



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.10.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P (MD) (PD) .No.1601 of 2017

WEB COPY

Lalith Noble Surjove

... Petitioner

vs.

Sunitha Prem Victor

...Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.75 of 2015 in I.D.O.P.No.136 of 2011 on the file of the learned District Judge, Kanyakumari District at Nagercoil, dated 30.08.2016.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mr.S.Ramesh

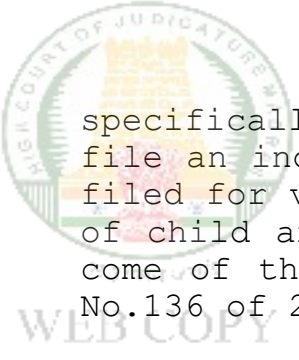
ORDER

The petitioner herein got married the respondent on 19.12.2007 at Marthandam as per Christian rites and rituals. A male child was born on 16.01.2010. The parties developed mutual incompatibility and that led to filing of mutual consent divorce petition under Section 10A (1) of the Indian Divorce Act in IDOP.No.136 of 2011. The decree was granted on 29.10.2011 and the marriage was dissolved. Thereafter, the present interlocutory application in I.A.No.75 of 2015 was filed seeking visitation rights. The Court below, by order dated 30.08.2016, dismissed the said interlocutory application. The same is challenged in this Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the respondent/wife contended that the order passed by the Court below has to be sustained. He drew the attention of this Court to the fact that the revision petitioner had given up his visitation rights.

4.I am of the view that the question of filing an interlocutory application in a concluded IDOP will not arise at all. IDOP.No.136 of 2011 was filed for dissolving their marriage by mutual consent. Once the IDOP was disposed of, the question of filing an interlocutory application therein will not arise at all. Therefore, the Court below was right in holding that I.A.No.75 of 2015 is not maintainable. But then I am not able to accept the reason given by the Court below to the effect that the revision petitioner having waived his visitation right over his child cannot file the present application. In my view that the father can never give up or waive his visitation right over the child. Therefore, this Court even while sustaining the order impugned in this Civil Revision Petition



specifically grants liberty to the revision petitioner herein to file an independent petition in this regard. If such a petition is filed for visitation rights, the Court below shall cause examination of child and take an independent decision uninfluenced by the outcome of this Civil Revision Petition or the terms set out in IDOP No.136 of 2011.

5. With the aforesaid liberty, this Civil Revision Petition is disposed of. No costs.

Sd/-
Assistant Registrar (Crl. side)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The District Judge,
Kanyakumari District at Nagercoil,
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 Copies)**

+1CC to Mr. T. Lajapathi Roy, Advocate, SR.No.89800
+1CC to Mr. V. Raghavachari, Advocate, SR.No.90152

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RMK
ES/SKN/RSK/SAR 3/15.11.2018/2P/6C