

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2021

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P. (PD) No.2304 of 2020

Dr.S.Jaikumar

....Petitioner

Vs

T.Brindha

....respondent

Civil Revision Petition filed under Article 227 of Code of Civil Procedure against the fair and final order dated 09.03.2020 made in I.A.No.01 of 2019 in G.W.O.P.No.3403 of 2014 on the file of the III Additional Family Court, Chennai.

For Petitioner ..

Mr.K.Ramesh Kumar

For Respondent ..

Ms.P.Yasmin Begum for

CAV.R.Angalaparameswari

ORDER

This Revision Petition has been filed against the fair and final order dated 09.03.2020 made in I.A.No.01 of 2019 in G.W.O.P.No.3403 of 2014 on the file of the III Additional Family

Court, Chennai, in and by which, the respondent/mother of two children, was permitted to visit her children by staying in the house of the petitioner during school vacation, Dasara/Christmas/summer holidays and also to have contact with them using video calling facilities or any other type of social media every day between 8.00 p.m. and 8.15 p.m. for 10 minutes respectively with each child during working days and the petitioner herein who is the father of the children was directed to ensure such facility.

2. Questioning the above directions, the petitioner has come forward with the present revision petition.

3. I am deeply disappointed with the attitude of the petitioner/father who appears to have no concern about the welfare and mental status of his children. The petitioner herein is questioning the practicality of the interim order which has been passed by the Family Court, permitting the respondent who is the mother of the children, to visit her children in the residence of the petitioner during holidays and also to have contact through video calls during working days.

4. The petitioner and the respondent herein are husband and

wife. They had been blessed with two children namely, Kaniksha and Mitun Kumar who were born on 06.11.2008 and 21.05.2010 respectively. There have been some differences of opinion between the petitioner and the respondent which prompted the respondent to file a Guardian and Wards Original Petition in G.W.O.P.No.2304 of 2014 before the District Court, Tiruchirappalli, praying to declare her as guardian of her two minor children and also seeking to hand over their custody to her. The petitioner also moved HMOP 3351 of 2013 before the III Additional Family Court, Chennai for grant of divorce on the ground of cruelty, while the respondent moved HMOP 791 of 2013 before the Principal Subordinate Court, Tiruchirapalli, for restitution of conjugal rights. By virtue of the order of this Court, dated 26.06.2014 in Tr.C.M.P.Nos.88, 268 and 269 of 2014, the proceedings in GWOP No.2304 of 2014 and HMOP No.791 of 2013 were directed and transferred to the file of III Additional Family Court, Chennai to be tried along with HMOP 3351 of 2013. Pursuant to the same, all the above said proceedings were taken on the file of III Additional Family Court, Chennai and they are pending.

5. During the pendency of GWOP, the respondent moved an interlocutory application in I.A.No.1 of 2019 seeking interim custody of her children. By order dated 09.03.2020, which is the subject

matter of the present revision petition, the Family Court permitted the respondent/mother to visit her children, in the house of the revision petitioner herein during school vacation, Dasara/Christmas/Summer vacation holidays and also permitted her to be with them by staying in the house of the revision petitioner herein.

6. It appears that there had been no effective compliance of the interim order of the Family Court since the petitioner is resisting the visitation of the respondent/mother and her stay in his residence and depriving her to avail her visitation rights to see her children and spend time with them. The petitioner claims to be a Doctor and I do not understand how he does not realize that his minor children are entitled to seek the need of the care and affection of their mother. Even if the children are not inclined, it is his duty to convince and encourage the children and facilitate them to get love, affection and companionship of the mother, which is not only a requirement, but is their basic human right. Admittedly, all along the petitioner/father is having custody of the children and the respondent/mother is longing to see her children and spend time with them and for this, she has been approaching the Courts and despite the interim orders of the Court, granting visitation rights to the respondent/mother, she is unable to exercise them because of the attitude of the

petitioner/father in not obeying the orders of the Court under the guise that the children themselves are not interested even to see their mother and spend time with her. The petitioner/father cannot claim that he alone has every right over the children and his love and affection is sufficient while the love and affection of the mother is not required and the visitation rights granted by the Courts cannot be implemented. When the petitioner is in custody of the minor children, he cannot even deny the visitation rights of the respondent/mother in violation of the orders of the Courts. When the respondent/mother is not in custody of her children, she is entitled to have sufficient visitation rights so that the children would keep in touch with her and would not lose their social, physical and psychological contact of her. If the petitioner continues to deny and evade to implement the interim orders of the Court, the bond between the respondent/mother and her children who are now at tender age, would become feeble and after some time, she would become a stranger to her children. Therefore, this Court condemns the attitude of the petitioner in preventing the respondent to avail her visitation rights.

7. During the pendency of the revision petition, my predecessors have passed interim orders on various occasions, facilitating the respondent/mother to spend time and interact with her

children by directing the petitioner/father to bring the children to the Children's Care Centre, Family Court at 10.30 a.m. and to leave them and again take back them at 5.00 p.m. On one occasion, during Pongal holidays, this Court specifically directed the petitioner/father to handover the children to the respondent/mother in her residence at Trichy. It appears that the petitioner/father instead of taking them to the residence of the respondent/mother, went to the All Women Police Station, Trichy and lodged a complaint alleging that the children were not ready to go and stay with their mother and not even interested in seeing and talking with her. According to the respondent/mother, the children have been tutored by the petitioner to speak against her. Generally, the children at their tender age, are not capable of forming a bad opinion of their own mother unless they are tutored or the mother is portrayed before them in a negative manner. Claiming that the children are not willing to go with their mother nor interested to see and talk with her, the petitioner cannot deny the respondent/mother to have visitation rights, since as mother, she has a special place in the minors' life and depriving the minors of their mother's love and affection and company, would certainly have an adverse impact on their over all development.

8. In this revision, the petitioner has challenged the interim

order of the Court below only on the ground that the respondent's behaviour is uncultured and she used to quarrel with him and his age old parents and cause disturbance to peace and tranquility at the residence of the petitioner if she is permitted to stay and it would have an impact on the children and that the children are not willing to go with their mother and they cannot be compelled to stay with her by virtue of the interim order of the Court. This Court is not convinced with the version of the petitioner and does not find any merit in the contentions raised by him.

9. In the light of the above and in view of the circumstances of the case wherein, the petitioner has been depriving the respondent/mother to avail her visitation rights despite the interim order of the Court below, this Court feels it appropriate to direct the petitioner/father to hand over the custody of the minor children to the respondent/mother at his residence on the 2nd and 4th Saturday of every month at 10.30 a.m. and the respondent/mother shall take them from the house of the petitioner and spend time with them at Children's Care Centre, Family Court, Chennai till 5.00 p.m. and thereafter, she shall hand over them to the custody of the petitioner/father at his residence. This arrangement shall continue until further orders of the Family Court. In case the petitioner/father

resists or disobeys the order of this Court, the Family Court should not hesitate to appoint an Advocate Commissioner to accompany the respondent/mother to facilitate her to exercise her visitation rights.

10. With the above observation, the Civil Revision Petition is dismissed. No costs.

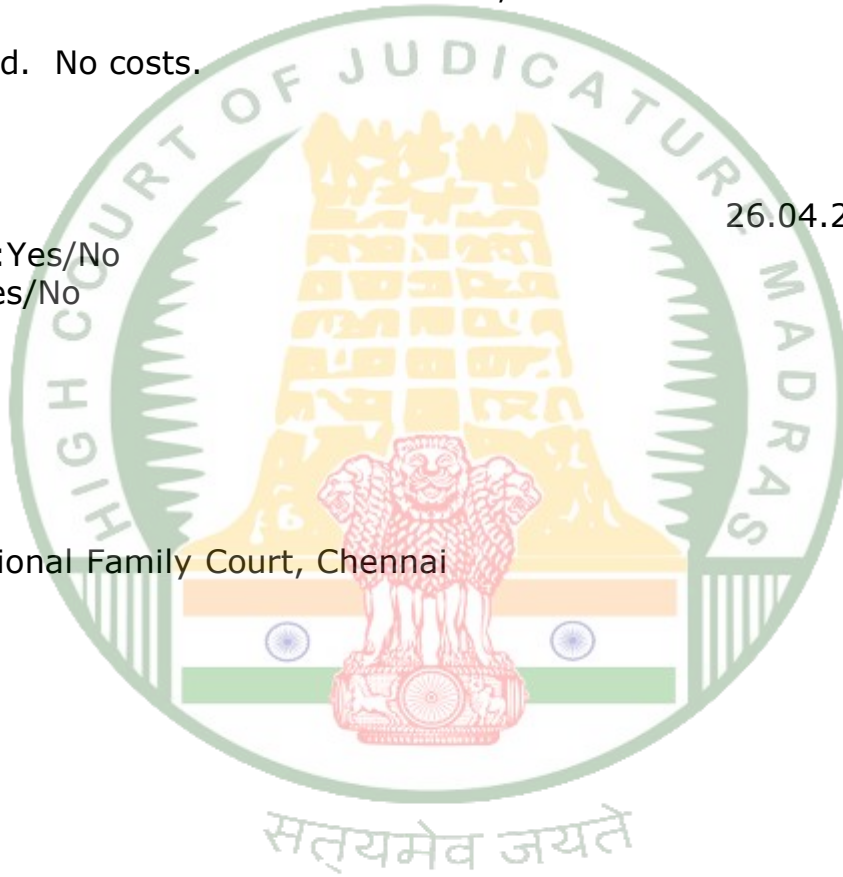
26.04.2021

Internet:Yes/No
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To

III Additional Family Court, Chennai



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C.V.KARTHIKEYAN,J.

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