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CRP.No. 2846 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

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P.A. Shahabudeen

... Petitioner

Versus

Arshiya Banu

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, prays to set aside the fair and decretal order dated 04.03.2023 passed in IA.No. 2 of 2022 in IA.No. 1 of 2019 in GWOP.No. 1812 of 2018 on the file of the Additional Principal Family Court, Coimbatore.

For Petitioner : Mr.B.Moghan
For Respondent : Mr.V.S. Venkatesh
For Mr.K.Balasubramanian



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ORDER

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This Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 04.03.2023 passed in IA.No. 2 of 2022 in IA.No. 1 of 2019 in G.W.O.P.No. 1812 of 2018 on the file of the Additional Principal Family Court, Coimbatore.

2. The case of the petitioner/husband is that the petitioner has filed G.W.O.P.No. 1812 of 2018 under Section 25 of the Guardianship and Wards Act, 1890, directing the respondent/wife to hand over the custody of the minor child, namely, Maheera of the petitioner to the father. During the pendency of the petition, the revision petitioner/husband has filed IA.No. 1 of 2019 in G.W.O.P.No. 1812 of 2018 under Section 12 of the Guardian and Wards Act, to produce the child and grant visitation rights to visit the child every week end (from Friday evening to Monday morning) till the disposal of the case. After perusing the records, the Court below allowed the application by order dated 22.07.2022 by granting visitation right to the petitioner permitting him to meet his daughter Maheera during the first Saturday of every month between 11.00 a.m to 1.00 p.m. in the Court premises, Coimbatore. If the 1st Saturday falls on any holiday, then the



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petitioner/father was permitted to meet his daughter on the next working Saturday. It is further clarified that the respondent/mother of the child is permitted to remain with the child and the petitioner shall not provide anything without the consent of the respondent and he shall not take anybody with him during the said visit and he should not do anything harmful to his daughter. The parties are at liberty to approach the Court for any modification of this order if the same is required. Aggrieved by the said order, the revision petitioner has filed I.A.No. 2 of 2022 in IA.No.1 of 2010 in G.W.O.P.No. 1812 of 2018 under Section 151 CPC seeking to grant an order to modify the said visitation order to allow the petitioner to meet his minor child without the presence of the respondent/mother next to them and without her supervision and surveillance. After analysing the records, the Court below dismissed by order dated 04.03.2023. Challenging the said order, the petitioner has come forward with the present Civil Revision Petition.

3. Counter affidavit has been filed by the respondent/wife stating that it is false statement the minor female child is now under the forcible custody of the respondent only from the year 2013 onwards. The true fact



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is that after taking away the minor child maheera forcibly, the respondent was thrown away from the matrimonial home by the petitioner and he had broken the neck of the child under intoxication. It was therefore, the mother had approached this Court through HCP.No. 299 of 2014, the same was restored the custody of the child to the mother. Despite filing a suit for divorce, the petitioner visited the respondent's home frequently to harass her and also on several occasions, he disturbed the minor child and her education by visiting her school. Further, there is no possibility for the shared parenting as the petitioner is a criminal with various cases pending against him. Even since the interim order passed by the Court to spend the time with the minor, the minor child is mentally affected a lot and the minor is not mentally and physically prepared to be with the petitioner even for a moment. It is false to state that there was an influence and abnormal presser on the minor when the minor was brought to the Court to obey the visitation order. It is false to say, due to the respondent's adamant and inconsistent act, the minor was not under her free will and the statement of the petitioner that the minor was not in a comfortable mind and mentally are false. It is right for the mother to be with the child and there is no necessity to modify the present visiting right so as to grant further or much



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more time for the petitioner to be with the child. Therefore, the above Civil Revision Petition has to be dismissed.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondent and perused the materials available on record.

5. On perusal of the records, it is seen that the petitioner/husband and the respondent/wife are living separately and their daughter Maheera is in the custody of respondent/mother are not in dispute. It was already decided in IA.No. 01 of 2019 itself that the allegations levelled by the parties against each other and the reason for their separation all can be decided in the enquiry of main petition for dissolution of marriage. The petitioner/husband filed IA.No.01 of 2019 seeking to grant visitation rights to him to meet his daughter Maheera during every week end i.e., from Friday evening to Monday morning and after due enquiry, this Court passed an order on 22.07.2022 by granting visitation rights to the petitioner herein to meet his daughter during the first Saturday of every month between 11.00 a.m., to 1.00 p.m. in the Court premises of Coimbatore and that the respondent/mother of the child was permitted to remain with the



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child.

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6. However, the petitioner has come forward with the application to modify the said condition since the respondent is sitting next to the child during his visitation and the child was not under her free will and in a comfortable mind and as such the petitioner needs some more time and space to mingle with the child as a dutiful father to converse with the child freely without the influence of the respondent and as such, it is absolutely necessary to modify the previous order and permitting the petitioner to meet the child without the presence of the respondent and her unnecessary surveillance. The respondent has strongly denied to modify the said condition as the minor child is not mentally and physically prepared to be with the petitioner even for a moment and the statement of the petitioner that the minor was not in a comfortable mind is false. The petitioner has filed GWOP.No. 1812 of 2018 seeking a direction before the trial Court to hand over the custody of the minor child Maheera to him and the same is pending for commencement of enquiry from 27.10.2021 itself. The application in IA.No.1 of 2019 filed by the petitioner to grant visitation rights to meet his daughter, and the same was allowed on 22.07.2022.



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7. The contention of the petitioner is that it is not at all possible for the petitioner to have a free conversation with the child in the presence of the respondent/wife. The contention of the respondent/wife is that the petitioner has not changed his attitude and as stated in the counter, the Police had registered nearly seven First Information Reports in Kavandapadi Police Station of Erode District against him and the petitioner handed over the custody of the child to the respondent/wife as per the order of this Court in HCP.No. 299 of 2014, by order dated 07.03.2014. While that being the case, as stated earlier the allegations levelled by the parties against each other can be decided only in the enquiry of main petition.

8. The petitioner and the respondent and their daughter are living separately from the year of 2013 onwards. The minor daughter is presently aged about 12 and half years. Therefore, it would take time for the child to mingle with her father and it is for the petitioner to win over the love and affection of the child by this behaviour, contact and showering the love and affection over the child in the ways which are all available to him and as such, all these aspects can be gone into at the time of deciding the case on merits in accordance with law. Hence this Court is not inclined to interfere



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with the impugned order passed by the Court below. Therefore, the above
Revision is liable to be dismissed.

9. In view of the above facts and circumstances of the case and
the submissions made by the learned counsel on either side, the Civil
Revision Petition is dismissed. No costs.

29.09.2023

Index: Yes/No
Speaking order/Non-speaking order
Neutral Citation: Yes/No
MSM

To

1. The Additional Principal Family Court,
Coimbatore.
3. The Section Officer, V.R. Section,
High Court, Madras.

V.BHAVANI SUBBAROYAN, J.



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