



WEB COPY



CRP.No. 315 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 315 of 2023

and

CMP No. 2648 of 2023

Vijay Samuel Wilson

.. Petitioner

Versus

Buvalalochini

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 23.11.2022 passed in I.A. No. 3 of 2022 in GWOP. No. 3218 of 2022 pending on the file of the II Additional Family Court, Chennai.

For Petitioner : Ms. N. Mythreye Chandru
for Ms.N. Ishwarya

For Respondent : Ms.Vasudha Thiyagarajan

ORDER

A Division Bench of this Court, in an identical case involving custody of the minor children in the *inter se* matrimonial dispute between the father and mother, has observed in the order dated 03.01.2023 in Habeas Corpus Petition No. 1689 of 2022 that children should not be used as a pawn in the



CRP.No. 315 of 2023

matrimonial dispute between their parents. It is apt to extract the opening paragraph of the said order, which reads thus:-

“The Child is father of the Man” is a famous quote from William Wordsworth’s poem “My Heart Leaps Up”. The popular understanding of this phrase is that the behaviour and activities of a person’s childhood go a long way in building his personality. Children used to be enchanted with the joys of childhood and those thoughts evoke nostalgia when the child becomes a man. For Wordsworth, a rainbow in the sky made his heart leap. Alas, gone are the days when children used to enjoy their childhood and they are now helplessly made to witness the fight between their father and mother, because of their petty egos and it is painful to notice that in most of those fights, it is the children who are used as a pawn. The mental health of such a child takes a beating and how such a child is going to grow into a man and manage relationships, is a million dollar question. We were constrained to start this judgment with such a poignant note since we encounter two or three such cases on a daily basis while dealing with Habeas Corpus Petitions. This is yet another case which falls under this category and we have to deal with it keeping in mind the best interest of the children involved in this case.

2. The observations made by the Division Bench of this Court are more relevant in the context of disposal of this Civil Revision Petition. In this case also, the revision petitioner, who is the father of three children, has knocked the doors of this Court aggrieved by the order dated 23.11.2022 passed in I.A. No. 3 of 2022 in GWOP. No. 3218 of 2022 on the file of the II Additional Family Court, Chennai, whereby, the visitation rights of the



CRP.No. 315 of 2023

petitioner were restricted to few hours, that too, to be visited within the precincts of the Court.

3. For the purpose of disposal of this Civil Revision Petition, certain facts which are absolutely germane and necessary, including the multiple cases filed by the revision petitioner as well as the respondent, are briefly set out hereunder.

4. The marriage between the petitioner and the respondent herein was solemnized on 23.04.2012 at Christ Church, No.56, Anna Salai, Chennai-600 002, as per the Christian rites and customs. The marriage was a love marriage. Therefore, it was initially opposed by the parents of the petitioner. However, after marriage, the parents of the petitioner have buried their hatchet and taken the petitioner and the respondent within the fold of their family. The petitioner and the respondent initially resided with the parents of the petitioner. It is an admitted fact that from the wedlock between the petitioner and the respondent three children have born. However, simmering matrimonial dispute had cropped up between the petitioner and the respondent which prompted the petitioner to file O.P. No.



CRP.No. 315 of 2023

2084 of 2017 under Section 32 of the Indian Divorce Act 1869 for restitution of conjugal rights.

5. Pending O.P. No. 2084 of 2017, the petitioner has filed I.A. No. 4812 of 2018 praying to grant him visitation rights to visit the first and second children, namely, minor Judah Samuel and minor Auron Samuel, every weekend during Saturday and Sunday between 4.00 p.m. and 8.00 p.m.

6. The application for visitation right was opposed by the respondent mainly on the ground that, as Christians, they have to attend the Church and the related religions ceremonies thereof every Sunday. That apart, it was reasoned that the children have to attend their tuition, key board and tennis classes every Saturday and Sunday and not attending those classes would affect their future career option. It is further stated that the third child is only one year old baby and therefore, the respondent has to look after the child and consequently, she finds it difficult to entrust the custody of the two minor children to the petitioner every week. Therefore, the respondent prayed for dismissal of the I.A. No. 4812 of 2018.



CRP.No. 315 of 2023

7. The petitioner has filed a rejoinder stating that the averments in the counter affidavit are false and motivated and they are invented only to harass the petitioner. It is also stated that the reasons stated in the counter affidavit for denying visitation rights are invented to deny him visitation rights. In the rejoinder, reference was also made to the complaint given by the respondent against the petitioner before the All Women Police Station, Guindy and the written undertaking given by him on 08.01.2018 in which it was stated that only after obtaining order from the Family Court, Chennai, the petitioner can visit the children. However, when the petition for visitation rights is filed it is being unceremoniously opposed by the respondent. As a father, the petitioner is entitled to visit the children and therefore, he prayed for granting visitation rights.

8. Pending the proceedings before the Family Court, a Joint Memo was filed by the petitioner and the respondent on 25.01.2019 which reads as follows:-

It is mutually agreed that the respondent shall bring her 1st and 2nd children, namely (i) Judah Samuel and (ii) Aaron Samuel on the first and third Sunday of every English calendar month to the Hotel Saravana Bhavan, JN Road, Ekattuthangal,



CRP.No. 315 of 2023

WEB COPY

Chennai at 3.00 p.m. and hand over the said two children to the petitioner and he shall pick up his children and again he shall hand over the two children to the respondent at 6.30 p.m. to the same venue mentioned above (i.e) Hotel Saravana Bhavan, JN Road, Ekattuthangal, Chennai.

It is therefore prayed that this Court may be pleased to accept this joint memo filed by both the parties and that this joint memo may be treated as part and parcel of the order for visitation of the children in the above matter and thus render justice.

9. Subsequently, on 16.11.2019, O.P. No. 2084 of 2017 filed by the petitioner was allowed by directing the respondent to resume the matrimonial life with the petitioner.

10. The petitioner thereafter filed IDOP No. 765 of 2020 under Section 10(1)(ix) & 10(1)(x) of The Divorce Act, 1869 to grant a decree of divorce on the ground of cruelty and adultery.

11. The respondent filed her counter affidavit in IDOP No. 765 of 2020 stating that the grounds relating to adultery are untenable and they are invented only for the purpose of getting a decree of divorce. Therefore,



CRP.No. 315 of 2023

while denying the averments in IDOP No. 765 of 2020, the respondent prayed for dismissal of the Original Petition

12. That apart, the respondent, along with three minor children, has filed M.P. No. 158 of 2022 in M.C. No. 170 of 2021 praying to direct the petitioner herein to pay a sum of Rs.20,000/- per month to her and Rs.30,000/- per month for each children totally Rs.90,000/-, totally a sum of Rs.1,10,000/- per month towards monthly interim maintenance.

13. The Family Court, considering the plea for maintenance raised by the respondent, has passed an order dated 12.04.2022, directing the petitioner herein to pay a sum of Rs.10,000/- each to the children totally a sum of Rs.30,000/-.

14. Subsequently, the petitioner has filed the instant petition GWOP No. 3218 of 2022 under Sections 7, 8, 9 and 10 and under Section 25 of the Guardians and Wards Act, praying to appoint him as the said Guardian for the three minor children, and to direct the respondent to handover the custody of the minor children to him.



CRP.No. 315 of 2023

15. Pending GWOP No. 3218 of 2022, the petitioner has also filed I.A. No. 3 of 2022 in GWOP No. 3218 of 2022 seeking interim custody of the three minor children pending disposal of the GWOP. No. 3218 of 2022.

16. Opposing the petition for guardianship as well as the interim custody, a counter affidavit has been filed by the respondent.

17. The Family Court, upon considering the rival submissions passed the order dated 23.11.2022 refusing to send the children to the custody of the petitioner. However, the petitioner was given visitation right to visit the children twice in a month on the first and third Saturday of every month from 10.00 a.m. to 12.00 p.m. at Children Care Centre attached to the Family Court, Chennai, till the disposal of the GWOP.No. 3218 of 2022.

18. It is as against this order dated 23.11.2022, the petitioner has filed this Civil Revision Petition.

19. The learned counsel for the petitioner would vehemently contend that the direction issued by the Family Court to visit the minor



CRP.No. 315 of 2023

children in the Court premises is uncalled for, for, in the Court premises, the children may not be open to the petitioner and it is against the spirit with which he sought visitation right. The time of two hours provided by the Family Court to enable the petitioner to visit the three minor children is grossly inadequate, as, within such short span of time the petitioner may not have adequate bonding with the children. Even in the Joint Memo filed by the petitioner and the respondent in O.P. No. 2084 of 2017 it was agreed that the petitioner can take the children with him for atleast three hours and hand over them to the respondent. On the other hand, the present order passed by the Family Court had virtually curtailed the visitation hours to the father which is illegal and improper. The Family Court has not appreciated the legitimate prayer of the petitioner to have the visitation right of the minor children atleast on Saturday and Sunday. Therefore, the learned counsel for the petitioner prayed for setting aside the order passed by the Family Court and to allow the Civil Revision Petition.

20. On the other hand, the learned counsel for the respondent submitted that it is not the intention of the respondent to prevent the petitioner to see the minor children. At the same time, the visitation right



CRP.No. 315 of 2023

sought by the petitioner every week would adversely affect the academic prospects of the minor children. The children are imparted with various extra-curricular activities such as tennis and key board and they have to attend such classes during Saturdays and Sundays. The learned counsel also submitted that the children have excelled themselves in such games. Even though the petitioner was fully aware of the same, he seeks visitation right during the weekend which would adversely affect the classes of the children. Any disturbance or discontinuance of their regular classes would adversely impact them in pursuing the courses. Therefore, it is submitted that the visitation right granted by the Family Court would adequately fulfil the demands made by the petitioner and therefore, the learned counsel prayed for dismissal of the petition.

21. Pending this Civil Revision Petition, this Court on 30.08.2023 passed the following order:-

“The learned counsel on either side, the petitioner and the respondent and the children are present. Considering the submissions made by the parties as well as the learned counsel on either side, this Court, hereby directs the Court below to maintain status quo, prevailing as on date, till



CRP.No. 315 of 2023

WEB COPY

2. Annual Holidays - 1st Week of School Annual

Holidays, 3rd and 4th Week – Friday 6 p.m. to Sunday 6 p.m.

3. Half yearly and Quarterly holidays - 1st Week of Half yearly and Quaterly holidays. \

4. School declared national and festivals holidays occurring in Odd or even months, one of them chosen as per the Respondent's convenience.

5. Attending school events like sports day, annual day, cultural events and parent teacher meetings.

6. At the time of deciding higher studies – college/change of school, if any, petitioner to be consulted.

23. This Court has earnestly considered the rival submissions made by the parties. Undoubtedly, the petitioner, being the father of the three minor children, must be granted visitation right to visit them. The visitation right, if given, would only strengthen the bonding and it would serve as a bridge to retrieve the lost love. In fact, the petitioner submitted in no lesser terms that he is yearning to see the minor children and by citing the academic curriculum of the children he cannot be refused visitation rights. According to the petitioner, he may be permitted to visit the minor children for reasonable hours and it is not his intention to disturb the academic pursuits of the children. Such a request made by the petitioner, in the opinion of this



CRP.No. 315 of 2023

Court, appears to be wholly justified. By citing the academic pre-occupation of the children, visitation rights cannot be curtailed to the petitioner. Moreover, the petitioner only seeks to visit the minor children from 6 p.m. every Saturday to 6 p.m. every Sunday. Such a legitimate request of the petitioner cannot be simply brushed aside.

24. Having regard to the above facts and circumstances of the case, this Court is inclined to modify the order passed by the Family Court and the following directions are issued:-

(i) The respondent is directed to entrust the custody of the three minor children to the petitioner in alternative weeks on Saturdays and Sundays

(ii) During the annual leave declared by the school, the minor children shall remain in the custody of the petitioner for half of the period of holidays. Similarly, the petitioner shall keep custody of the minor children for equal number of days of holidays (50%) during the Dasara or Christmas holidays

(iii) However, it is directed that the petitioner shall not take the minor children, at the time when their custody was vested with him, out of



CRP.No. 315 of 2023

the City limits and he shall enjoy good time with the children within the limits of the City.

25. With the above directions, the Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is also closed.

No costs.

29.09.2023

Index : Yes/No

Speaking order : Yes/No

Neutral Citation: Yes/No

msm

To

1. II Additional Family Court, Chennai.

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



WEB COPY



CRP.No. 315 of 2023

V.BHAVANI SUBBAROYAN, J

MSM

CRP No. 315 of 2023

29.09.2023