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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2021

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THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.PD.NO.216 OF 2019

AND

C.M.P.NO.1689 OF 2019

Mr.J.Michael Sudhan

...Petitioner/Respondent

Vs

Alangara Shamini

...Respondent/Petitioner

Civil Revision Petition filed under Article 227 of Constitution of India to GWOP.No.452 of 2018 on the file of the VII Additional Family Court, Chennai.

For Petitioner .. Mr.R.Chandrasudan

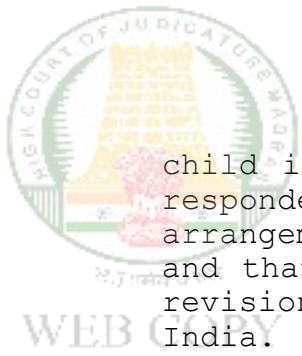
For Respondent .. M/s.Alamelumangai

ORDER

The Revision Petition has been filed under Article 227 of Constitution of India to strike off GWOP.No.452 of 2018, now pending on the file of the VII Additional Family Court, Chennai.

2. The revision petitioner was the husband of the respondent herein. There were some differences of opinion between them and subsequently, DOP.No.202 of 2016, came to be filed in the District Judge, Kanniyakumari. Orders were passed on 04.05.2017. The marriage solemnized on 16.05.2008 was dissolved by mutual consent.

3. A reading of the said order reveals that the learned District Judge has not given any definite order or not made any arrangement with respect to the custody of the child. They had been blessed with a female child born on 10.03.2009. The revision petitioner, as on date, is in United States of America. Subsequent to the said order referred in DOP.No.202 of 2016, dated 04.05.2017, the revision petitioner had remarried and the



child is now in the custody of his present wife at Kerala. The respondent herein has filed GWOP.No.452 of 2018, seeking arrangement to be made with respect in the custody of the child and that petition is now sought to be struck off by way of this revision petition filed under Article 227 of the Constitution of India. Notice has been directed to be served on respondent.

4. Ms.Alamelu Mangai, learned counsel for the respondent had entered appearance. However, on the last hearing date on 24.06.2021, the learned counsel stated that whatever the learned counsel for the revision petitioner states is correct. This Court had not appreciated the said arguments and therefore, adjourned the matter today.

5. Today, the learned counsel for the respondent stated that the respondent is not coming forward to give instructions. Though that may be a reason to hold that the respondent should not be heard, it is appropriate, as a mother, she should be heard with respect to any arrangement made. Though there are some differences of opinion between the petitioner and respondent, the welfare of the child alone is important. Every child requires the affection of parents. The parents might have decided to live separately, but still, it is their obligation to ensure the welfare of the child. Viewing from that angle, it is only appropriate that in this particular case that the competent Court examines the factors relating to the custody of the child. As on date she is only aged of 11 years. This is the age where she requires the care and protection from the mother. She will be given a chance in this regard. The learned Judge, may, if necessary, examine the child and take a considered view in the matter. The GWOP.No.452 of 2018 cannot be struck off as contended by the learned counsel for the revision petitioner. The cause of action starts from the birth of the child.

6. Therefore, I would rather hold that the petitioner and the respondent should participate in GWOP.No.452 of 2018 at Kerala. The learned Judge can interview the child and determine the requirements of child keeping in mind, the welfare of the child. GWOP.No.452 of 2018 shall proceed in normal course.

7. The learned counsel for the revision petitioner states that the petitioner is in USA and that the child is in Kerala. In this Covid-19 pandemic situation, the child should not be disturbed. The learned Judge shall take into consideration all these facts, while examining GWOP.No.452 of 2018. If, for some reason, the petitioner in GWOP.No.452 of 2018, does not appear before the Court, the learned Judge may appoint an experienced counsel from the Legal Aid Cell to represent the petitioner and pass order, after examining the child and after determining her welfare.



8. With the above observations, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The VII Additional Family Court,
Chennai.
2. The District Judge,
Kanniyakumari.

+1cc to Mr.P.Kamal, Advocate, S.R.No.32508/21

C.R.P.PD.No.216 of 2019
and
C.M.P.No.1689 of 2019

RLD (CO)
RGA (02/08/2021)