

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

C.R.P.(PD) No.4210 of 2019

and

C.M.P.No.26462 of 2019

Mr.U.Matha Das Nair

... Petitioner

Vs.

Mrs.R.G.Ashalakshmi

... Respondent

Prayer :- This Civil revision has been filed under Article 227 of the Constitution of India against the fair Order and decretal Order dated 17.11.2019 of the learned Subordinate Judge, Poonamallee passed in I.A.No.274 of 2019 in H.M.O.P.No.130 of 2019.

For petitioner

: Mrs.Chitra Sampath, SC
for Ms.J.Tamilarasi

For respondent

: Mr.Udayashankar

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ORDER

This revision has been filed against the order permitting the petitioner/husband to have visitation right of the child only on his birthday and also on last Sunday of every month.

2. Brief facts leading to filing of this revision is as follows :

The respondent/wife has filed H.M.O.P.No.777 of 2018 before Subordinate Court for divorce on the ground of cruelty. Pending Original petition, the petitioner has filed the present Original Petition for restoration of conjugal rights. In the above Original Petition, the petitioner has filed an application under section 26 of Hindu Marriage Act seeking visitation right of the minor child. The Court below partly allowed the application permitting the petitioner to visit the child on last Sundays of every month and also on his birthdays. Not being satisfied with the Order, the present petition has been filed before this Court.

3. Mrs.Chitra Sampath, learned Senior Counsel appearing for the petitioner submitted that earlier the petitioner was working in Bangalore and he could not come to Chennai regularly to see his son. Now he has been transferred to Chennai and he is residing in the same place where the respondent is residing. Now the child is seven years old and being a father, the petitioner is entitled to have the custody of the child. However, the application has only been filed seeking visitation rights. Hence, the child may be given to the custody of the petitioner atleast every Saturday and Sunday.

4. The learned counsel appearing for the respondent would submit that the child is having some health problem and wife alone is taking care of the child. If the custody of the child is given to the petitioner, he may not be in a position to take of the child properly. Further, if the custody of the child is given to the petitioner, his studies will be spoiled and hence, it is not advisable to give custody of the child to the father for long number of days. That apart, the child is also not willing to stay with the father. Considering all these circumstances, the Court below has granted visitation rights once in a month and there is no illegality in the Order of the the trial Court.

5. Heard the learned Senior Counsel Mrs.Chitra Sampath, appearing for the petitioner and the learned counsel for the respondent and perused the materials available on record.

6. It is not in dispute that the petitioner is father of the child and the child is in the custody of the respondent/mother. The petitioner is granted visitation right of the child once in a month, i.e., the last Sunday of every month and also on the birthdays of the child. It is further submitted that earlier the petitioner was working in Bangalore and now he has been transferred to Chennai and he is residing in the same area where the respondent/wife is residing.

7. Considering the fact that no serious allegation has been stated against the husband for denying the visitation right of the child, the

petitioner, the father of the Child is entitled to have the visitation right and it cannot restricted for once in a month, and on birthday alone. In the above circumstances, I am of the view that the petitioner/husband can be given custody of the child for atleast two days once in 15 days till the disposal of this Original Petition.

7. Accordingly, the petitioner/husband is permitted to have the custody of the child on second and fourth Saturday on Sunday of every month, and the petitioner shall take the custody of the child at 10.a.m. on second and fourth Saturdays of every month from the respondent's house and leave the child on the following Sundays at 5.p.m. at the respondent's house. The petitioner is further directed to take care of the health of the child carefully. If the School is working on any Saturdays, the petitioner shall have the custody of the child from the school, after school hours.

8. With the above modifications, this Civil Revision Petition is partly allowed. Consequently, the connected miscellaneous petition is closed.

VRC

17.02.2020

Note : Issue order copy on 25.02.2020

Index : Yes/No

Internet : Yes/No

Speaking order/non speaking order

To

The Subordinate Judge, Poonamallee.

V.BHARATHIDASAN, J.

VRC



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