court for denying the request of the father's visitation right is as under,

"It is learnt that the baby was born on 17.01.2013 and the age of the baby is nearing to complete 4 years. It is the contention of the petitioner that the respondent left the matrimonial home on 05.09.2015. Per contra the respondent would contend that she was sent on 05.09.2015 by the petitioner and his parents. The child would have been two and a half years on that day when the respondent left the matrimonial home either on her own accord or on the compulsion of the petitioner. There are chances for the child to have apprehension on seeing the strangers which is called stranger anxiety. It may not be ruled out that the petitioner/husband will be an exemption to the stranger anxiety to the child. The child who can identify the father can be ordered for visitation rights in favour of the father. Further order to bring the baby to public places or to the court in order to comply the order of visitation rights may be a hindrance to the normal life of the baby. In the



requirements of visitation rights or custody of the child, the court has to give paramount consideration to the welfare of the child. Since the baby is only about to complete 4 years, even then the petitioner wants to express his love and affection with the child, this is not the proper stage to order or granting visitation rights. Hence this court is not inclined to order either visitation rights or custody of the child for a particular day in favour of the petitioner".

2.This court is at a loss to understand as to what will be the proper stage to order or grant visitation right to the father, since the Trial Court has expressed its opinion that 4 years old baby cannot be allowed to be seen by her father and is not the proper stage. When this question was posed to the counsel for the respondent, the learned counsel for the respondent submitted that the father has never shown any interest or love towards the child. Only after filing petition for divorce, he has filed his application for visitation right and the Trial Court has rightly dismissed it. By virtue of said order, the revision petitioner seeks to stay all further proceedings pursuant to H.M.O.P. No. 992 of 2015, only indicates that the revision petitioner is not interested in pursuing the divorce proceedings, but only to have the visitation rights.

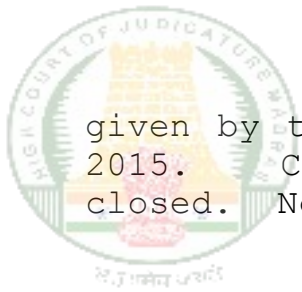
3.This Court finds the reason stated by the Trial Court to reject the submission made by the petitioner is erroneous. No doubt, a matrimonial dispute between the petitioner and the respondent has led to separation from 05.09.2015. The cause for separation can be decided by the family court, after due trial. Now, a child who was born on 17.01.2013 deprived of her father's care, love and affection because of the fight between her parents. I see no justification in depriving the father and the child seeing each other. Facilitating such visitation by order of the Court is essential for the well being of the child.

4.The reason stated by the Trial Court for dismissing the application is far from merit. Hence, the Order of the Trial Court is liable to set aside. And accordingly the order is set aside.

5. It is submitted by the learned counsel for the revision petitioner, that the petitioner is living in Chennai working in ITC Hotels and the respondent is living with her brother at Madurai. Hence, the respondent is directed to accommodate the visitation of the petitioner on the first Sunday of every month. The mother shall bring the child to "Gandhi Museum, Madurai" by 10.00a.m. and from there the parents can work out to be together with the child for the day, till 7.30p.m.

<https://hcservices.ecourts.gov.in/hcservices/>

6.With these above directions, the revision petition is disposed of. The family Court shall also monitor the direction



given by this court till the disposal of the H.M.O.P. No. 922 of 2015. Consequently, connected C.M.P.(MD)No.2775 of 2017 is closed. No costs.

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Sd/-
Assistant Registrar (CS-II)

Sub Assistant Registrar

To
The Judge,
The Family Court,
Madurai.
+1 CC to MR.T.R.JEYAPALAN, Advocate, SR No. 51321
GK/MM
PSM/KP/SAR4/28.04.2017/3P/3C

ORDER MADE IN

C.R.P (MD) (PD) No.620 of 2017
and
C.M.P (MD) No.2775 of 2017
10.04.2017