



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2018
(Reserved on 30.11.2017)

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CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (PD) (MD) No.2224 of 2017

S.Nashid Ahmed

Represented by his Power of Attorney

Mohamed Shajahan

...Revision Petitioner/ Petitioner

vs.

A.Sameena

... Respondent/Respondent

Petition filed under Article 227 of the Constitution of India, to issue direction to dispose the petition in I.A.No.337 of 2015 in GWOP.No.270 of 2015 on the file of the Principal District Court, Kanyakumari at Nagercoil within a stipulated time as fixed by this Hon'ble Court.

For Petitioner : Mr.S.Sankar

For Respondent : Mr.A.Azeem

ORDER

The revision petitioner is represented by a power of attorney. This revision petition has been filed to issue a direction to the learned Principal District Judge, Kanyakumari at Nagercoil, to dispose of I.A.No.337 of 2015 in GWOP.No.270 of 2015 within a time frame to be fixed by this Court.

2.Learned counsel for the petitioner would submit that the marriage between the petitioner and respondent took place on 03.01.2010 at Nagercoil. Out of the wedlock, they were blessed with a female child namely, N.Shaheen on 12.11.2011. Due to misunderstanding, the respondent went to her parents home along with the child. Hence, the petitioner filed GWOP.No.270 of 2015 before the Principal District Court, Kanyakumari at Nagercoil, for custody of the child, stating that divorce was granted to the petitioner and respondent on 11.04.2014 through Thengapattanam Jamath in Vilavacode Taluk, Kanyakumari District and thereafter, the child is under the custody of the respondent which is aged 3½ years old and no proper care and education is given to the child. After divorce, the petitioner was not permitted to see the child



by the respondent and her family members despite repeated requests. The petitioner also contended that if the respondent got remarried, the child will be thrown to street. Therefore, the petitioner filed GWOP seeking custody of the child. Pending GWOP, the petitioner filed I.A.No.337 of 2015 to see the child. The said I.A. was posted for enquiry on 28.04.2016 and it is pending. It is further contended that whenever the plea for seeing the child is raised, the respondent will undertake to produce the child but will not do so and prolonging the matter. Hence, the petitioner has filed this revision petition for early disposal of I.A.No.337 of 2015.

3.Learned counsel for the respondent submits that the respondent filed counter in GWOP contending that the affidavit filed by the petitioner is defamatory and condemnable in nature. The petitioner has made frivolous allegations and derogative statements against the respondent and also trying to assassinate the character of the respondent. Further, the allegation of the petitioner that the respondent is a psycho itself proves the mind set of the petitioner. It is further contended that neither the petitioner nor his parents have filed this revision petition for early disposal, but this revision petition has been filed by the petitioner through his power of attorney. As per the Muslim Law, the guardianship and custody of any child whether male or female shall be with the mother till the age of 7 years. In respect of female child, the guardian and custodian of the child till she attains puberty and till she is given in marriage shall be with the mother, the natural guardian and in the absence of mother, custody shall be with the maternal relatives. It is further submitted that the child is taken care by the respondent and her parents and brought up in such a way with love and affection, care and the best of everything is given to the child. It is also stated that the respondent and her parents are doctors.

4.It is the specific case of the respondent that shortly after the divorce on 11.04.2014, the petitioner married one Smt.Majoosa, daughter of A.Shahul Hameed of Colachel on 03.10.2014 and is living with his second wife at U.A.E owing to his employment. The petitioner has filed the present petition with evil intention to separate the child from the respondent/mother. The petitioner is not interested in the welfare of the minor child and even the present revision petition has been filed through the power of attorney who is the father of the petitioner. When the petitioner is away at U.A.E, on 24.08.2015, the parents of the petitioner went to Adarsh Vidya Kendra School to see the child and tried to take away the child from the school forcefully which had been thwarted by the school authorities. After filing of the present petition, the petitioner's parent's had given a letter to the principal of the school seeking permission for the petitioner and his parents to visit the child at the school and they have



even gone to the extent of meeting the Chairman of the school seeking permission to visit the child at the school, but the Chairman has warned them and informed that if such personal problems are brought to the school, they may be constrained to issue transfer certificate to the child.

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5. Heard the learned counsel for the petitioner and respondent and perused the materials available on record.

6. Perusal of the records shows that the father of the child got remarried and is living with his second wife in middle east countries and it appears that only to disturb the respondent, such allegations have been made. In my considered opinion, the petitioner has filed revision petition for early disposal of I.A.No.337 of 2015 through the power of attorney only to harass the respondent. If at all the father is interested to see the child, he may agitate his rights in the manner known to law.

With the above observation, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Principal District Judge,
Kanyakumari at Nagercoil.

+ 1 cc TO Mr.M.P.Senthil , Advocate in SR No. 43036

+ 1 cc TO Mr.S.Sankar , Advocate in SR No. 42819

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AE/KKR/SAR1/31.01.2018/3P/4C

order made in
CRP (PD) (MD) No.2224 of 2017
19.01.2018