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C.R.P.(PD)No.4791 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.12.2024**

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)No.4791 of 2024
and C.M.P.No.26788 of 2024

E.Nithiyanandh

.. Petitioner

Vs

1. K.M.Vishnupriya

2. Sai Harshavardini
(Minor represented by her mother
K.M.Vishnupriya)

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.09.2024 made in I.A.No.4 of 2024 in O.P.No.3116 of 2022 passed by the IV Additional Principal Family Court at Chennai.

For Petitioner : Mr.P.Sathyanathan



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ORDER

This civil revision petition challenges the order passed by the learned IV Additional Principal Judge, Family Court at Chennai in I.A.No.4 of 2024 in O.P.No.3116 of 2022, dated 30.09.2024.

2. I heard Mr.P.Sathyanathan for the civil revision petitioner. I have carefully gone through the records.

3. The civil revision petitioner is the husband. He filed O.P.No.3116 of 2022 seeking divorce on the grounds of cruelty and adultery. Earlier, he had filed O.P.No.969 of 2016 before the very same Court seeking for divorce. In the said proceedings, the respondent/wife filed an application seeking for interim maintenance. She had also filed a separate application for maintenance invoking Section 125 of the Cr.P.C., in M.C.No.489 of 2019. Pending O.P.No.969 of 2016, the civil revision petitioner filed an application in I.A.No.2229 of 2017 seeking for DNA test of the child. The same was allowed by the Family Court on 15.03.2018.



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4. Aggrieved by the same, the wife preferred a revision to this Court in C.R.P.(PD)No.1634 of 2018. On 03.04.2019, the said C.R.P. was allowed and the order passed by the learned Family Judge in ordering DNA test was set aside. Challenging the same, the husband preferred a Special Leave Petition to the Supreme Court in S.L.P.(Civil) No.33514 of 2019. The said S.L.P. was dismissed on 04.10.2019. Thereafter, he did not pursue O.P.No.969 of 2016. It was dismissed for default on 21.09.2021. Subsequently, the husband presented O.P.No.3116 of 2022 for the aforesaid reliefs.

5. In this proceeding, the husband, yet again, took out an application in I.A.No.4 of 2024 seeking for a direction that the 2nd respondent/minor, should undergo a DNA test along with the petitioner to confirm her paternity.

6. This application was resisted by the wife on two grounds;

(i) The child is not a party to the proceedings and,

(ii) The husband had not pleaded non-access between himself and the wife.



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7. The wife pointed out that the petitioner and the 1st respondent were living together till February 2016 and the 2nd respondent/child was born on 19.07.2016. Therefore, she pleaded for dismissal of the petition.

8. The learned Trial Judge considered the affidavit, petition and several verdicts of the Supreme Court regarding DNA test. Finally, the learned Judge came to a conclusion that the petition is not tenable and therefore, dismissed the same. Hence, this revision.

9. The Supreme Court, in ***Aparna Ajinkya Firodia v. Ajinkya Arun Firodia, (2023) SCC OnLine SC 161***, has laid down broad guidelines to be followed while considering an application for DNA test.

It held:

“i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.



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ii. *DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima facie material to dislodge the presumption under S.112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under S.112 of the Evidence Act, a DNA test may not be directed.*

iii. *A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceedings.*

iv. *Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test becomes indispensable to resolve the controversy the Court can direct such test.*



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v. While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc. ”

10. Under Section 112 of the Indian Evidence Act, a Court would presume the paternity of the child, if it is born during the period, the father had access to the mother. In this case, the party pleads adultery, but as pointed out by the learned Trial Judge, he has not specified the date from which the husband and wife separated. Even according to his deposition, he had separated some time in March 2016. If that be the position, then the child, which was born on 19.07.2016, cannot be said to have been conceived, at the time when the petitioner did not have access to the respondent.

11. It is always open to the petitioner to prove the adultery by way of other evidence. He need not rely upon the result of a DNA test. The child cannot suffer the DNA test on account of the fact that the father wants to prove the allegations against his mother. Applying the judgment



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of *Aparna Ajinkya Firodia* to the facts of the present case, I do not find any reason to interfere with the order of the learned Judge.

12. With the above observations, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

03.12.2024

Index:Yes/No

Speaking order/Non-speaking order

Neutral Citation:Yes/No

kj

To

IV Additional Principal Family Court at Chennai.



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V. LAKSHMINARAYANAN,J.

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