



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P.PD.No.2132 of 2017

and

C.M.P.No.10218 of 2017

V.G.Jagan Narayanan

... Petitioner/respondent

Vs

K.Bhavani

...Respondent/petitioner

Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to strike off the GWOP.No.1816 of 2017 on the file of the I-Additional Family Court, Chennai.

For Petitioner

..

Mr.D.Ferdinand for  
M/s.BFS Legal

For Respondent

..

Mr.K.Kannan

**ORDER**

I do not think the Revision Petition should be kept any further on the board of this Court.



2. The revision petitioner is the husband and the respondent is his own wife. There were issues between themselves leading to filing of O.P.No.181 of 2016 under Section 13(1)(ia) and under Section 26 of the Hindu Marriage Act, 1955 by the petitioner herein before the Family Court, Chennai. That Original Petition did not move along in its normal course. It is stuttered on its way. The respondent herein was originally set ex-parte and thereafter, an ex-parte decree for divorce and also for custody of the two minor children were granted. It is to be mentioned that one of the children was a boy and the other a girl.

3. I am really surprised with the nature of ex-parte decree. The learned Judge had not examined either one of the two children to determine their wish. After extracting the pleadings in the ex-parte judgment which is dated 15.09.2016, it had been stated that the Court was of the considered view that the petitioner herein / husband was also entitled to permanent custody of the minor children.

4. Such a judgment is non-est in law and has to be straight away interfered with.



5. The children have not been examined to determine their wish, nor even were they asked, nor even opinion obtained. Even if the mother is set ex-parte, while deciding custody and the father is present, he could have been called upon to produce children to find out their wish. That step was not taken.

6. Subsequently, it transpires that the respondent herein / wife had filed an application to set aside the ex-parte judgment / order and I am informed that the order had been set aside rightfully and later, the parties went to trial and after contest, an order had been passed on 15.11.2019 again granting divorce, but thankfully, holding out the custody of the two children to the respondent / wife.

7. The respondent / wife had also filed GWOP.No.1816 of 2017. Mere filing of the said petition has triggered the present revision petition by the husband. He could very well have filed a counter in GWOP and contested its maintainability and jurisdiction and could have very easily pointed out the learned Judge that an ex-parte decree had been passed handing over the two children to him and therefore, no further enquiry should be done.



WEB COPY 8. *Prima facie* the revision petition is not maintainable. If the petitioner wants to contest the filing of the GWOP, which is lawfully filed under provisions of law enacted by statute, then primarily, he should invite an order from the learned Trial Judge and thereafter, proceed against the said order. Filing a civil revision petition questioning filing of a Guardian Original Petition, which is still pending, cannot be countenanced and on that one ground itself, this civil revision petition should suffer an order of dismissal.

9. Be that as it may, it is also informed that the son has attained the age of majority and is now studying second year MBBS. The daughter is now aged 16 years. It is stated that a comprehensive order had been passed in O.P.No.181 of 2016 by order dated 15.11.2019, wherein, the custody has been handed over to the respondent. Both the children are with the respondent. They are also visiting the petitioner herein. Let that arrangement go on. The petitioner is also paying necessary maintenance as determined by the Court. Let that maintenance be continued to be paid to the respondent. The respondent is residing in a flat owned by the petitioner. Let her continue to reside in that particular flat.



10. So far as the GWOP.No.1816 of 2017 is concerned, it is for the petitioner herein to enter appearance, to contest, to file a counter and the learned Judge before whom the said petition is pending has to pass necessary orders. This Court cannot intervene and strike out GWOP or encourage the filing of the present revision petition.

11. With the above observations, the present revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

07.02.2022

Internet:Yes/No

Index:Yes/No

smv

To

The I-Additional Family Court,  
Chennai.



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**C.V.KARTHIKEYAN,J.**

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