IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2021

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THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (NPD) No.873 of 2021

F.Rajan Babu ... Petitioner

Vs.

S.Shoba ... Respondent

Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order passed in I.A. No.674 of 2019 in O.P. No.2896 of 2017 dated 02.01.2021 on the file of the V Additional Judge, Family Court, Chennai by allowing the above civil revision petition.

For Petitioner : Mr. V.Manohar

For Respondent : Mr. D.Ashok Kumar

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O R D E R

This petition is filed to set aside the order passed in I.A. No.674 of 2019 in O.P. No.2896 of 2017 dated 02.01.2021 on the file of the V Additional Judge, Family Court, Chennai.

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2. I.A. No.674 of 2019 was filed by the respondent to set aside the right given to the petitioner in O.P. No.2896 of 2017 on 20.12.2017, to visit the child. The case of the respondent is that the marriage between the petitioner and the respondent had taken place on 20.02.2009. Out of wedlock, a female child was born on 09.11.2010, named Sharon Tanya. Due to marital discard, a divorce petition was filed in O.P. No.2896 of 2017 on the file of V Additional Family Court, Chennai. The parties agreed for mutual divorce and the Court ordered that the custody of the child to be with the respondent and the petitioner was permitted to visit his child on any two Saturdays in a month between 10.00 a.m. to 01.00 p.m. in Creche in the Family Court, Chennai. There was also a condition that the petitioner shall not take the child out. It is submitted that though the respondent waited for a long time, there was no response or initiative from the petitioner till 01.03.2019, to visit the child at Child Care Centre. She was taking the child to the Child Care Centre, Family Court, Chennai, on 02.03.2019, 23.03.2019, 27.04.2019, 18.05.2019 & 25.05.2019. But, the petitioner never made any attempt to visit the child during these days. Therefore, the petition to set aside the visitation right was filed by the respondent.

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3. The learned trial Judge, after examining the child and considering the materials, found that the petitioner had not exercised his visitation right and among other reasons, he held that the wish of the child has to be predominantly considered to decide about the visitation rights and therefore, cancelled the visitation rights granted to the petitioner. Against the said order, this civil revision petition is filed.

4. Learned counsel for the petitioner submitted that the child cannot decide and she is not in a position to decide for the reason that she is aged only seven years at the time of adjudicating the marital dispute between the parties. Taking advantage of closeness of the child, the respondent had influenced and brainwashed the child to speak against her father. Father cannot be deprived of his right to visit his daughter. Therefore, he prays for setting the order of cancellation of visitation rights.

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5. In response, learned counsel for the respondent submitted that despite the child was taken to the Creche in the Family court, Chennai, the petitioner had not taken any steps or bothered to visit his child. In this regard, the respondent produced before this Court, a certificate issued by the Family Court, Chennai, wherein it is stated that the child was produced in the Child Care

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Centre, Family Court, Chennai, 02.03.2019, 23.03.2019, 27.04.2019, 18.05.2019 & 25.05.2019. The respondent submitted that the petitioner had not made any entries on the aforesaid dates. Learned counsel for the respondent also submitted that there are no entries found in the register with regard to the production of the child from 01.01.2019 to 31.01.2018. He further submitted that the child was inquired by the learned Judge on 30.12.2019. Only after considering the fact that the petitioner had not taken any steps to visit his child and also taking note of views expressed by the child and her wish, the learned Judge, had cancelled the visitation right of the petitioner. Therefore, he prayed for sustaining the order and for dismissal of this civil revision petition.

6. Considered the rival submissions. It is seen from the order that when the marriage was resolved between the petitioner and respondent, the husband / petitioner was permitted to visit his child on any two Saturdays in a month from 10.00 a.m. to 01.00 p.m. in the Creche in Family Court, Chennai. It is also stated that the petitioner shall not take the child out and both the parties shall not interfere in the life of each other. This order was passed on 20.12.2017. We have no records to show that on what dates the petitioner visited the Child Care Centre Family Court, Chennai, to enforce his visitation right. There is also no records to show that whether he submitted any application before the Court

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concerned to enforce his right of visitation. On the other hand, there is a certificate given by the Family Court, Chennai, showing that the respondent produced her child on certain dates and on that dates, the petitioner had not visited the child. Before pronouncing the order in I.A. No.674 of 2019, on 02.01.2021, it appears that the child was examined by the learned Judge on 30.12.2020. A statement was also recorded by the learned Judge. It is seen from the statement that she visited the Court for five times along with her mother and on those days her father did not come and visit her. She expressed her fear over her father. While considering the child's view and her wish, the learned Judge had held as follows:

> *" In our case in hand the female child, aged 10 years is mature and she understood that she came to the court and talked with the judge and that she came regarding the dispute of visitation rights between her parents. She would state her firm view that she does not want to see her father, that she has fear on her father, that the visitation rights given to her father by her mother in the joint memo of compromise is wrong and that the order passed by this Court permitting her father to visit her is also wrong. He oral statement shows that the child has her own opinions, that she is stubborn in her view, that she needs no ones decision, even the decision of her mother who is in custody of her."*

The order further reads that the petitioner had not taken any steps to visit

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the child in the Creche in the Family Court, Chennai. He had also not taken any steps like issuing notice or letter to the respondent seeking her to bring the child to Creche. The petitioner claim that he visited Creche from the year 2017 and the respondent did not bring the child did not find favour with the Court for the reason that the petitioner had not approached the Court seeking direction to the respondent to bring the child to the Creche. Thus, the Court found that after passing of order of visitation right, the petitioner had not taken any steps to visit the child nor did he take any steps to enforce his visitation right by sending notice or letter to the respondent or taking up the matter with the Court. Therefore, the learned Judge, found it appropriate to cancel the visitation right of the petitioner.

7. Even now the learned counsel for the petitioner is unable to prove before this Court as to the steps taken by the him to enforce his visitation right. As indicated earlier, he had not produced any material in this regard to show either he sent any letter or notice to the respondent to produce the child and took up the matter in the Court to enforce his right of visitation. The child's statement is also very important in a case like this. When it comes to visitation of the child, the concern of the father or the mother is not much important, but the concern of the child is very important. The child, in clear terms, expressed

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her unwillingness to see her father and go with him. She also said that she visited the Child Care Centre, Family Court, Chennai, five times with her mother but her father / petitioner did not come to see her. Therefore, this Court, on considering the attitude of the petitioner in not exercising his visitation right and the child's unwillingness to see her father, is of the view that the cancellation of visitation of right granted to the petitioner is just and in accordance with facts and law. Hence, this Court finds no reason to interfere with the order of the V Additional Judge, Family Court, Chennai, in I.A. No.674 of 2019 in O.P. No.2896 of 2017 dated 02.01.2021, and the same is confirmed.

Accordingly, the Civil Revision Petition is dismissed. No costs.

10.08.2021

Index: Yes / No
Speaking order / Non speaking order
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The V Additional Judge, Family Court,
Chennai.

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G.CHANDRASEKHARAN. J.,

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