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C.R.P.No.1708 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

C.R.P.No.1708 of 2024

and

C.M.P.No.9033 of 2024

Muthumari

... Petitioner

Vs.

S.V.R.Subramaniam

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the order dated 20.12.2023 passed by the IV Additional Principal Family Court, Chennai in I.A.No.2 of 2023 in H.M.O.P.No.176 of 2023 and set aside the same.

For Petitioner : Mr.D.G.Hariprasath

ORDER

The petitioner/respondent in I.A.No.2 of 2023 had filed this petition seeking to set aside the order dated 20.12.2023 passed by the learned IV Additional Principal Judge, Family Court, Chennai.



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2.The contention of the learned counsel for petitioner is that the Family Court failed to consider that the age of the child is nearly 1 ½ years old. Further, sensitivity, age and maturity of the infant not considered. The infant was born on 05.07.2022. The child does not possess any understanding and it must be in utmost care with the mother until 3 years that any child would have some maturity. Further, the Family Court ought to have considered maintainability of the petition under Section 26 of the Hindu Marriage Act for a new born baby and infants, whose natural custody can only be with the mother as they are biologically dependant, especially when they are unable to reasonably express or protect themselves. The order of the Family Court is mechanical, hence, by allowing the visitation rights the Family Court fails to consider the health and condition of the infant and the baby was put in the Child Care Centre, Family Court, Chennai for the purpose of visitation of the respondent. Further submitted that already a Memorandum of Understanding prepared but yet to be signed. In the draft



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Memorandum of Understanding in paragraph 9 it is stated that the respondent herein relinquishes his rights namely, visitation rights, custody rights, guardianship rights in respect of the child. In view of the same, the learned counsel seeks to set aside the order passed in I.A.No.2 of 2023.

3.The learned counsel appearing for the respondent submits that the Memorandum of Understanding is only at draft stage, it is yet to be signed. The marriage between the petitioner and respondent took place on 10.09.2021. The infant was born on 05.07.2022 and the respondent has been denied access of having touch and feel of his child. Since, petitioner's sister is in police department and the petitioner is residing in Police CID Quarters, Papanasam Sivan Salai, Mylapore, Chennai, the respondent is unable to visit, see the infant to have the touch and feel. As per the impugned order it is only an hour in a month, i.e., on the first Saturday between 4.00 p.m. to 5.00 p.m. the respondent was permitted to see the minor child at Child Care Centre, Family Court, Chennai. Further submitted that it is only an interim



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arrangement till the disposal of the divorce petition in H.M.O.P. No.176 of 2023.

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4.This Court finds no reason to interfere with the order of the Family Court, dated 20.12.2023. The dispute between the father and mother should not deny the love and affection, feel and touch for the father as well as the child. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.04.2024

Index : Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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The IV Additional Principal Judge,
Family Court, Chennai.



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M.NIRMAL KUMAR, J.

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