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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN**

Civil Revision Petition (PD) No.1673 of 2021
and CMP Nos.12955 & 12958 of 2021

1. D.Suganya

2. Naresh .. Petitioners

Vs.

Nithesh .. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to strike-off GWOP No.2865 of 2021 on the file of VI Additional Family Court, Chennai.

For Petitioners : Mr.George William Y.

For Respondent : Mr.M.Himvanth



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ORDER

The petitioners seek to strike of the original petition in GWOP No.2865 of 2021 invoking the supervisory jurisdiction under Article 227 of the Constitution of India. GWOP has been filed seeking custody of the minor child Saathwik on the ground that the respondent/wife is remarried and the child is not being taken proper care of.

**2.** Rejection of the original petition is sought for solely on the ground that the husband has given up the right to even visit the child while agreeing for divorce in OP No.1418 of 2020 on the file of the V Additional Family Court at Chennai. The order of the Family Court at Chennai reads as follows:

> " *In the result, it is ordered that*
>
> *i) The marriage held between the petitioner and the respondent on 28.06.2017 at Thangam Maligai, No.11/6 T.H.road, (Tolgate Bus Terminal) Tolgate, Chennai 600 081, is dissolved.*
>
> *ii) The husband is not entitled for visitation rights,*



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*and*

*iii) The wife and child are not entitled for maintenance and the wife is not entitled for permanent alimony, and*

*iv) The child shall be in the custody of its mother."*

**3.** Mr.M.Himvanth, learned counsel appearing for the respondent/husband, would submit that it is because of the remarriage and neglect of the child which are subsequent events, the husband is seeking custody of the child.

**4.** Be that as it may, I do not think that this Court can entertain this petition under Article 227 of the Constitution of India. It is open to the petitioners to move the Trial Court namely the VI Additional Family Court, Chennai, before which the GWOP is pending seeking rejection of the petition on the grounds that have been raised before this Court. The Hon'ble Supreme Court in ***Virudhunagar Hindu Nadargal Dharma Paribalana Sabai and Others v. Tuticorin Educational Society and***



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***Others,*** reported in ***(2019) 9 SCC 538***, has pointed out that this Court will refrain from exercising jurisdiction under Article 227 of the Constitution of India, unless it is shown to be an extreme case, when alternative remedy under the law is available.

**5.** Hence leaving it open to the petitioners to approach the Trial Court with an application seeking rejection, this Civil Revision Petition is **dismissed.** No costs. Consequently, the connected miscellaneous petitions are closed.

**05.01.2022**

jv

Index: Yes/No
Internet: Yes/No
Speaking order/Non Speaking Order

To

1. The I Additional District Judge,
   Coimbatore.

2. The Section Officer,
   V.R.Section,
   High Court of Madras.



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**R.SUBRAMANIAN, J.**

jv

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