

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.09.2021

Coram

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P.(PD) No.1885 of 2021
and
C.M.P.No.14672 of 2021

Anbazagan

... Petitioner

Vs

Vasanth

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Order and Decreetal order dated 29.12.2020 in I.A.No.1 of 2020 in HMOP No.341 of 2020 on the file of the learned Judge, Family Court, Perambalur.

For Petitioner

...

Mr.C.Muruganandam

ORDER

This petition is filed to set aside the order passed in I.A.No.1 of 2020 in HMOP No.341 of 2020 on 29.12.2020 by the learned Family Court Judge, Perambalur.

2. I.A.No.15 of 2012 was filed by the petitioner under Section 151 CPC for conducting DNA test on petitioner, respondent and the child born on 06.10.2009 named Arunkumar. The reason for filing this petition is that the marriage between the petitioner and respondent had taken place on 11.09.2002 and a male child was born on 09.07.2008 and he was named Ajay. Petitioner went to Dubai on 23.09.2003 in connection with his work. He came back on 07.08.2007 and stayed in India for two months and then went to Dubai on 15.10.2007, then he came back to India On 03.01.2009 and permanently staying in India. Petitioner came to know that the respondent was having illicit intimacy with one Arivazhagan. He had personally seen their illegal relationship. Then the respondent left to her parent's home. On 06.10.2009, a male child was born to the respondent and he was named as Arunkumar. Arunkumar is not born to him. Therefore, DNA test of the petitioner, respondent and child Arunkumar is necessary. That petition was contested by the respondent and was allowed. Advocate Mr.Raja was appointed as Advocate Commissioner. However, Advocate Commissioner has not taken any steps for getting the DNA test report, inspite of payment of his fees. Therefore, I.A.No.15 of 2012 came to be

dismissed. Therefore, this petition in I.A.No.1 of 2020 is filed for similar relief. This petition was resisted by the respondent stating that there is no necessity for subjecting the petitioner, respondent and Arunkumar for DNA test. In I.A.No.15 of 2012, as per the order of the Court blood samples were collected from the respondent and child Arunkumar in Perambalur Government Hospital on 05.06.2014. The petitioner has not paid necessary amount for DNA test. Therefore, I.A.No.15 of 2012 was closed. Again this petition is filed for DNA test and it is nothing but an abuse of process of law. The learned Family Court Judge considered the rival submissions and dismissed the petition. Against the order of dismissal, the present petition is filed.

3. Learned counsel for the petitioner submitted that the petitioner had no sexual relationship with the respondent after he returned from Dubai. There is no possibility of minor Arunkumar being born to him. Unless DNA test is conducted to petitioner, respondent and minor Arunkumar, he will not be in a position to prove that minor Arunkumar was not born to him and that the respondent was leading an adulterous life. He paid Commissioner's fee. Only the Commissioner

has to take steps for DNA test. There is no fault on his part. However, I.A.No.15 of 2012 was closed. In the said circumstances, I.A.No.1 of 2020 was filed for DNA test. Without considering the merits of petitioner's claim, this petition was dismissed. Therefore, he prayed for setting aside the order of learned Judge, Family Court, Perambalur and for allowing I.A.No.1 of 2020.

4. Considered the submissions of learned counsel for the petitioner and perused the records.

5. Perusal of the records, especially the order passed by the learned Family Court Judge, Perambalur in I.A.No.1 of 2020 shows that the petitioner had already filed I.A.No.15 of 2012 for conducting DNA test for petitioner, respondent and minor Arunkumar. The respondent made an endorsement in the petition that without prejudice to her right, the DNA test may be conducted and therefore, I.A.No.15 of 2012 was allowed on 02.04.2012. Petitioner also filed I.A.No.74 of 2012 for appointment of Advocate Commissioner to help in conducting DNA test. Respondent had also endorsed no objection to this petition without

prejudice to her right. On 02.04.2003, petition was allowed fixing the expert's fee as Rs.7500/-. Advocate Mr.Raja was appointed as Commissioner to collect blood samples and send it to Forensic Science Department. The records show that blood samples were received in June 2014. Till 09.06.2016, either the Advocate Commissioner or the petitioner has not taken any steps to send the blood samples for DNA test. The petitioner has not paid the Demand Draft for Rs.7500/- for expert's fee. Therefore, I.A.No.74 of 2012 was dismissed on 09.06.2016.

6. The order of learned Judge shows that the petition filed for conducting DNA test in I.A.No.15 of 2012 was already allowed and Commissioner application was also allowed to facilitate the DNA test. Blood samples of respondent and minor Arunkumar were also collected. Petitioner has not paid the Demand Draft for Rs.7500/- towards payment of expert's fee. It appears that due to non-payment of expert's fee, Commissioner has also not taken any steps for taking blood samples to the Forensic Science Department. Therefore, the petition in I.A.No.74 of 2012 was dismissed. After eight (8) years, petitioner has again filed

I.A.No.1 of 2020 for DNA test. In the considered view of this Court, the filing of the present petition is nothing but a clear abuse of process of Court. The petitioner was given opportunity. But he failed to avail that opportunity by paying expert's fee, despite blood samples of respondent and minor son were collected. Therefore, he cannot file another petition for the same relief. In this view of the matter, this Court finds no reason to interfere with the order of the learned Judge, Family Court, Perambalur and accordingly, the order of the learned Judge, Family Court, Perambalur passed in I.A.No.1 of 2020 in HMOP No.341 of 2020 on 29.12.2020 is confirmed.

7. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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14.09.2021

Index : Yes / No

Internet : Yes / No

Speaking order : Yes / No

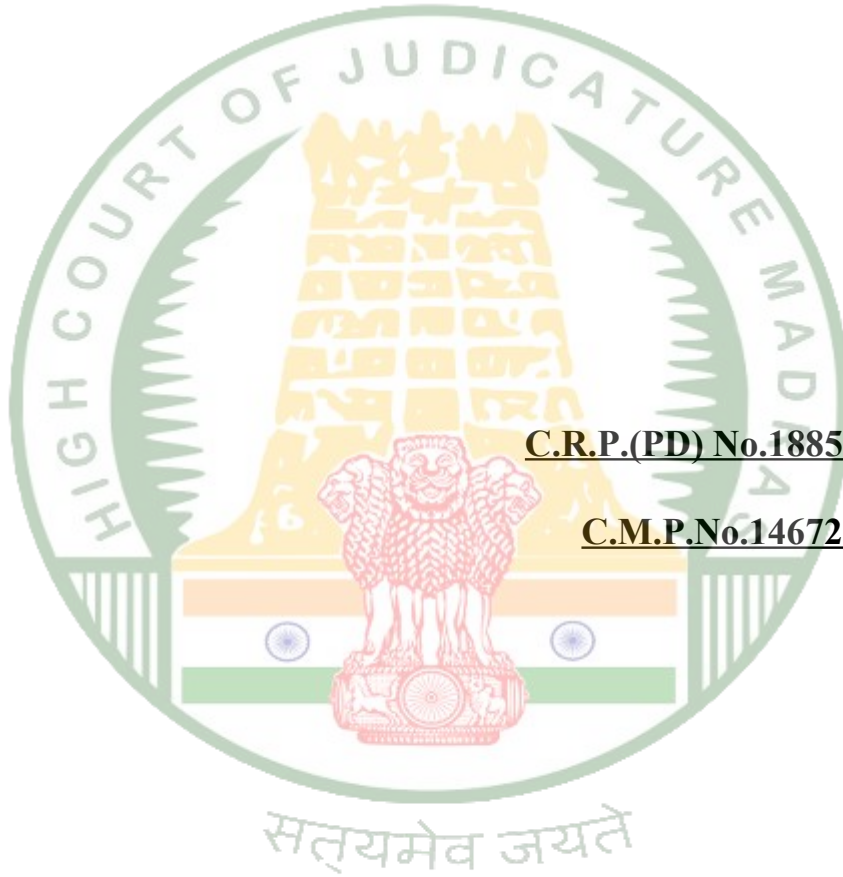
To,

1. The Judge, Family Court, Perambalur.

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G.CHANDRASEKHARAN, J.

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