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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P(MD) Nos. 1553 and 1554 of 2021

and

C.M.P(MD)No.8521 of 2021

C.Subramanian

... Petitioner/Petitioner/Respondent in
both petitions

Vs.

1.B.Suriyakala,

2.Minor Arjun

... Respondents/Respondents/
petitioners in both petitions

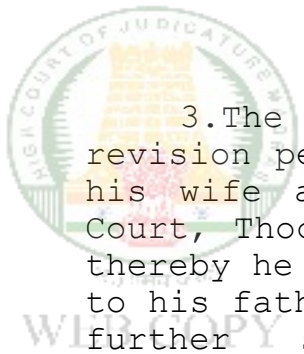
PRAYER IN BOTH PETITIONS: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the return order dated 31.08.2021 passed in unnumbered I.A.No.... of 2021 in M.C.No.62 of 2020 and further for a direction directing the Learned Family Court, Tuticorin to number the unnumbered I.A.No..... of 2021 and proceed the same on merits for adjudication.

For Petitioner : Mr.S.Rajasekar

COMMON O R D E R

C.R.P(MD) No.1553 of 2021 has been filed to set aside the return order dated 31.08.2021 passed in unnumbered I.A.No.... of 2021 in M.C.No.62 of 2020 and further for a direction directing the Family Court, Tuticorin to number the unnumbered I.A.No..... of 2021 and proceed the same on merits for adjudication.

2.C.R.P(MD) No.1554 of 2021 has been filed to set aside the return order dated 31.08.2021 passed in unnumbered I.A.No.... of 2021 in M.C.No.62 of 2020 and further for a direction directing the Learned Family Court, Tuticorin to number the unnumbered I.A.No..... of 2021 and proceed the same on merits for adjudication



3.The learned counsel for the petitioner submits that the revision petitioner is the respondent filed in M.C.No.62 of 2020 by his wife and child, which is pending on the file of the Family Court, Thoothukudi. The petitioner is presently employed at USA and thereby he is unable to appear in person had given Power of Attorney to his father to represent him before the Courts in India. He would further submit that the petitioner has earlier filed HMOP No.354 of 2019 for divorce before the II Additional District and Sessions Court, Thiruvallur at Poonamallee which was later transferred to Sub Court Tuticorin on the instance of the respondent and it is renumbered as HMOP No.40 of 2020 is still pending on the file of the Sub Court, Tuticorin. The petitioner's father as Power of Attorney is representing the petitioner before the Sub Court. Meanwhile, the respondents have filed M.C.No.62 of 2020 on the file of the Family Court, Tuticorin seeking for maintenance for her and her minor son. Since the petitioner was unable to come from USA the trial Court has passed an EX-parte order on 29.07.2021. The petitioner through his power agent has filed a petition to set aside an ex-parte order and also filed a petition to permit to represent through power agent and also to set aside the exparte order passed on 29.07.2021. The trial Court without taking into consideration the judgments of this Hon'ble Court in **Nathiya Faru Vs. Rojan Roux** [2009 5LW 353] and **Ambika Vs.Arunachalam @ Arun** [CRP (MD)No.817 of 2019] has returned the petition. He would submit that one of the reasons stated by the Registry of the Family Court is that the power has been given to file legal proceedings before the Subordinate Court Poonamallee. The Registry is refusing to accept the fact that in the same Power of Attorney at clause 4, the power of Attorney is authorised to file and defend any suits, petitions or other proceedings in all Courts, Tribunals in my name and on my behalf and to do all other necessary things as my attorney deems fit and proper and if the power of attorney is not accepted and the petition is not re-numbered the petitioner will be put to serious prejudice.

4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.

5. Though clause 4 of the Power of Attorney authorises the petitioner to defend and file any suit, the Registry of the Family Court, Thoothukudi, had followed a rigid approach and returned the petition. In the opinion of this Court, having permitted the petitioner to represent through power of attorney his father in H.M.O.P.No.40 of 2020, no prejudice would be caused to the respondent by permitting him to be represented by his father in M.C.No.62 of 2020.

6. In view of the above circumstances of the authorities referred to above, this Court deems it appropriate to allow the Civil Revision Petition, hence the Civil Revision Petition stands allowed. No costs. However, it is made clear that whenever the trial Court insists for the presence of the petitioner, he should



appear before the Court. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

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Sub Assistant Registrar(CS)

sn/aav

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Judge,
Family Court, Tuticorin.

Copy to:

The Section Officer,E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-32207[F] dated 22/10/2021)

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MGJ/SKN(18.11.2021) 3P 5C