

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2018

CORAM :

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

CRP.Nos.699 and 700 of 2018
and CMP.Nos.3673 & 3674 of 2018

Shringar Mascarenhas

.. petitioner/
2nd Petitioner/Petitioner
in both the CRPs

v.

Gayatri Muthu Vaidyanathan

.. respondent/
4th Petitioner/Respondent
in both the CRPs

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 31.08.2017 made in IA.Nos.1208 and 1209 of 2014 in OP.No.4379 of 2010 on the file of the V Additional Family Court, Chennai.

For petitioner : Mr.A.Gowthaman
For Respondent : Mr.S.S.Rajesh

O R D E R

Both the revision petitioner and the respondent filed OP.No.4379 of 2010 for dissolution of marriage and for divorce by mutual consent under Section 28 of the Special Marriage Act on the file of the I Additional Family Court, Chennai. The petition was allowed and consent decree for divorce was passed on 09.08.2011. In the said consent decree, visitation right of his daughter was granted to the petitioner during weekends, family gatherings, functions and other important occasions. The child was under care and custody of the respondent/wife.

2. Subsequently, the revision petitioner filed an application in IA.No.1208 of 2014 for contempt committed by the respondent/wife under Section 15 of the Contempt of Court Act and IA.No.1209 of 2014 to modify the order dated 09.08.2011 made in OP.No.4379 of 2010 with regard to the custody of minor Tania Mascarenhas and direct the respondent to hand over the minor to the petitioner. The trial Court after hearing both sides, dismissed both the applications filed by the petitioner. Feeling aggrieved against the orders passed by the V Additional

Family Court, Chennai, the petitioner is before this Court with the present revision petitions.

3. The learned counsel for the petitioner in both the revisions submitted that one of the conditions imposed in the consent decree is that the custody of the child with the respondent, but the visitation right has been given to the revision petitioner. If the respondent/wife proceeds to abroad, the petitioner has to give written consent for their daughter to travel with the respondent/wife for the length of assignment and the respondent has to ensure that the education of the child will not be affected. In the year 2014, the respondent took the minor child with her to Singapore without giving any intimation or getting permission from the petitioner. Hence, the petitioner lost his visitation right and the respondent/wife disobeyed the order of the Court. The petitioner filed another petition to modify the order dated 09.08.2011 made in OP.No.4379 of 2010. The trial Court failed to consider the fact that the father has right to visit the child and also without his permission the child should not be taken to foreign countries, thus the orders of the trial Court warrants interference.

4. The learned counsel for the respondent submits that trial Court observed that though the petitioner has stated that his wife took his minor daughter to Singapore without informing him. The petitioner himself admitted that the respondent/wife informed that she is going to Singapore along with the child. Further, PW1 deposed that his wife allowed him to see his minor child and created Skype ID for his daughter for video chat, it shows that the petitioner is using the visitation rights. The welfare and future of the minor child has to be looked into, now the minor child is living abroad in good position. The respondent has not committed any contempt and she has not violated any of the conditions mentioned in the consent decree. Considering the facts and circumstances of the case, the trial Court rightly dismissed the applications filed by the petitioner and the orders of the trial Court requires no interference.

5. Heard the rival submissions made on both sides and perused the available records.

6. It is not in dispute that the petitioner and respondent filed OP for consent divorce and obtained a consent decree. On a perusal of the order it reveals that the custody right has been given to the respondent and visitation right has been given to the petitioner. Now the main grievance of the revision petitioner is that before leaving abroad with the child, the respondent has to obtain written consent from the petitioner. Whereas, the respondent was posted at Singapore, she took the child with her without obtaining any permission from the

petitioner before taking the child to Singapore, knowing fully well she was staying at Singapore for quite long period. Due to the act of the respondent in taking the child to Singapore for long period will affect the visitation rights given to the petitioner in the consent decree for divorce.

7. The trial Court dismissed the applications, considering the evidence given by the revision petitioner in the applications. The petitioner was examined as PW1 and Exs.P1 to P13 were marked on the side of the petitioner and Exs.R1 to R3 were marked on the side of the respondent. The trial Court rightly pointed out that the revision petitioner admitted that the respondent is going to take the child to the Singapore along with her. Since, the child being a female child, the custody of the child is given to the respondent, in the consent decree also it is clearly stated that the respondent can take the child to abroad by getting written consent from the petitioner. According to the respondent, once the petitioner visited Singapore, during his visit the Singapore police took cognizance of his unruly behaviour and threatening attitude and warned the petitioner, the Indian Embassy intervened and advised the petitioner not to intimidate the child and the respondent. It is no doubt, the parties got mutual consent divorce, one of the conditions is that the respondent while going to abroad she can take the child with her. Certainly, the visitation right will be affected, the petitioner being the father of the child, if he wants to see the child, he can go to the place where the child is residing with the respondent. The petitioner in his evidence clearly stated that the respondent/wife informed that she is going to Singapore along with the child, now he cannot take a different stand that no written consent was obtained from him by the respondent for taking the child to Singapore.

8. Even as per the consent decree, being a female child, the custody of the child remains with the respondent/mother. The petitioner being a father of the child can go to the place and visit the child where she resides. Therefore, there is no disobedience of the decree on the part of the respondent in taking the child to the Singapore along with her. The trial Court rightly discussed the oral and documentary evidences and given valid reasons for dismissing the petitions filed by the petitioner.

9. The custody of the child was given to the respondent, there is no impediment to the petitioner to go to Singapore for visiting his daughter. In consent decree also it is mentioned during the entire length of assignment the respondent can take the child with her, the petitioner has also agreed to give his written consent. In the cross examination also PW1/petitioner deposed that his wife allowed to see the minor child by creating

a Skype ID for his daughter for video chat, which shows that the petitioner is chatting with his daughter.

10. The learned counsel for the petitioner vehemently contended that by creating Skype ID for video chat is not visitation right, the visitation should be in physical and not through the video, taking advantage of the technological developments the visitation right can be exercised through Skype ID also, if the child is in the foreign countries. If at all, the petitioner is not satisfied and if he wants to exercise physical visitation of his daughter, he can very well go to Singapore and visit the child. There is no necessity arises to modify the consent decree for divorce. Furthermore, the mutual consent decree cannot be modified unilaterally. Now the respondent is at Singapore due to her avocation and age of the minor child is more than 10 years at this age, in the interest and welfare of the minor child custody of the female child should be with the mother until any material to show that the mother is acting against the interest and welfare of the minor child. Admittedly, in this case there is no allegation against the respondent, she is acting against the interest and welfare of the child and no materials has been placed before the Family Court in that aspects. Under the said circumstances, this Court finds there is no illegality or infirmity in the order passed by the Family Court and the orders passed by the Family Court does not warrant any interference and finds no merits in the revisions filed by the petitioner.

11. In the result, the both the civil revision petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The V Additional Family Court, Chennai.

Copy To

The Section Officer, VR Section,
High Court, Madras (2 Copies)

+1cc to Mr.B.Nambi Selvan, Advocate, S.R.No.45206

+2cc to Mr.S.S.Rajesh, Advocate, S.R.No.45212 (06.08.2018)

CRP.Nos.699 and 700 of 2018

ssv(co)

cs/23/07/18