

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1536 of 2020

V.Vinothraj

... Petitioner

Vs.

P.V.Deepa Devi

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India to direct the Subordinate Judge, Poonamallee to dispose of the said H.M.O.P.No.513 of 2019 within a time frame.

For Petitioner

: Ms.P.Srividhya for
Mr.A.Muthukumar

For Respondent

: Mr.C.Prabhakaran

ORDER

The present Civil Revision Petition has been filed to direct the learned Subordinate Judge, Poonamallee to dispose of the H.M.O.P.No.513 of 2019 within a time frame by raising various grounds.

2. The case of the petitioner is that originally H.M.O.P.No.711 of 2017 was filed under Section 9 of Hindu Marriage Act, 1955 seeking for Restitution of Conjugal rights. The petitioner and the respondent was married under Hindu Rites and Customs at Sri Kalyani Thirumana Mandapam, Mangadu, Chennai on 07.06.2012. As the respondent / wife was working as Senior System Executive in Wabco TVS India Limited, she never used to do any house hold works and she did not co-operate for the family life. A male baby was born on 07.07.2013 and was named as Kritikesh and the boy was studying at International CBSE I School, Mangadu. The petitioner was taking care of his child education from LKG to IV Standard and without the consent of the petitioner, the respondent had admitted Kritikesh in Infant Jesus Matriculation School, Pattibiram, which was not as good as the International CBSE I School.

3. It is the further case of the petitioner that on 05.07.2016, the respondent had called the petitioner and stated that her brother had met with an accident and died on the spot. When the petitioner's family visited the respondent's brother at hospital, the respondent shouted stating that her brother died on the spot only because the petitioner had come to meet the respondent in her house and next 20 days, the respondent was staying

with her family and she did not intend to come back to the petitioner's house and she started behaving like a mentally disturbed person. The dispute started between the parties and the respondent started leveling baseless allegations against the petitioner stating that for the past 10 years, the petitioner had illegal contacts with many women and showed a photograph of the office colleague of the petitioner to his parents. In spite of repeated request from the family members of the petitioner to rejoin him, the respondent had not bothered to live with the petitioner, hence he filed a petition for Restitution of Conjugal Rights in H.M.O.P.No.711 of 2017.

3. In the meanwhile, the petitioner filed I.A.No.187 of 2018 in H.M.O.P.No.711 of 2017 before the court below to direct the respondent to appear with the child Kritkesh to visit the petitioner on every week ends, i.e., Saturday morning at 9.00 a.m. to be kept in the company of the petitioner till evening of Sunday and to visit the petitioner on the 1st day of vacation to be kept up to the end of half of the vacation period.

4. Subsequently, a counter was filed by the respondent to the said I.A.No.187 of 2018 as well as to the H.M.O.P.No.711 of 2017 before the court below denying all the allegations stated by the petitioner and prayed to dismiss the petition filed by the petitioner.

5. The court below after considering the rival submissions on either side had allowed the I.A.No.187 of 2018 in-part, by observing *"that the respondent, being mother and the child was aged 5 years at that time, the petitioner's contention that he should be given custody of their child on his birthday and all festival occasions and vacation is not acceptable"* hence a direction was issued to the petitioner to visit the child on Saturday or Sunday in a common place or at the respondent's residence.

6. It is the further case of the petitioner that the respondent was very adamant and did not permit the petitioner to visit the child. Since the respondent did not evince any interest to live with the petitioner, he had withdrawn the said earlier H.M.O.P.No.711 of 2017, which was filed for restitution of conjugal rights. Thereafter, yet another H.M.O.P.No.513 of 2019 was filed by the petitioner to dissolve the marriage, which was held between the petitioner and the respondent on 07.06.2012. Pending the said H.M.O.P., another I.A.No.626 of 2019 was filed by the petitioner for visitation rights of the minor child on every week ends and on 1st day of vacation. Since the same is pending without any further adjudication, the petitioner has filed the present Civil Revision Petition.

7. The learned counsel for the petitioner submits that there are several police complaints by the respondent against the petitioner and his family members, which ultimately broken down the marriage bondage and there is no chance of reunion between the parties. Further, the respondent has neither came forward to live nor allow the petitioner to live and dragging the case as possible.

8. The learned counsel for the petitioner also contends that the respondent took nearly 6 months for filing counter in the first round of litigation namely, H.M.O.P.No.711 of 2017 filed by the petitioner herein against the respondent for restitution of conjugal rights and now almost 10 months had been expired in the second round litigation namely, H.M.O.P.No.513 of 2019 filed by the petitioner herein against the respondent for divorce on the ground of cruelty, wherein the respondent has not at all chosen to file her reply till date.

9. Further, the petitioner submits that the respondent is not willing to live with the petitioner from the day one till date. Also in number of cases, this Court had directed the lower courts to dispose of the HMOPs as expeditiously as possible by giving preference to the matrimonial disputes,

as the delay would cause mental agony, torture and harassment and also affect the young age of both the parties and kept the future planning of both the parties in suspension and affects the child from such a broken family and therefore, he prayed to allow the present Civil Revision Petition.

10. The learned counsel for the respondent submits that the petitioner assaulted her and threatened to ill her and had driven her out of the matrimonial home with her child. Further, the petitioner did not make any attempt to see the child and ulterior motive has filed the petition to separate the child from her. Also the petitioner and his family members do not have any right or capacity to take the custody of the child for a minute and hence seeks to dismiss the petition.

11. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the documents placed on record.

12. It is seen from the perusal of the records that already a petition for restitution of conjugal rights has been filed by the petitioner / husband and the same was pending for nearly two years, thereafter, the said petition was withdrawn by the petitioner himself after two years. Moreover, the

visitation rights, which was granted by the court below was also not effected in a peaceful manner. The respondent / wife had levelled allegations against the petitioner stating that the petitioner is a drunkard and the same will affect the peaceful environment of the child. That being the case, it is clear the respondent / wife is not willing to join the petitioner / husband and hence this Court is inclined to put an full-stop for the pending litigation between the parties.

13. Though it is clear that the marriage solemnized between the petitioner and the respondent is unsuccessful marriage, the child future also to be taken into account, however, in the interest of the minor child, this Court directs the respondent / wife to file counter in H.M.O.P.No.513 of 2019, within a period of one month, [ie., the next hearing date the court below can grant one month time to file counter] and trial to be conducted thereafter and concluded within 30.09.2021. It is needless for this Court to point out that the parties shall not seek unnecessary adjournments.

With the aforesaid observation, the present Civil Revision Petition is allowed. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

V.BHAVANI SUBBAROYAN, J.,

ssd

To

1. The Subordinate Judge,
Poonamallee
2. The Section Officer,
V.R.Section,
High Court, Madras



C.R.P.No.1536 of 2020

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