



CRP No.4762 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.4762 of 2023 and
CMP No.28271 of 2023

E.Purushothaman

... Petitioner

Vs.

V.Sasikala

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 13.09.2023 made in I.A.No.2/2023 in O.P.No.459/2015 by the Subordinate Judge, Tambaram.

For Petitioner : Mr.Ramaswamy

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 13.09.2023 made in I.A.No.2/2023 in O.P.No.459/2015 by the learned Subordinate Judge, Tambaram.



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2. The brief facts leading to the filing of Civil Revision petition is as follows:

The petitioner herein is husband and the respondent herein is wife. The respondent has filed the above said HMOP No.459/2015 against the petitioner to dissolve the marriage solemnized between them. Pending petition, the petitioner herein has filed I.A.No.2/2023 seeking visitation right of the child and direct the respondent to handover the custody of the minor Harhitha, aged 12 years to him on every Saturday and Sunday and 50% of the holidays in quarterly, half yearly and annual leave. The above petition was dismissed by the learned Judge, vide order dated 13.09.2023 and challenging the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner contended that the petitioner is having visitation right of the child and hence he is entitled to see his child. Therefore, he may be permitted to visit the child and custody of the child may be given to him on every Saturday and Sunday and also 50% of the school holidays.



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4. Heard the learned counsel for the petitioner and I have perused the materials on record.

5. On records, the facts reveals that the petitioner is the husband of the respondent and a divorce petition filed by the respondent on ground of cruelty and desertion is now pending. Pending petition the respondent has filed I.A.No.2/2023 seeking visitation of right of the child and the same was dismissed.

6. On perusal of the order, the learned Judge, in her order, has observed as follows.

8. The rival contentions placed by both the parties are considered. Considering the entire facts set out in the petition and counter averments and after hearing the arguments of both sides and also considering the nature of relief sought for by the petitioner normally this court would have inclined to allow the petition in the interest of justice even though the respondent objected the same. The issue as to the facts and rights of the parties as claimed by both the petitioner and respondent can be decided only during trial and are irrelevant to



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decide in this petition. But, when the minor daughter was present before this court, she is already 12 years and is well aware of all the issues between her parents. Moreover, she also expressed that she is not willing to meet her father as he was totally a stranger to her. This court does not want to antagonize the child and compel her to meet her father against her wishes. It would result in unnecessary trauma to the child. Therefore, this petition cannot be allowed.

From the above, it is clear that the child is not willing to see her father. Therefore, since the child herself has expressed that the petitioner is totally a stranger to her, the petitioner cannot be allowed to visit his child. Furthermore, custody of the child will be decided only in the main petition, after recording evidence of both side. Considering the above aspects, the learned Trial Judge has rightly dismissed the application filed by the petitioner and I do not find any infirmity to interfere over it. As such, the civil revision petition is liable to be dismissed, as it has no merits.



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7. In fine, the civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

The Subordinate Judge, Tambaram.



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V.SIVAGNANAM, J.,

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