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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.08.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A.(MD)No.627 of 2023
and
C.M.P.(MD)No.8112 of 2023

R.Sudha

...Appellant

/Vs./

N.Balasubramani

...Respondent

PRAYER:- Civil Miscellaneous Appeal- filed under Section 19(1) of the Family Courts Act, 1984 to call for the records and set aside the fair and decreetal order passed in I.A.No.2 of 2022 in H.M.O.P.No.167 of 2021, dated 20.05.2023 on the file of the Family Court, Dindigul.

For Appellant : Mr.S.Sarvagan Prabhu
For Respondent : Mr.N.Balasubramani
party-in-person



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JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

This Civil Miscellaneous Appeal is filed by the petitioner challenging order passed on 20.05.2023 in I.A.No.2 of 2022 in H.M.O.P.No.167 of 2021 pending on the file of the Family Court, Dindigul.

2.The hearing of the above HMOP is stated to be in progress now. Pending such hearing, the respondent had filed an interim application in terms of Section 26 of Hindu Marriage Act seeking grant of visitation rights qua his minor child, Pradeesh, aged 10 years (approx.) (in short 'child').

3.Seeing as the HMOP is yet to be decided by the Family Court, Dindigul, we restrict ourselves to the basic facts touching upon and as relevant to decide this Civil Miscellaneous Appeal only. The parties to HMOP were married on 16.02.2011 and the child was born on 06.03.2013.

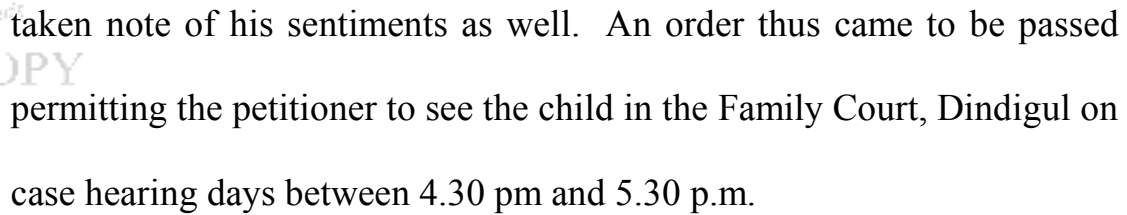


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4.The Appellant had sought visitation rights on the ground that the family has been living together till 12.07.2021 when the respondent filed for divorce and claimed that he was fully committed to the family. He claimed that the separation from the family, particularly the child, is causing him mental agony.

5.The defence of the appellant (wife)/respondent in the interlocutory application, was to the effect that the father had no connection whatsoever with the child from the time of his birth. All expenses with regard to upkeep of the child, including his education are being met only by her. The respondent denied all the averments in the petition and further alleged that she herself, and her child had been deserted by the petitioner.

6.Having heard the rival contentions, the lower Court was of the view that since there was no denial of paternity and the question of desertion was a matter to be considered in HMOP after taking note of evidence on either side, the father must be granted visitation rights. In arriving at this conclusion, the Court had conversed with the child and



8. Even assuming that the appellant had not complied with the order of the lower Court on the ground of pendency of the present Civil Miscellaneous Appeal, there should have been compliance on 03.06.2023, 15.06.2023, 30.06.2023 and 07.07.2023.

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meeting place has been mentioned in order dated 20.03.2023. The parties were directed to meet in the District Court. The respondent would allege that the child would merely be brought to Court ensuring that there was no opportunity for him to meet or spend time with the child. The appellant has also filed a Contempt Petition before the Family Court in this regard.

10.Though not part of the pleadings and neither has it been recorded by the Family Court Judge, there was an oral submission by the appellant before us that the child was not co-operating in meeting his father. We have ascertained this fact ourselves from the child. He does evince disinclination to meet the father. Be that as it may and though the child's sentiments are important, there is nothing on record that would militate against the appellant being permitted to meet the child for an hour, once a month.

11.No prejudice would be caused by such an order, particularly in light of the direction given in conclusion for expeditious disposal of the HMOP. Since the impugned order is silent as to a specific place



where the parties could meet and to avoid any possibility of the Appellant taking undue advantage of this ambiguity, we clarify that the Respondent and the child will meet in the office of the Legal Services Authority, in the Dindigul District Court Complex. The meeting shall be on the first saturday of every month. The impugned order is modified to this extent alone.

12.Learned Family Court Judge, Dindigul is directed to complete the hearing of H.M.O.P.No.167 of 2021 expeditiously, and in any event within a period of three months from the date of receipt of a copy of this order.

13.With the above directions, this Civil Miscellaneous Appeal is disposed. No costs. Consequently, connected miscellaneous petition is closed.

[A.S.M.J.,] & [R.V.J.,]
07.08.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes
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- 1.The Family Court, Dindigul.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench Of Madras High Court,
Madurai.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Order made in
C.M.A.(MD)No.627 of 2023

Dated:
07.08.2023