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CRP (PD) No.2493 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2493 of 2021

CMP No.18799 of 2021

Godwin Joseph Selvam

... Petitioner

Vs

Monica Clement @ C. Monika

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of The Constitution of India, to set aside the docketal order dated 03.08.2021 in returning the I.A. SR. No.4120 of 2021 presented by the Power Agent of the petitioner in I.D.O.P. No.1961 of 2021 and further direct the Learned V Additional Family Court, Chennai to receive and number the I.A. SR. No.4120 of 2021 presented by his Power Agent under Order III Rule 1 of CPC read with Section 151 and to allow the petitioner to be represented by his Power Agent.

For Petitioner : Mr. A. Arulmozhi

ORDER

Considering the fact that the application has been returned without numbering, notice to the respondent at this stage, is deemed unnecessary.

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2. The return made by the learned Family Judge exposes ignorance of law as well as the wooden approach adopted by the learned Family Judge. The application seeking permission to represent the respondent in the proceedings before the Family Court filed by the Power of Attorney has been returned by the learned Family Judge on the ground that the original petitioner viz., the Principal was not physically present. This kind of return will erode the confidence of the litigant in the entire judiciary. No doubt, the Family Court Act requires the parties to be present. But the Family Court Act does not prevent the party from authorising another person to represent his case before the Court.

3. In the case on hand, the respondent in IDOP No.1961 of 2021 is a resident of United States. He has authorized his brother by executing a legal document which is executed before the Officials of the Indian Embassy in the United States and necessary Stamp duty has been paid under Section 18 (2) of the Indian Stamp Act. Once such a document is produced, it is for the Court to consider whether the Power of Attorney is still in force and the Agent represents the Principal. The Family Court cannot insist upon



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the presence of the Principal, which will defeat the very object of the execution of the Power of Attorney. This Court had in CMA No.2237 of 2007 held that a person can be permitted to be represented by a Power Agent before the Family Court and it is not necessary that the individual should be physically present.

4. In view of the above return made by the Family Judge dated 03.08.2021 is set aside. The Family Judge is required to entertain IA SR No.4120 of 2021 without insisting upon the presence of the Principal and proceed to dispose it of in accordance with law. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2021

vum

Index: Yes/No

Speaking order / Non speaking order

Note: Registry is directed to return the original petition that has been filed in the revision to the learned counsel for the petitioner forthwith to enable her to represent it.



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R.SUBRAMANIAN, J.

vum

To:

The V Additional Family Court,
Chennai.

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and CMP No.18799 of 2021

24.11.2021

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