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C.M.A.No.2822 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

C.M.A.No.2822 of 2023

and

C.M.P.No.26396 of 2023

Ashwanth Pothy

...Appellant

Vs.

Asmitha Alanknitha

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984 against the order and final order dated 26.10.2023 passed in I.A.No.1 of 2023 in GWOP.No.606 of 2023 on the file of the Principal Family Court at Coimbatore.

For Appellant : Mr.T.R.Rajagopal, Senior Counsel
for Mr.N.C.Ashok Kumar

For Respondent : Mr.Dhalapathy Vignesh Kumar



J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

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The husband who has been favoured with a not so meaningful order for visitation is on appeal.

2. The proceedings for divorce are pending. The husband sought for visitation of the child aged about 2 years. While not denying the right of the husband for visitation, the wife contended that it will be harmful if the child is left with the husband for a long time. The Family Court took note of the entire circumstances where there were allegations and counter allegations between the parties and passed an order for visitation. The operative portion of the same reads as follows:-

In the result, the petition is partly allowed and visitation right is granted to the petitioner/ husband by permitting him to meet his daughter Nyra Ashwanth in any public place such as Malls, temples or parks which is nearer to the residence of the respondent/ wife in 1st and 3rd Sundays of every month between 11.00 a.m to 1.00 p.m. 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 to the child without the consent of the respondent and he shall not take anybody with him except his parents during the said visit and



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he should not do anything harmful to the child and the place may be decided by the parties well in advance and informed through their counsel.

3. Aggrieved, the husband is on appeal.

4. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellant would vehemently contend that the order of visitation should be a meaningful order. Allowing the husband to be with the child for just 2 hours, once in 15 days, that too, in a public place would be more detrimental to the child than being of any use. The learned Senior Counsel would also submit that the child must have the affection of both the parents. The fight between the parents, which is, many a times, an egoistic fight should not affect the child.

5. He would also draw our attention to the judgment of the Hon'ble Supreme Court ***Yashita Sahu Vs. State of Rajasthan and others*** reported in ***(2020) 3 SCC 67***, wherein, the Hon'ble Supreme Court while dealing with the visitation rights had observed as follows:-

20. It is well settled law by a catena of judgments that while deciding matters of custody of a child, primary and



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paramount consideration is welfare of the child. If welfare of the child so demands then technical objections cannot come in the way. However, while deciding the welfare of the child, it is not the view of one spouse alone which has to be taken into consideration. The courts should decide the issue of custody only on the basis of what is in the best interest of the child.

21. The child is the victim in custody battles. In this fight of egos and increasing acrimonious battles and litigations between two spouses, our experience shows that more often than not, the parents who otherwise love their child, present a picture as if the other spouse is a villain and he or she alone is entitled to the custody of the child. The court must therefore be very wary of what is said by each of the spouses.

6. The Court went on to further observe that a child is not an inanimate object which can be tossed from one parent to the other. Every separation, every reunion may have a traumatic and psychosomatic impact on the child.

7. In ***Amyra Dwivedi (Minor) through her mother, Pooja Sharma Dwivedi Vs. Abhinav Dwivedi and another*** reported in (2021) 4 SCC 698, the Hon'ble Supreme Court had this to say:



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4. When a court grants visitation rights, these rights should be granted in such a way that the child and the parent who is granted visitation right, can meet in an atmosphere where they can be like parent and child and this atmosphere can definitely not be found in the office of District Legal Services Authority. That atmosphere may be found in the home of the parent or in a park or a restaurant or any other place where the child and the parent are comfortable.

8. If we are to consider the correctness of the order passed by the learned Family Judge in the light of what has been stated by the Hon'ble Supreme Court, we will have to necessarily observe that the order does not help the welfare of the child. The two hours meeting, that too, once in 15 days in a public place will only increase the traumatic experience of the child.

9. The learned Family Judge had also stated that the mother should be with the child when the visitation takes place. We are not able to visualize such situation without there being a fight between the spouses. We find very serious allegations made by the spouses against each other. Therefore, the presence of one spouse during the visitation by other will only lead to bitter fight between them, which would definitely be an invasion on the



human right that the child is entitled to.

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10. Mr.Dhalapathy Vignesh Kumar, learned counsel appearing for the respondent/ wife would however submit that the husband does not deserve whatever has been granted by the Family Court itself.

11. Whatever may be the dispute between the husband and wife, the same cannot stand in the way of the father visiting the child and such visitation should be meaningful and it cannot be just on paper. We are therefore of the considered opinion that the order of the Family Court needs modification.

12. We find from the papers that have been placed before us that the parties are fighting a bitter battle for divorce. They have been in High Court twice earlier by way of transfer petition and civil revision petition arising out of the proceedings under the Domestic Violence Act etc., In this backdrop, if the wife is allowed to be present when the husband visits the child, we are sure that it will create further acrimony to the parties, which will be injurious to the child. We do not want to dwell deep into the controversy/ dispute between the spouses in this appeal, since that may have

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an effect on the proceedings that are pending before the trial Court, excepting to observe, as pointed out by the Hon'ble Supreme Court in Paragraph 21 of the judgment in ***Yashita Sahu Vs. State of Rajasthan and others supra*** their fight seems to be the result of unadulterated ego and increasing acrimony between the two spouses.

13. Mr.T.R.Rajagopalan, learned Senior Counsel would submit that the husbands family owns a house in Coimbatore and the visitation can take place in that house. The learned counsel for the respondent would submit that he is not aware of that position. However, in view of the fact that the statement made by a learned Senior Counsel of this Court, we accept the same.

14. We therefore modify the order of visitation and pass the following order:

- *The husband will have the right to visit the child on every Sunday between 10.00 a.m and 1.00 p.m at his residence in Coimbatore.*

- *He can pick up the child from the wife's place in the*



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morning after 9.00 a.m and drop her back before 2.00 p.m in the after noon. The visitation timing will be between 10.00 a.m and 1.00 p.m.

● *The wife shall not disturb the husband or the child during the visitation.*

● *We are sure that the husband will behave like a responsible father while visiting the child, therefore we do not want to venture into making any further directions restricting his rights during the visitation.*

15. The appeal is **partly allowed** with the above directions and in the event the parties find any difficulty they are at liberty to approach this Court seeking suitable modifications. No costs. Consequently, the connected miscellaneous petition is closed.

(R.S.M.,J.) (N.S.,J.)
15.12.2023

dsa

Index :No

Internet :Yes

Neutral Citation : No

Speaking order

Note:- Issue order copy by 19.12.2023.

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To

The Principal Family Court Judge,
Motor Accident Claims Tribunal,
Coimbatore.

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