



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.01.2018
(Reserved on 11.12.2017)

WEB COPY

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1403 of 2017 and
CMP(MD)No.7033 of 2017

1.Jawahari Anwar Ali Khan
2.Anwar Ali Khan : Petitioners/Respondents/
Petitioners 1&2

vs.

1.Abubakar Sithick
2.Shaheera Mehaboob : Respondents/Petitioners/Respondents

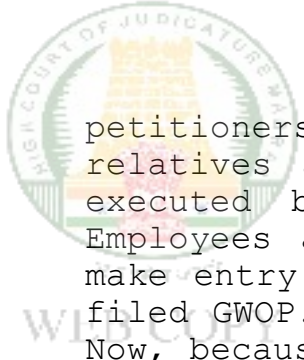
Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 31.01.2017 passed in I.A.No.98 of 2012 in GWOP.No.2 of 2003 on the file of the learned Principal District Judge, Madurai.

For Petitioners : Mr.R.Gandhi
For R1 : Mr.M.Kannan
For R2 : Mr.G.Balaji

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 31.01.2017 passed in I.A.No.98 of 2012 in GWOP.No.2 of 2003 on the file of the learned Principal District Judge, Madurai, allowing the condone delay petition filed by the respondents to condone the inordinate and unexplained delay of 3024 days to set aside the ex parte order passed in G.W.O.P.No.2 of 2003 appointing the petitioners as joint guardians of the minor child Faheema Tahaseen.

2.The petitioners are husband and wife and the respondents are also husband and wife. The second respondent is the sister of first petitioner. The petitioners have no issues. Two female child and one male child were born to the respondents on 06.07.2001, 15.07.2002 and 25.02.2005 respectively. Thereafter, when the second respondent became pregnant, the respondents decided to abort it. The petitioners approached the respondents and undertook to take the child Faheema Tahaseen and the respondents also consented for it. The petitioners gave Rs.5,00,000/- and the respondents received it and the said female child was given in adoption in favour of the



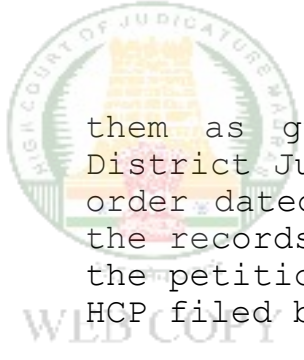
petitioners on 10.09.2002, in the presence of the both side relatives and accordingly, on 30.09.2002 an adoption document was executed between the parties. The petitioners are Government Employees and since they have to obtain Court order in order to make entry in respect of the child in their service register, they filed GWOP.No. 2 of 2003 and obtained ex parte order on 19.09.2003. Now, because of misunderstanding that arose between the parties with regard to immovable property worth about Rs.35,00,000/- the respondents have filed I.A.No.98 of 2012 to set aside the ex parte order passed in GWOP with false allegations.

3.The respondents have filed an application in I.A.No.98 of 2012 to condone the delay in filing the petition to set aside the ex parte order passed in the GWOP, contending that without the knowledge of the respondents, the petitioners had obtained an ex parte order against the child of the respondents. It is further stated that on 13.04.2011, the child of the respondents was confined in the petitioners' house and the petitioners did not allow the respondents to see their child and they intimidated the life of the child. Hence, the respondents filed HCP.No.816 of 2011 before this Court and this Court by order dated 25.11.2011 directed the respondents to seek remedy before the Court below. Thereafter, the respondents filed Interlocutory Application in I.A.No.98 of 2012 with delay and the said application was allowed. Against the said order, the petitioners have filed the present Civil Revision Petition.

4.Learned counsel appearing for the petitioners submits that the respondents have miserably failed to explain the inordinate delay of 3024 days in filing the petition to set aside the ex-parte order and each and every day delay has to be explained by the respondents. He would further submit that the respondents have approached this Court with an ulterior motive to grab money from the petitioners. The first respondent who is a lawyer received the summon from the Court in the year 2003 and in the year 2012, he cannot plead that he was not aware of the proceedings. He further contended that the respondents cannot be allowed to misuse and abuse the judicial forum to settle their personal vengeance. He further contended that this Court has already imposed a cost of Rs.20,000/- against the respondents for having filed a criminal complaint against the petitioners with an ulterior motive, while quashing the said complaint. Hence, he prayed to set aside the fair and decreetal order dated 31.01.2017 passed in I.A.No.98 of 2012 in GWOP.No.2 of 2003 on the file of the learned Principal District Judge, Madurai.

5.Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

6.Perusal of the records shows that the petitioners had taken leave for the purpose of maintaining the child and thereafter they have also approached the District Court, Madurai, for appointing



them as guardian of the minor child and the learned Principal District Judge, Madurai, also appointed them as joint guardians vide order dated 19.09.2003 in GWOP.No.2 of 2003. It is also seen from the records that the respondents executed adoption deed in favour of the petitioners which was also not disputed by the respondents. The HCP filed by the respondents was also dismissed.

7.From the above, it is clear that the child was given in adoption on their own volition and now due to personal dispute, the present petition has been filed. Now the child is almost 16 years old and in my considered opinion, the respondents cannot be allowed to misuse and abuse the judicial forum for their personal use. Further, this Court also imposed a cost of Rs.20,000/- against the respondents for having filed a criminal complaint against the petitioners with an ulterior motive.

8.In my considered opinion, the present petition filed by the respondents is misuse and abuse of the judicial forum to settle their personal vengeance and if any sympathy is shown to the respondents, it will only affect the child which is now aged almost 16 years and therefore, in my considered opinion, the impugned order passed by the learned Judge condoning the delay in filing the petition to set aside the ex parte order is erroneous and liable to be set aside.

9.Accordingly, the order dated 31.01.2017 passed in I.A.No.98 of 2012 in GWOP.No.2 of 2003 on the file of the learned Principal District Judge, Madurai, is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Madurai.

+ 1 CC TO Mr.R.GANDHI, ADVOCATE IN SR No. 42923
+ 1 CC TO Mr.M.KANNAN, ADVOCATE IN SR No. 43111

BALA

TE/MR/SAR-2 : 01/02/2018 : 3P/4C