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CRP.No.949 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRP.No.949 of 2023 and
CMP.No.7028 of 2023

S.Ramesh Arvind

... Petitioner

Vs.

Nagachandra Vathana

... Respondent

PRAYER:

Civil Revision petition is filed under Article 227 of the Constitution of India to direct the learned Family Court Judge, Salem to take counter and vakalat of the petitioner in IA.No.4 of 2023 against HMOP.No.414 of 2022 dated 02.03.2023 on file and pass orders in accordance with law.

For Petitioner : Mr.T.Saravanan

ORDER

Challenging the endorsement made by the trial judge dated 06.03.2023 in the petition filed under Section 13 of the Family Courts Act, the husband has preferred this revision.



CRP.No.949 of 2023

WEB COPY 2.

The learned counsel for the revision petitioner submits that the wife filed HMOP.No.414 of 2022 before the Family Court, Salem for restitution of conjugal rights. In that main petition, the husband remained *exparte*. However, the wife filed application seeking interim custody of the minor child Jeevika in IA.No.4 of 2023, who is under his custody now. In that application, summon was served on him. On receipt of the same, as he is having valid defence, he filed counter along with application under Section 13 of the Family Courts Act seeking permission of the court to engage counsel to defend his case since he is residing at Bangalore. The said application was returned by the trial judge. Now challenging the same, he has preferred this revision.

3. The learned counsel for the petitioner submits that the husband is having valid defence to defend the IA. Even though he remained *exparte*, he is also taking steps to set aside the *exparte* order. Without considering the same, the trial judge not permitted him to file objection in the custody application as such, it is totally erroneous one.



CRP.No.949 of 2023

4. On perusal of records, it reveals that the wife has filed IA.No.4 of 2023 for interim custody of the child. Now the admitted fact is that the child is under the custody of the petitioner / husband. Summon was also served and he should have been given opportunity to submit his objection in the application. But the trial judge erroneously rejected the application filed by the husband seeking permission to engage counsel. If fair opportunity not given to the revision petitioner, then the right to defend the case will be defeated. Though he remains *exparte* in the main proceedings, on receipt of the summon, now he is taking steps to set aside the *exparte* order also. However, in the application in IA.No.4 of 2023, the relief claimed by the wife is totally independent to that of the claim in the main HMOP. Therefore, opportunity should be given to the revision petitioner to submit his objections.

5. As such, the findings in the endorsement made by the trial judge in the petition filed by the husband under Section 13 of the Family Courts Act is set aside. Liberty is given to the revision petitioner to file his objection in IA.No.4 of 2023 and also advised to file a petition to set aside the *exparte* proceedings.



CRP.No.949 of 2023

6. Accordingly, this civil revision petition is allowed. Registry is directed to return the original IA and counter to the revision petitioner.

Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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CRP.No.949 of 2023



WEB COPY



CRP.No.949 of 2023

T.V.THAMILSELVI, J.

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To
The learned Family Court Judge,
Salem

CRP.No.949 of 2023

28.03.2023