

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.R.P.(NPD).No.4357 of 2018
and C.M.P.No.23837 of 2018

1.K.Madanavalli
2.Moorthy

...Petitioners

Vs

1.V.R.Jagadeesan
2.J.Radha
3.The Additional General of Police (Prison ADGP)
Gandhi Irwin Road, CMDA Tower II,
Egmore, Chennai 600 008.

... Respondents

Prayer Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, prayed to set aside the fair and decreetal order dated 27.08.2018 passed in I.A.No.104 of 2018 in GWOP.No.40 of 2009 on the file of the Principal District Court, Vellore, Vellore District.

For Petitioners : Mr.PA.Sudesh Kumar
For R1 and R2 : Mr.D.Magarajan
For R3 : Mr.Y.T.Aravind Gosh
Additional Government Pleader

ORDER

This Civil Revision Petition has been filed against the order dated 27.08.2018 passed in I.A.No.104 of 2018 in GWOP.No.40 of 2009 on the file of the Principal District Court, Vellore, Vellore District.

2.The learned counsel for the petitioners submitted that the said GWOP.No.40 of 2009 was filed by the Revision Petitioners to get the guardianship of the Minor Vedavarshan. The 1st Revision Petitioner is the paternal grandmother and 2nd Revision Petitioner is the paternal uncle of the said Minor Vedavarshan. The parents of the Minor Vedavarshan died on 03.08.2009 (mother) and 04.08.2009 (father) and after their demise, Minor Vedavarshan was in the custody of his maternal grandparents. Under these circumstances, the Revision Petitioners have filed the GWOP., and the same was decreed in exparte. The Execution Petition was also filed by the petitioners. Thereafter, the respondents herein filed a petition to condone the huge delay of 2525 days in filing the petition to set aside the exparte decree in the said GWOP. The Court below after hearing both the parties has allowed the same, which is not just and fair.

3.The learned counsel for the respondents 1 and 2 submitted that the respondents do not know about the status of GWOP. They were shifted from Adampakkam to Katupakkam and their counsel also doesn't inform about the status of the case. They came to know about the exparte decree after the filing of execution petition, when the Police Personnel approached them for the purpose of executing the order in GWOP.

4.Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

5.The facts remains that the child is yet under the custody of the maternal grandparents, who are aged about 80 years. Due to the failure of the respondents' counsel the respondents were not able to about the status of the case and the learned counsel also failed to communicate about the disposal of the case. Under these circumstances the respondents filed an application to condone the delay to set aside the exparte decree.

6.The relevant portion of the order passed by the Court below is extracted hereunder:

“8.The petitioners are the respondent 1 and 2 and the respondents 1 and 2 are the petitioners in GWOP 40/2009. The respondents 1 and 2 filed GWOP 40/2009 to appoint themselves as Guardian for Minor V.Vedhavarshan. Even though the petitioners entered their appearance, due to non filing of the counter, they were set exparte and the said petition was allowed in 29.06.2011. Now after a lapse of 7 years, the petitioners, who are the respondents 1 and 2 filed petition to set aside the exparte order and this petition to condone the delay of 2525 days. The respondents in their counter vehemently opposed the petition stating that the petitioners have not stated any valid reason for the delay of the years and that the petition is filed only to harass the respondents.

9.The delay in filing the set aside petition is very long as the delay is more than 7 years. The petitioners have not stated any valid reasons to condone the delay. Upon the direction of the Court, Minor V.Vedhavarshan was produced before the time if enquiry. He is studying 8th Standard and he is still under the custody of the petitioners alone. He was also capable of understanding things. The Minor V.Vedhavarshan was living

with the petitioners for the past 7 years and upon enquiry he has stated that he is willing to go with the petitioners only.

10. Even though the petitioners have not explained each and every day delay, considering the welfare of the child, we have to decide who is proper guardian for the child. Even though the exparte order was passed in the above case, no steps have been taken by the respondents to get the child to their custody. Considering the facts and circumstances of the case, welfare of the child the fact that the petition thereby condoning the delay. Since the delay is abnormal, considering the inconvenience caused to the respondents 1 and 2, I am inclined to allow this petition on payment of costs by the petitioners to the respondents 1 and 2.

In the result, this petition shall be allowed on payment of costs of Rs.7,000/- on or before 05.09.2018 failing which this petition automatically stands dismissed.”

7.A perusal of the order would show that the Court below after taking into consideration the submission of the petitioners therein and in the interest of the justice has come to the conclusion that it would be appropriate to condone the delay. This Court does not find any infirmity in the order passed by the

Court below.

8.The learned counsel for the petitioners fairly submits that the 2nd petitioner, Paternal father of the child is 49 years old unmarried man and therefore he wants to take care of the Minor Vedhavarshan, therefore he along with his mother filed GWOP. He further submitted that it will be well and good, if the petitioners are granted visitation right to visit the Minor Vedhavarshan twice in a month until the disposal of GWOP. The learned counsel for the respondents also accepted for the same.

9.Accordingly, this Courts passes the following order:-

(i)Visitation right is granted to the petitioners to visit the child, Minor Vedhavarshan twice in a month preferably the second and third Saturday of every English calender month till the disposal of the GWOP.,

(ii)The Court below is directed to dispose of GWOP.No.40 of 2009, within a period of 6 months from the date of receipt of a copy of this Order.

10. With the above directions, this Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed.

12.02.2021

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

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To:

The Principal District Court, Vellore,
Vellore District.



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KRISHNAN RAMASAMY,J.

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