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C.R.P. (PD) .No.4450 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.4450 of 2024
and C.M.P.No.24788 of 2024

T.Divya

.. Petitioner

Vs.

K.Someswaran

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 05.07.2024 made in I.A.No.01 of 2022 in G.W.O.P.No.99 of 2021 on the file of the Principal District Court, Vellore District by allowing this Civil Revision Petition.

For Petitioner : Mr.T.Dharani

For Respondent : Mr.D.Thirumoorthy

ORDER

This civil revision petition arises against the order passed by the learned Principal District Judge, Vellore District, in I.A.No.1 of 2022 in G.W.O.P.No.99 of 2021 dated 05.07.2024.



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2. There is no dispute in the relationship between the parties. The parties shall be referred to as per their ranks in G.W.O.P. The petitioner is the father and the respondent is the mother of a minor child aged about 12 years today. The mother initiated H.M.O.P.No.102 of 2015 on the file of the Sub Court at Gudiyattam, seeking for divorce. The learned Trial Judge granted a decree of divorce. Since the mother re-married, the father filed G.W.O.P.No.99 of 2021 seeking to appoint him as the guardian for the child. It is pertinent to point out here that the petition is confined only for appointing him as guardian and does not seek custody of the child.

3. Pending disposal of G.W.O.P.No.99 of 2021, the husband moved an application for visitation rights to see the minor child twice a week. The plea of the father was that, after they were separated through the order of Court, the mother is not permitting him to see the child. Notice was issued in the application to the wife. The wife filed a counter that the husband was never interested in the welfare of the child and having come to know that she has contracted a second marriage and has become pregnant, this petition has been filed to harass her. She also pleaded that the husband has contracted a second



marriage and therefore, it will not be in the interest of the child to see his father.

4.The learned Trial Judge on consideration of the petition and counter, permitted the father to see the child at the Day Care Centre attached to the Family Court at Vellore on second and fourth Sunday of every month between 10.00 AM and 01.00 PM. He had also imposed restriction conditions during the time of such visitation. Aggrieved by the said order, the wife is on the revision before me.

5.I heard Mr.T.Dharani for the civil revision petitioner and Mr.D.Thirumoorthy for the respondent.

6.Mr.T.Dharani contends that the father was absolutely dis-interested in seeing the child from the time of birth viz., from 2015 till the time of the Guardian Petition in 2021. The father had never shown any interest in parting with any amount towards the maintenance of the child. He states that the father never visited the child between 2015 to 2021. He adds that the father never filed any application from the time of separation and waited for over a



period of nine years, to file the G.W.O.P. He states all of a sudden, when the wife got re-married and became pregnant, in order to harass her, he has come forward with this petition.

7.Mr.D.Thirumoorthy pleads that the father is interested in seeing the child and is also interested in becoming the guardian for the child. The cause of action for filing the G.W.O.P was on account of the fact that he was living independently and is interested in spending his free time with the child. He states it is false to allege the father was not interested in seeing the child. The father was prevented from spending time with the child only on account of the interference of the mother. Hence, with no other alternative, he moved the petition for guardianship and the application for interim visitation.

8.In response, Mr.T.Dharani submits that the wife has shifted her residence from Nellorepet in Gudiyattam to Chennai and she is currently residing in Chennai. He states if the order is implemented as it stands, it will cause prejudice and difficulty to the wife and the child. He further submits that the husband has since taken employment in Qatar, which is not disputed by Mr.D.Thirumoorthy and therefore, the impugned order is unsustainable.



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9.I have carefully considered the submissions of both sides and gone through the records.

10.As pointed out above, there is no dispute between the relationship of the parties or the birth of a minor child. The father and the mother have separated through a decree of Court in H.M.O.P.No.102 of 2015. The father wants to visit his only son. Whereas Mr.T.Dharani, submits that the father has re-married, this fact is denied by Mr.D.Thirumoorthy. It matters not whether the father and mother have re-married and gone their separate ways. The fact remains that their bondage had produced a child and the respondent is the biological father of the minor child. In case, the father does not meet the son, then it might create a situation that the child grows up not even knowing who is father is. That would not be in the best interest of the child. It is keeping those circumstances in mind, the learned Judge has granted visitation rights. Therefore, I do not find any error in the order passed by the learned Judge. The facts pleaded by Mr.T.Dharani are grounds to be raised at the time of final disposal of G.W.O.P. They are not grounds to deny the rights of the father to see his child.



11.Taking into consideration the plea of Mr.T.Dharani that the civil revision petitioner has moved to Chennai, I am inclined to modify clauses (i), (ii) & (iii) alone of the order dated 05.07.2024 in I.A.No.1 of 2022.

(a) Instead of the father seeing the child at Day Care Centre attached to the Family Court, Vellore between 10.00 AM to 01.00 PM, the father is permitted to see the child at Phoenix Mall, Velacherry, at the same timings as fixed by the learned Principal District Judge, Vellore District.

(b) The father, as directed by the learned Principal District Judge, Vellore District, is permitted to present any eatables, dress, toys or any other things he wants to give the child.

(c) In case, it is inconvenient for the wife to take the child to Phoenix Mall, Velacherry, she can take the child to any other place convenient to her and the father, who is so desirous to see the child, should meet the child at any other convenient place to the mother. Prior to the change in venue, the petitioner shall give proper intimation about the place to the father.



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(d) The father will not be permitted to take the child outside the premises of Phoenix Mall or other than the public place mentioned by the mother at the time of visitation.

12. Subject to the modifications found in this order, all the other conditions imposed by the learned Principal District Judge, Vellore District stands confirmed.

13. In the result, this Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs.

07.11.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The Principal District Court, Vellore District.



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V.LAKSHMINARAYANAN, J.

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