

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A. Nos.1949 & 2159 of 2019
and C.M.P. No.6803 of 2019

S.Shivakumar ... Appellant in both the cases

-vs-

S.Srividya ... Respondent in both the cases

Prayer in C.M.A. No.1949 of 2019: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act to set aside the fair and decretal order passed in I.A. No.1384 of 2018 in O.P. No.2465 of 2016 dated 13.02.2019 on the file of IV Additional Family Court, Chennai.

Prayer in C.M.A. No.2159 of 2019: Civil Miscellaneous Appeal filed under Order XLIII Rule 1(r) of Civil Procedure Code to set aside the fair and decretal order passed in I.A. No.4493 of 2018 in I.A. No.1422 of 2017 in O.P. No.2465 of 2016 dated 13.02.2019 on the file of IV Additional Family Court, Chennai.

For Appellant : Mr.S.Veeraraghavan

For Respondent : Mr.A.Thiyagarajan

COMMON JUDGMENT

(Judgment of this Court was made by T.RAJA,J.)

C.M.A. No.1949 of 2019 has been filed against the I.A. No.1384 of 2018 in O.P. No.2465 of 2016 dated 13.02.2019 passed by the IV Additional Principal Judge, Chennai, directing the appellant to pay a sum of Rs.7,000/- to the respondent wife and Rs.10,000/- each to the children towards monthly maintenance from the date of the petition namely, 02.02.2018.

C.M.A. No.2159 of 2019 has been filed against the I.A. No.4493 of 2018 in I.A. No.1422 of 2017 in O.P. No.2465 of 2016 dated 13.02.2019 passed by the IV Additional Principal Judge, Chennai, declining to initiate contempt proceedings against the appellant's wife for violating the order dated 27.11.2017 passed in I.A. No.1422 of 2017, wherein the Family Court, has directed the respondent wife to bring the children viz. S.Kausshika and S.Pranaav on 1st and 3rd Saturdays of every month to the Child Care Centre, Family Court Premises, Chennai between 11.00 a.m. and 1.00 p.m. pending disposal of the main petition.

2.Learned counsel appearing for the appellant husband submitted that when the divorce proceedings in O.P. No.2465 of 2016 was filed under Section 13 (1)(ia) of the Hindu Marriage Act, 1955 for dissolution of the marriage, the appellant husband has moved the I.A. No.1422 of 2017 seeking visitation rights and that was granted by the Court, but the wife refused to show the children as directed by the Court, hence, the husband has filed I.A. No.4493 of 2018 to punish the respondent wife for her willful disobedience of the order dated 27.11.2017 passed in I.A. No.1422 of 2017, wherein the appellant husband was entitled to have the visitation right of the minor children viz. S.Kausshika and S.Pranaav on 1st and 3rd Saturdays of every month at Child Care Centre, Family Court Premises, Chennai between 11.00 a.m. and 1.00 p.m. Learned counsel appearing for the appellant further submitted that the respondent wife instead of obeying the said order, has filed an I.A. No.5388 of 2018 to modify the order passed in I.A. No.1422 of 2017 to the effect that the appellant husband shall have the benefit of visitation rights of the children on the 2nd Saturday of every month between 11.00 a.m. and 1.00 p.m. instead of 1st and 3rd Saturdays of every month. But the Family Court, without considering the averments made by the appellant, allowing the I.A. No.5388 of 2018 filed by the respondent wife, modified the above order to the effect that the appellant shall have the visitation rights over the minor children on the 2nd Saturday of every month at Child Care Centre, Family Court, Chennai between 11.00 a.m. and 1.00 p.m. and dismissed the I.A. No.4493 of 2018 filed by the appellant to punish the respondent wife for her willful disobedience of the order dated 27.11.2017 passed in I.A. No.1422 of 2017. When the I.A. No.5388 of 2018 was filed by the respondent wife seeking modification of the visitation rights, though objections were raised for granting the visitation right only on the 2nd Saturday of every month, without considering the same, the Family Court wrongly has modified the said order, as a result, the appellant father is able to see his children only on the 2nd Saturdays alone with a long gap.

3.Learned counsel appearing for the respondent, agreeing to the reasonable visitation right, submitted that the appellant is entitled to have the visitation rights twice in a month to see his children.

4.Heard both sides.

5.Insofar as the I.A. No.1422 of 2017 seeking visitation rights filed by the appellant husband is concerned, since it is submitted by the learned counsel for the appellant that every Saturdays is holiday for the children, we are inclined to modify the visitation rights to the effect that the appellant shall have the visitation rights on the minor children viz. S.Kausshika and S.Pranaav on the 2nd and 4th Saturdays of every month at Child Care Centre, Family Court, Chennai between 11.00 a.m. and 1.00 p.m. Accordingly, the order granting visitation rights to the appellant to have the benefit of seeing his children in the 2nd Saturdays, is hereby modified to the effect that the appellant shall have the visitation rights on the minor children viz. S.Kausshika and S.Pranaav on the 2nd and 4th Saturdays of every month at Child Care Centre, Family Court, Chennai between 11.00 a.m. and 1.00 p.m. and the respondent wife is directed to bring the children viz. S.Kausshika and S.Pranaav on the 2nd and 4th Saturdays of every month to the Child Centre, Family Court Premises, Chennai between 11.00 a.m. and 1.00 p.m.

6.Insofar as the I.A. No.4493 of 2018 filed by the appellant husband to punish the respondent for her wilful disobedience of the order dated 27.11.2017 is concerned, the Family Court, holding that since the respondent wife is temporarily working in a private school, she could not avail any leave from the school on the said Saturdays hence she could not be found fault with. We have seen the reasons given by the mother of the children in I.A. No.5388 of 2018 for modification of the order passed in I.A. No.1422 of 2017 seeking visitation rights only on the 2nd Saturdays of every month between 11.00 a.m. and 1.00 p.m. because she is employed as a Teacher on temporary basis, hence, she could not leave the school on those Saturdays; that when her father took the children, they were not comfortable and that the children are also having schools on those Saturdays. We are convinced with the reasons given by wife. Therefore, we find no violation of the order.

7.Insofar as the I.A. No.1384 of 2018 directing the appellant to pay a sum of Rs.7,000/- to the respondent wife and Rs.10,000/- to each children towards monthly maintenance from the date of the petition namely, 02.02.2018 is concerned, we are unable to find any error to interfere with the same since the said order is reasonable and it is only an interim arrangement.

8.With the above observation and direction, C.M.A. No.1949 of 2019 stands dismissed and C.M.A. No.2159 of 2019 stands disposed of. Consequently, C.M.P. No.6803 of 2019 is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The IV Additional Principal Judge
Family Court,
Chennai.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+2 Ccs to Mr.S.Veeraraghavan, Advocate sr 6134 & 6135.

C.M.A. Nos.1949 & 2159 of 2019 and C.M.P. No.6803 of 2019

SSD(CO)
SP(03/03/2021)



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