



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.01.2020
Delivered On : 09.03.2020

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD)No.880 of 2019
and
C.M.P. (MD)No.5144 of 2019

D.Jesu Sharmila .. Petitioner
Vs.

P.Wise Light .. Respondent

Prayer: This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 22.05.2019 in I.A.No.1 of 2019 in G.W.O.P.No.146 of 2018 on the file of the Family Judge, Kanyakumari at Nagercoil.

For Petitioner : Mr.G.Cenil
For Respondent : Mr.K.Samidurai

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.1 of 2019 in G.W.O.P.No.146 of 2018 dated 22.05.2019, on the file of the Family Judge, Kanyakumari, Nagercoil.

3.The petitioner herein is the wife and the respondent herein is the husband. The respondent husband filed a petition in G.W.O.P.No.145 of 2018 against the wife. In that petition, the respondent husband has filed an application in I.A.No.171 of 2018 to execute the order passed in G.W.O.P.No.146 of 2018. The trial Court modified that order. Again the respondent husband filed another application in I.A.No.1 of 2019 to direct the wife to hand over minor Sharon to the custody of the husband.

4.The brief substance of the petition in I.A.No.1 of 2019 is as follows:

As per the order in G.W.O.P.No.146 of 2018 dated 13.07.2018, the husband is entitled to have the custody of minor boy Sharon

<https://hcservices.ecourts.gov.in/hcservices/>



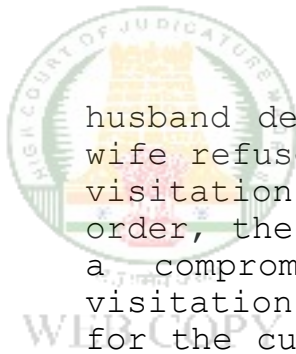
Livingstone for 10 consecutive days during the summer vacation. But the wife failed to hand over the child.

5.The brief substance of counter in I.A.No.1 of 2019 is as follows:

The provision of law stated in the petition is not correct. There is provision only for an execution petition. The exparte order, which was passed by the Court on 13.07.2018, was meant only for husband's visitation right. It is not for the custody of the child even for a single day. The order passed by the Court in I.A.No.166 of 2015 in I.D.O.P.No.93 of 2015 dated 04.12.2015 is only for visitation right. That order was taken on appeal before this Court in C.R.P.(MD)No.1410 of 2016, wherein both the parties mutually agreed and filed a compromise memo. The compromise memo was with regard to visitation right. Those particulars were not stated in the petition. The petitioner never raised any question regarding the custody of child for any period. The sole aim in keeping the G.W.O.P. Pending is to get a conflicting order. The right of visitation is settled by this Court through mediation. By mutual consent, dated 18.12.2017, this Court passed an order dated 13.07.2018, referring the terms of compromise with modification, entitling the petitioner to have custody of the child for consecutive 10 days, which is against the wish and interest expressed by the parties before this Court. The petitioner has filed a petition in I.A.No.171 of 2018 in G.W.O.P.No.146 of 2018 and the Court passed an elaborate order on merit, modifying the entire order in G.W.O.P. The order in G.W.O.P.No.146 of 2018 dated 13.07.2018 was replaced by the modified order in I.A.No.171 of 2018 dated 31.10.2018 wherein the right of the petitioner to have custody of the child for 10 consecutive days during the summer vacation which was mutually settled between the parties has been ignored. By virtue of the modified the order, the entire order in G.W.O.P has been replaced. The petitioner is not entitled to file any I.A. Or E.P. for enforcing an imaginary right or condition and the petition is liable to be dismissed.

6.The trial Court after considering both sides, passed an elaborate order on merits directing the petitioner wife to hand over the minor child to the custody of the husband from the date of the order till 31.05.2019, failing which the Inspector of Police, All Women Police Station to get back the child and to hand over the child to the father for interim care and maintenance. Against that order, the petitioner preferred this revision petition.

7.On the side of the petitioner, it is stated that at the time of marriage on 21.01.2012, the wife was doing B.E., final year. After marriage, she was taken to Bangalore she was having uterus problem and the advice of doctor is not to get pregnant within a period of two months. When she was pregnant and she was not allowed to contact her parents. Later a boy was born. Again the doctor advised not to have another baby within one year. The



husband demanded the wife to come to Bangalore in 40 days and the wife refused. I.D.O.P.No.93 of 2015 was filed and an application for visitation rights in I.A.No.166 of 2015 was filed. Aggrieved by the order, the petitioner has filed C.R.P.(MD)No.1410 of 2015. There was a compromise between the parties regarding the question of visitation rights. G.W.O.P.No.146 of 2018 was filed by the husband for the custody of the minor child and the custody order was given. I.A.No.1 of 2019 was filed without any provision of law. But the Family Court wrongly passed an order to hand over the custody of the child on that date itself and a direction to the Police was also given with a threatening of contempt proceedings. Against the order passed in G.W.O.P., C.M.A was filed and pending in S.R stage. The minor boy is aged about 6 years old. The mother alone is having the capacity of custody. Already interim stay is granted in the present petition. The petition to be allowed.

8.On the side of the respondent, it is stated that there is no infirmity in the order passed by the Family Court. The custody of the minor child was given for 10 days during the summer vacation. The wife did not comply with the order. G.W.O.P. order was not stayed by this Court.

9.On the side of the petitioner, it is stated that the child was regularly shown to the respondent at the church.

10.It is seen that there is matrimonial dispute between the husband and wife. The wife filed a petition in I.D.O.P.No.93 of 2015 on the file of the District Court, Nagercoil for a relief of restoration of conjugal rights. In that G.W.O.P, the husband has filed I.A.No.166 of 2015 for an interim direction to produce the minor child on every sunday and saturday. That petition was allowed on 04.12.2015. Aggrieved by the same, the petitioner wife preferred a revision petition in C.R.P.(MD)No.1410 of 2016 and that petition was disposed of with a right of visitation to the respondent husband. The wordings are reads as follows:

"(I)The respondent/wife directed to hand over the minor child viz., W.Sharon Livingstone in CSI, Church, Scott Nagar, Nagercoil to the petitioner at 11.00 a.m., on the first and third sundays of every month.

(ii)The petitioner/husband handover the minor child to the respondent at 04.00 p.m., on the same day. The petitioner has not taken out the minor child out of the campus of the Church. Further the petitioner not to disturb and disrupt the welfare, comfort and pleasant living of the minor child during his custody.

(iii)The respondent will not disturb the minor child when the child is in the custody of the petitioner from 11.00 a.m to 04.00 p.m.



(iv)The petitioner will not give any trouble to the minor child and respondent and quarrel with the respondent in the campus of the church.

(v)The petitioner shall share the expenses for the education, food and clothes etc of the minor child. Further the petitioner on his own accord can contribute to the minor child anything and the respondent should not prohibit the petitioner from giving the child anything for his comfort and pleasant living.

(vi)The petitioner will also be entitled to the custody of the minor child for 10 consecutive days during the summer vacation on dates to be mutually settled between the parties.

(vii)With regard to visiting right of the petitioner and compliance of the same by the wife, both parties are directed to maintain records and obtained the signature of the Chief Pastor of the church and produce the same as and when required by this Court in future.

(viii)Both the parties are directed to inform their mobile to each other for communication with regard to any change of visiting rights of the minor child during 1st and 3rd sunday as directed above.

(ix)The above said arrangement is made on the basis of prime consideration for the welfare of the minor child and will continue for the present, but the parties will be at liberty to approach the Court for fresh direction."

11.Later the husband filed an application in I.A.No.171 of 2018 stating that the wife refused to comply with the order and to direct the wife to produce the bank account. The Court passed the order modifying the visitation right of the respondent husband, which reads as follows:

"1.The respondent wife is directed to hand over the minor child W.Sharon Livingstone in Good Shepard CSI Church, Ananthan Nager, Asaripullam, Nagercoil to the petitioner in the presence of the Advocate Commissioner at 10.00 a.m., to 01.00 p.m., on the first and third day sunday of the every month.

2.The petitioner husband should handover the minor child to the respondent at 01.00 p.m., on the same day. The petitioner has not taken out the minor child out of the campus of the Church. Further the respondent not to disturb and disrupt the welfare, comfort and pleasant stay of the minor child during his custody.

3.Selvi.M.Paul Sheeba, Advocate is hereby



appointed as an Advocate Commissioner to carry out the visitation rights ordered by this Court and further directed to note down the conduct of the parties during the visiting and report the same to this Court.

4.If there is any change in visitation date and time, both parties are directed to intimate the same to the Advocate Commissioner well in advance.

5.The respondent is hereby directed to furnish the bank account to the petitioner without delay, to enable the petitioner in transferring amount towards minor son's expenses monthly basis.

6.The petitioner is directed to pay a sum of Rs.1,500/- per visit to the Advocate Commissioner until further orders.

7.The Church Pastor, Good Shepard CSI Church, Ananthan Nagar, Asaripallam, Nagercoil is hereby directed for compliance of the order passed by this Court, considering paramount consideration of the minor child."

12.Again the husband filed another petition in I.A.No.1 of 2019 for custody of minor child for 10 days during the summer vacation. Admittedly the wife did not prefer any appeal or revision against the modified order in G.W.O.P.No.146 of 2018. Subsequently, the respondent wife filed a divorce petition in I.D.O.P.No.287 of 2018, which is still pending.

13.It is seen that the visitation right was complied by the wife. The wife produced the child before the church regularly. There is no appeal against the order passed by the Family Court in G.W.O.P.No.146 of 2018. The interim custody given to the husband was not disputed by the wife before the proper forum. Now it is stated that C.M.A. is pending before this Court against that order.

14.It is seen that when a C.M.A is pending before this Court, the Family Court passed an order giving a direction to the Inspector of Police, All Women Police Station to get the minor child from the respondent wife and to hand over the child to the husband, which is unwarranted.

15.The Family Judge has passed an order without taking note of the age of the minor child and the mental disturbance to the child by the appearance of the Police. In the above circumstances, this Civil Revision Petition is allowed and the order passed in I.A.No.1 of 2019 in G.W.O.P.No.146 of 2018 dated 22.05.2019, on the



file of the Family Judge, Kanyakumari, Nagercoil is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

WEB COPY

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Family Judge,
Kanyakumari at Nagercoil

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-11171[F] dated 11/03/2020)

+1 CC to M/s.G.CINIL, Advocate (SR-11202[F] dated 11/03/2020)

C.R.P. (PD) (MD) No.880 of 2019

09.03.2020

MK (19.03.2020) 6P 4C