

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.715 of 2023

and

CMP(MD)No.3350 of 2023

M.Shobana

... Petitioner/ Respondent/Respondent

Vs.

R.Murugan

... Respondent/Petitioner/Petitioner

PRAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the impugned order passed in I.A.No.5 of 2023 in G.W.O.P.No.43 of 2021 on 16.02.2023, passed by the learned Family Court, Sivagangai, and allow this Revision Petition.

For petitioner : Mr.V.Lakshmanan
For Respondent : Mr.K.Raghul Priyan
(Vakalat not filed)

ORDER

This Civil Revision Petition has been filed by the petitioner to set aside the impugned order passed in I.A.No.5 of 2023 in G.W.O.P.No.43 of 2021 on 16.02.2023, passed by the learned Family Court, Sivagangai.

2.The petitioner is the respondent before the Family Court in G.W.O.P.No.43 of 2021. GWOP was filed by the respondent for the following relief:-

“Under such circumstances, the petitioner prays to this Court may be pleased to direct the respondent herein to allow meeting the petitioner's beloved minor daughter M.Ajneyaa Nachiyar at weekly interval, take her to the petitioner dwelling house and maintain as per her wish.”

3.In the aforesaid GWOP, the respondent filed I.A.No.5 of 2021 for the following relief:-

“For the reasons stated in accompanying affidavit, it is therefore prayed that, this Court may be pleased to direct the respondent to produce the petitioner's beloved daughter minor Ajneyaa Nachiyar on 20.01.2023 at any place and any time as fixed by this Court and allow the petitioner to spent time with the petitioner's daughter.”

4.The said I.A was filed by the respondent on 10.01.2023. The relief was sought for visiting the minor child of the petitioner and the respondent on her birthday on 20.10.2023. The petitioner took time for filing counter and ultimately, the counter was filed on 19.01.2023 and the enquiry was taken up by the Court on 04.02.2023. It appears that the petitioner was directed to produce the child before the Court. However, the petitioner failed to produce the child. Thus, by the time, enquiry was taken up in GWOP and the prayer sought for in IA had become infructuous.

5.Under these circumstances, the Family Court, Sivagangi, has passed the following decree:-

“ 1.that this petition is partly allowed.

2.that the petitioner is permitted to visit his child Minor Ajeyaa Nachiyar once for a month at the third Saturday at 10.30 a.m to 12 Noon in the present of trained mediator Mr.C.Elangovan (Cell No.9443465607) at the District Legal Services Authority building at Sivagangai till disposal of GWOP.No.43 of 2021 on certain condition.

3.that the petitioner shall deposit sum of Rs.1,000/- for meeting out the transport expenses of the respondent and the child and for their refreshment and the petitioner shall deposit Rs.750/- towards the remuneration of the trained mediator each time.

4,The above deposit should be made on or before 6th day of every month and notice of that shall be given to the mediator and the respondent on or before 7th of every month.

5.The petitioner and respondent are directed to furnish whatapp number or email address to the mediator for necessary communication so that necessary arrangement could be made fro the meeting.

6.that in case the Child does not wish to see her father the mediator is directed to give necessary counseling to the child and to submit a detailed report after minimum two counseling.

7.that the petitioner in such case shall bear the

expenses for the counseling and also for traveling and refreshment expenses of the respondent and the child at the rate as fixed above.

8.that it is further directed that at no cost the child be given with the custody of the petitioner and he shall not take the child out side the Combined District Court Complex at Sivagangai.”

6.The learned counsel for the petitioner submits that the respondent is a molester and therefore, the child should not be given to the custody to the respondent. It is submitted that the Court has to be guided by the principles of paramount interest of the child as held by the Hon'ble Supreme Court in AIR 2013 SC 102

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7.As per the decision of the Hon'ble Supreme Court, although the father is natural guardian, the Court is required to keep in mind the welfare of the child. The fact on record indicates that the I.A filed by the respondent/father was rendered infructuous by not bringing the child to the Court. If the child was brought to the Court, it could have been as to whether the child has any objection.

8.In my view, the Trial Court's order asking the petitioner to produce the child before the mediator at the District Legal Service Authorities Building, at Sivagangai till the disposal of the GWOP cannot be faulted as it has stipulated with the condition to safeguard the welfare of the child. The condition stipulated appears to be reasonable. If the respondent is allowed to have interim custody of the child as ordered will not deprive the petitioner had right. The order states that the petitioner has to produce the child on 3rd Saturday of every month at 10.30 am to 12.00 pm before the mediator at District Legal Service Authorities Building, Sivagangai. The order also categorically stated that in case, the child does not wish to see the respondent, the mediator was directed to give necessary counseling to the child and to submit a detailed report.

9.In my view, the order passed by the learned Family Judge, Sivagangai, in I.A.No.5 of 2023 in G.W.O.P.No.43 of 2021 dated 16.02.2023, does not call for any interference. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.03.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
dss

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C.SARAVANAN,J.

dss

To

- 1.The Family Court,
Sivagangai.
- 2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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