

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.06.2021
Pronounced on	05.07.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.R.P.(NPD).No.3575 of 2016

R.Raman

... Petitioner

Vs.

S.A. Thangamani

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 31.03.2016 in I.A.No.484 of 2015 in G.W.O.P.No.704 of 2010, on the file of the Additional Principal Family Judge's Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.Kumaraguru
for M/s.Sai Bharath

ORDER

(Heard through video conferencing)

This Civil Revision Petition has been filed against the Order of the Additional Principal Family Judge, Coimbatore dated 31.03.2016 passed in I.A.No.484 of 2015 in G.W.O.P.No.704 of 2010.

2. The petition, in which the impugned Order was passed, was filed before the Court below under Section 12 of the Contempt of Courts Act. The Contempt Petition has originated from the alleged disobedience of the Order of the learned Additional Principal Family Judge, Coimbatore passed in G.W.O.P.No.704 of 2010 with regard to the visitation right of the respondent. The Original Petition was filed by the respondent against the petitioner who is the husband, for the guardianship of her minor son. After hearing both the parties, the Family Judge has dismissed the petition filed by the respondent. But in the said Order, visitation rights was given to the respondent. According to the said Order, the petitioner/husband should bring the child to a park once in 15 days and during such times, the respondent can interact and be with the company of the child.

3. As per the allegations made by the respondent in the Contempt Petition, the petitioner did not obey the Order of the Court and he did not brought their son only on a few occasions. Making such allegation, the respondent requested the Court to take contempt action against the petitioner. The said petition was allowed and the petitioner was found guilty and he was imposed with a fine of Rs.2,000/- and in default,

sentenced to simple imprisonment for two months. Aggrieved by the said Order, the petitioner husband has filed this Civil Revision Petition.

4. Heard the arguments of the learned counsels for the petitioner and the respondent.

5. The learned counsel for the petitioner would submit that the petitioner never disobeyed the Order but only due to the non-cooperation and the refusal of the child to accompany his father to the park, as ordered by the court, he could not take the child beyond a few occasions.

6. Further, the petitioner drew the attention of this Court to a Memo filed by the petitioner on 22.05.2012, wherein, he has stated that the child refused to co-operate to meet the mother and hence, he was being compelled each time. By so stating, the petitioner sought indulgence of the Court to cancel the Order.

7. Once an Order is passed by the Court in such kind of matters and if any of the parties is aggrieved due to such orders, the best course open to the party aggrieved is to challenge the Order by filing the appropriate

proceedings before the Appellate Court or to file a petition for modification of the condition in the same Court. The petitioner did not opt to take any proceedings in this manner and to get any modified Order from the Court with regard to terms of the visitation rights given to the respondent. Instead the petitioner has filed a Memo in the above fashion. However, a copy of the same was also served on the respondent's counsel on 22.05.2012 itself. Neither the respondent has chosen to file any petition for modification or to get any appropriate order suiting to the then circumstances nor the child was taken to any psychologist or counsellors in order to make him understand the situation in which he is placed.

8. On the pretext of the non-cooperation of the child, the petitioner successfully passed three years. But the respondent also did not take any steps and she has filed this contempt petition after 3 years of wait. At the time when the contempt petition was filed, the child is said to have attained majority. In fact, even when the Order as to custody of the guardianship of the child was passed, the child was said to be 17 years old.

9. Though it is natural for the respondent as a mother to become anxious to see the child and concerned about the maternal affection to be

given to the child, if the child is not cooperative there would arise some difficulties in enforcing the orders of the Court. The contention of the petitioner is that at no point of time, he wilfully disobeyed the Order of the Court and only because of the circumstances beyond his control, he could not comply with the directions.

10. The learned Additional Principal Family Judge has observed that the respondent did not show any remorse for not complying the Order of the Court. The petitioner being the husband and not placed in cordial terms with the respondent due to their matrimonial dispute, he would have felt relieved when the child himself refused to meet the mother. And this would have made the mind of the petitioner free and he would not have shown any remorse. But that alone cannot be viewed as a sign for wilful disobedience.

11. It is true that the petitioner could have taken reasonable steps like getting advice of the psychological experts in order to bring a conducive situation where the Order of the Court could be complied. The respondent also did not approach the Court for 3 years even after the production of the child was stopped by the petitioner.

12. Given the peculiar nature of the child's psychology and the other circumstances, the failure on the part of the petitioner to produce the child as per the Orders of the Court, cannot be viewed as a wilful disobedience. Now the child has attained majority and the issue of his guardianship or visitation rights at this stage is of no consequence. Since the child being a major, he can take his own decision as to the company he prefers. In view of the above narrated facts and circumstances, I feel that the learned Additional Principal Family Judge is not right in coming to the conclusion that the petitioner had committed wilful disobedience of the Orders of the Court.

In the result, this Civil Revision Petition is allowed and the Order of the learned Additional Principal Family Judge dated 31.03.2016 passed in I.A.No.484 of 2015 in G.W.O.P.No.704 of 2010 is set aside. No costs.

Speaking/Non-speaking
Index: Yes

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05.07.2021

To

1.The Additional Principal Family Judge
Coimbatore.

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



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R.N.MANJULA,J.

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Pre-delivery Order in
C.R.P.(NPD).No.3575 of 2016

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