

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) Nos.2285 & 2286 of 2018
and CMP No.14279 of 2018

Kailasnath Lakshmikanthan .. Petitioner in both the Petitions

Vs.

Daksha S.Rao .. Respondent in both the Petitions

PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 24.11.2017 passed in (i) IA No.705 of 2017 in OP No.2304 of 2014 (ii) IA No.706 of 2017 in OP No.2304 of 2014 respectively on the file of the V Additional Family Court, Chennai.

For Petitioner : Ms. S.P.Arthi
(in both the Petitions)

For Respondent : Ms. Reshmi Cristy
(in both the Petitions) for M/s.K.V.Sanjeev Kumar

COMMON ORDER

This matter is taken up for hearing through Video-Conferencing.

These two Revision petitions have been filed by the husband challenging the orders passed by the Family Court disposing of his applications for visitation rights and interim custody of the children.

2. The parties have been at loggerheads for more than 6 years now. Three children born out of the marriage are suffering because of the indolent attitude of the parents. There were various proceedings that were launched by the parties against each other both on the Civil as well as the Criminal side. In a Habeas Corpus Petition filed by the wife a sort of compromise was reached before a Division Bench of this Court and a draft 13B Petition was filed containing various conditions relating to custody, guardianship of the children and visitation rights of the parties.

3. The Division Bench while recording the fact that the parties have expressed their desire to go ahead and seek divorce by consent also recorded that the parties have agreed for visitation rights of the children. Paragraph 5 of the order in the Habeas Corpus Petition which deals with the visitation rights is reproduced for the sake of convenience.

“5. The learned counsel appearing on either side would further add that both the parties viz., the husband and wife have agreed to abide by all the terms and conditions stipulated in the Section 13B Petition in letter and spirit. Besides that, it is represented on the side of the wife that apart from the conditions agreed to for the visiting rights of father to see the minor children in Clause 7 of the Section 13B Petition, the father of the minor children could at any time visit the minor children, after prior intimation to the wife. The wife who is present before this Court agrees for such a condition. It is also agreed by both the parties that, for any alteration or modification of the clauses and conditions agreed to between them in Section 13B petition, it is open to them to approach the appropriate Court in future.”

4. Claiming that the Section 13B Petition, a draft of which was produced before the Division Bench, was not eventually filed before the Court the husband sought for visitation rights before the Family Court. The Family Court without going into the factual situation concluded that the order of HCP will govern the visitation rights of the parties. On such conclusion, the Family Court had dismissed both the applications for custody during vacation and visitation rights. After going through the papers, I find that the order in HCP does not finally determine the rights of the parties regarding custody or guardianship of the minor children. What has been recorded by the Court is only a part of the draft compromise. I am unable to resist observing that the parties have hoodwinked the Division Bench by producing a draft compromise and thereafter resiling from it.

5. Now that the Section 13B Petition has not been filed and the agreement reached has not been made an order of Court, the conditions stipulated in the draft Section 13B Petition cannot be enforced. Therefore, the Family Court ought to have gone into the merits of these applications and have concluded on the custody of the children and visitation rights of the parties. The Family Court therefore was not right in dismissing the

application on the ground that the Division Bench of this Court has passed certain orders on the basis of a so called compromise which was expected to be entered into between the parties.

6. In view of the above, the orders of the Family Court are set aside and IA Nos.705 & 706 of 2017 are remitted to the V Additional Principal Judge, Family Court, Chennai, to be decided on merits without being influenced by any of the observations made here in above or in the order in HCP No.1542 of 2014. The Family Court will take into account the age of the minors as well as the interest of the minors and pass appropriate orders on the visitation rights claimed by the husband.

7. With the above observations, the Civil Revision Petitions are disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

22.09.2020

jv
Index: No
Internet: Yes
Speaking order

R.SUBRAMANIAN, J.

jv

To

1. The V Additional Principal Judge,
Family Court,
Chennai.
2. The Section Officer,
V.R.Section, High Court of Madras.



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