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C.R.P.No.3805 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.3805 of 2024

J.Walter Philips ... Petitioner

-Vs-

S.R.Olive Sharanya @ Olive Walter ... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.07.2022 passed in I.A.No.1 of 2022 in O.P.No.09/2022 insofar as Paragraph No.9 on the file of the 2nd Additional Family Court at Chennai.

For Petitioner : Mr.K.Myilsamy
For Respondents : Mr.R.Sanjay for
Mr.Sharanth Chandran

ORDER

This Civil Revision Petition arises against the order passed by the II Additional Family Court in I.A.No.1 of 2022 in O.P.No.9 of 2022 dated 29.07.2022.

2. The Civil Revision Petitioner is the husband. He married the respondent on 05.07.2018 and from the wedlock a child was born on 23.03.2019. Due to disputes and differences over the fact that the petitioner did not invite his brother-in-law and sister for certain celebrations which were held in the family in connection



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with the wife's birthday, the parties separated. The husband pleads that there are other issues entiling him to obtain divorce.

3. Pending the litigation, the husband moved an application invoking Section 41 of the Indian Divorce Act seeking for a direction to the respondent wife to hand over the custody of the minor daughter. This application was received as I.A.No.1 of 2022. The respondent filed a counter denying the averments made in the affidavit. She pleaded that the petitioner used to indulge in sexual relationships outside of the marriage, which resulted in the petitioner contracting Herpes, a sexually transmitted disease. She would plead that on this and other grounds including the allegation that the petitioner husband does not take care of the wife and child, he is not entitled to the custody of the child.

4. Learned trial Judge, after hearing both the parties, partly allowed the application. He denied interim custody, but granted visitation rights to the petitioner husband permitting him to visit the child on every first and third Saturday at the Child Care Center in the Family Court premises, Chennai between 10.00 a.m. to 12.00 p.m. During the course of disposal of the said application, he had entered a finding that the husband has been cured from Herpes. Feeling aggrieved over the order, this civil revision petition has been filed.



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5. Heard Mr.K.Myilsamy for the civil revision petitioner and Mr.R.Sanjay for Mr.Sharath Chandran appearing for the respondent.

6. I have carefully considered the submissions of both sides.

7. The following facts are not in dispute. The civil revision petitioner married the respondent and from the wedlock a child was born, who is aged about three years today. The child is in the custody of the mother. The parties have separated on account of several disputes, personal, as well as, on the allegation that the husband is suffering from a sexually transmitted disease.

8. Mr.Myilsamy would plead that the husband never suffered from any sexually transmitted disease and in order to substantiate the same, he would rely upon a certificate that has been issued by a well known Virologist Dr.V.Ramasubramanian of Apollo Hospitals, Chennai.

9. Mr.Sanjay would plead that the wife is aware that the husband is suffering from a sexually transmitted disease and that is one of the reasons why the parties separated.

10. Even if I were to assume that the husband was suffering from a sexually transmitted disease, it does not dis-entitle him from having visitation rights. As the



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father, he is certainly entitled to spend quality time with his child. Therefore, the Court has carefully balanced the rights of both sides and has granted visitation rights.

11. The grievance of Mr.Myilsamy that the findings in Para 9 would affect him, in my view, is baseless. The said finding is only for the purpose of disposal of the interlocutory application. It will certainly not be *res judicata* or stand in the way of the husband to prove that he never suffered from a disease or for the wife to prove that the husband suffered from a disease and was subsequently cured. These are all matters which necessarily would have to be agitated after oral and documentary evidence are recorded before the Court at the time of final disposal.

12. I notice that the Court has directed the child to be produced before the Child Care Centre at the Family Court premises. The wife being from Tiruvallur, she might find it difficult to bring the child on the first and third Saturdays to the Family Court, Chennai. Therefore, by consent, the petitioner is permitted to visit the child at the Food Court in V.R.Mall, Anna Nagar, Chennai on Every Saturday between 10.00 a.m. to 12.00 p.m. If the parties so agree, the child can be produced in any other public place so as to enable the father of the child to enjoy the benefit of the order.



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13. In fine, the finding in Para 9 is held to be one only for the purpose of the disposal of the application. It will not be treated as binding on the parties at the time of final disposal. It is open to the petitioner to let in evidence to prove that he never suffered from the disease and at the same time, it is open to the respondent wife to produce evidence to show that the husband was afflicted with the disease and was subsequently cured.

14. With the above modification on the place of visitation, the Civil Revision Petition stands disposed of. No costs.

25.09.2024

Index : Yes/No

Neutral Citation : Yes/No

KST

To

The II Additional Family Court
Chennai.



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V. LAKSHMINARAYANAN, J.

KST

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