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CRP.(PD).No.822/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.822/2019

[Virtual Mode]

Manikandan @ Abdul Abzel

.. Petitioner

Vs.

Shameena

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decree order dated 10.01.2019, made in I.A.No.666/2017 in O.S.No.6/2016 on the file of the learned Family Court Judge, Puducherry.

For Petitioner	:	Mr.Prakash Adiapadam for Mr.J.Kumaran
For Respondent	:	No appearance

ORDER

- (1) This Civil Revision Petition is preferred by the husband as against the order in the Interlocutory Application filed by the petitioner himself seeking visitation right to visit his daughter by name, Alzhaniya.



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(2) Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:

(3) The petitioner and the respondent are husband and wife and their marriage was stated to have been solemnized peculiarly by performing the religious ceremony according to Islamic form as well as according to Hindu form. However, the respondent herein filed the Suit in O.S.No.6/2016 on the file of Family Court at Puducherry for dissolution of marriage between the petitioner and the respondent which was performed on 10.08.2014 according to Islamic form and for cost.

(4) From the averments made in the petition filed by the respondent, it is seen that the incompatibility between the couple was mainly on account of religious sentiments. The most serious allegation against the husband was demand of dowry which according to the respondent is very common among Hindus. The repeated allegation against the petitioner was that he was interested in extracting money from the respondent out of marriage.

(5) During the pendency of the Suit, the petitioner/husband filed an application in I.A.No.666/2017 in O.S.No.6/2006 before the Family



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Court, Puducherry to permit him to visit his daughter, Alzhaniya on the date and time and place specified by the Court.

- (6) The said application was contested by the respondent by filing a counter making scurrilous allegations against the husband. It is pertinent to point out that the wife who did not state anything about the wild behaviour of petitioner/husband in the lengthy plaint filed in the Suit, had stated many things about the indecency and the conduct of the petitioner/husband. Be that as it may, the Family Court, Puducherry dismissed the application surprisingly by treating the application filed by the husband seeking visitation rights as on for custody of minor child.
- (7) The petitioner's application was not for custody of minor but to seek permission to have visiting rights as may be permitted by the Court during holidays. The Family Court also has observed that the petitioner or his parents had never cared about the child and had not shown any affection or interest towards child after her birth. It is to be seen that the Court below further observed that the petitioner has not assigned any *bona fide* reason to seek visitation right or custody of minor female child. Stating that paramount



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consideration should be the welfare of the child, the Family Court deprived the petitioner of his valuable right by referring to several judgments of the Hon'ble Supreme Court which are relating to custody of the minor child.

- (8) Before this Court the respondent did not enter appearance despite notice being served on her. The name of Mr.A.K.Anand, learned counsel who appeared for the respondent before the Family Court is also printed in the Cause List. Hence, this Court has proceeded to dispose of the Civil Revision Petition on merits on the available materials. It is relevant to refer to a recent judgment of the Hon'ble Supreme Court in the case of ***Yashita Sahu Vs. State of Rajasthan & Ors. made in Criminal Appeal No.127/2020*** dated 20.01.2020 when the Hon'ble Supreme Court had an occasion to deal with the visitation right of the husband/father, and the legitimate right of a minor child to contact his father. For convenience, Paras 19 to 21 of the judgment of Hon'ble Supreme Court is extracted below:

....“19.A child, especially a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because



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the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every re-union may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weighs each and every circumstance very carefully before deciding how and in what manner the custody of the child should be shared between both the parents. Even if the custody is given to one parent the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding issues of custody clearly define the nature, manner and specifics of the visitation rights.

20. The concept of visitation rights is not fully developed in India. Most courts while granting



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custody to one spouse do not pass any orders granting visitation rights to the other spouse. As observed earlier, a child has a human right to have the love and affection of both the parents and courts must pass orders ensuring that the child is not totally deprived of the love, affection and company of one of her/his parents.

21. Normally, if the parents are living in the same town or area, the spouse who has not been granted custody is given visitation rights over weekends only. In case the spouses are living at a distance from each other, it may not be feasible or in the interest of the child to create impediments in the education of the child by frequent breaks and, in such cases the visitation rights must be given over long weekends, breaks, and holidays. In cases like the present one where the parents are in two different continents effort should be made to give maximum visitation rights to the parent who is denied custody.”

(emphasis supplied)

- (9) As pointed out earlier, the petitioner is the father of minor child and his visitation right cannot be curtailed in the manner as it was done by the Family court. The Family Court failed to distinguish the



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issues which are relevant to consider the application for custody and the points which are relevant for considering the visitation rights of father. The Family Court has misdirected itself and declined the relief sought by the father after quoting or citing judgments which are out of context. Therefore, the order of the Trial Court is unsustainable and hence, it is liable to be set aside.

- (10) However, this Court is unable to give visitation rights without knowing the convenience of the mother and minor which is also important in the interest of both. Therefore, while setting aside the order of Family Court in I.A.No.666/2017, the matter is remitted to the Family Court once again to specify the terms for visitation rights being exercised by the husband with the concurrence of the mother of child and considering the convenience of the minor and respondent. The Civil Revision Petition is **allowed** and remitted as indicated above. No costs.

04.01.2022

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Internet : Yes

To

1.The Family Court Judge, Puducherry.



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S.S.SUNDAR, J.,

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