

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

**CRP(PD) No.2882 of 2018 &  
CMP.No.16926 of 2018**

Paul Gerald Aaron Janvier

.. Petitioner

Vs

P. Shanthi Rani

.. Respondent

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India to set aside the order of the Family Court, (District Judge), Pondicherry, made in I.A.No.374 of 2018 in MOP.No.9 of 2017 dated 18.07.2018 with cost.

For Petitioner : Mr. J. Arul Selvan

For respondent : Mr. C.Vigneshwaran

**ORDER**

In a petition filed by the respondent/wife under Guardians and Wards Act for the custody of the minor child, the Family Court, Pondicherry directed the respondent/wife to handover custody of the minor child to the petitioner. Aggrieved over the same, the petitioner/husband preferred the above Civil Revision Petition.

2. The short facts as stated by the petitioner is that the petitioner filed a petition for divorce in M.O.P.No.9 of 2017 which is pending on

the file of the Family Court, Pondicherry. During the pendency of the divorce petition, the petitioner/husband had approached the Child Welfare Committee with an allegation that his wife was suffering from certain psychological problems for quite some time, due to which, she is troubling him and the child. After discussing the issue, counselling was suggested to both the parties. It was found that the mother of the child was not cooperative with the directions of the Child Welfare Committee or the Doctors or Psychiatrist. Hence, custody of the child was entrusted to the petitioner/husband with visitation rights to the respondent/wife.

3. The petitioner husband would rely on the out-patient chits given by JIPMER Hospital, Puducherry, Institute of Mental Health, Chennai and the order of Child Welfare Committee dated 25.10.2016 and would contend that the respondent wife is a mentally ill person and handing over the custody of minor child to the respondent wife will be detrimental to welfare of the child, therefore the order of the Family Court, Pondicherry should be set aside.

4. I have considered the rival submissions made on either side.

5. The out patient records of JIPMER Hospital and also the order

passed by the Institute of Mental Health, Chennai does not disclose a strong case that the respondent/wife is a mentally ill person. The order of the Child Welfare Committee also appears to be biased and reiteration of all the allegations made by the husband. In fact, the decision taken by the Child Welfare Committee was found without any strong ground, with a view to favour the husband, thereby ordering visitation rights to the respondent/wife with the prior permission of the petitioner/husband. But the pleadings would clearly prove that the petitioner/husband is unemployed and does not have a standard income and he has not denied such statement made by the wife.

6. Be that as it may. In the absence of any proof that the wife is a mentally ill person and in the absence of any evidence on the side of the petitioner/husband that the petitioner/husband has the capacity of maintaining the child well, than the mother, this court is of the considered view that the child's future, happiness and sense of security will be protected, if the minor is in the custody of the mother. The welfare and safety of the minor has been amply proved by the respondent wife before the trial court and the petitioner / husband has failed to prove the same by adducing appropriate evidence. Therefore, I do not find any infirmity in the order passed by the Family Court in

**M.GOVINDARAJ, J.**

msr

handing over custody of the minor child to the respondent/wife.

7. Therefore, the Civil Revision Petition is dismissed. However, during the pendency of the divorce petition, a direction is issued to the Family Court to refer the matter for mediation enabling the parties to negotiate between themselves and to arrive at a settlement.

8. The Civil Revision Petition is dismissed with the above observation.

20.06.2019

msr  
Index:Yes/No  
Internet:Yes/No  
speaking order/non speaking order

To

The Family Court, (District Judge), Pondicherry

**WEB COPY****CRP(PD) No.2882 of 2018 &  
CMP.No.16926 of 2018**