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C.R.P.No.4778 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.4778 of 2024
and
C.M.P.No.26746 of 2024

D.Deenathayalan

.. Petitioner

VS

Devaraj

.. Respondent

Petition filed under Article 227 of the Constitution of India to set aside the order of dismissal dated 25.10.2024 dismissing the petition filed by the petitioner under Order XVI Rule 1(3) of Civil Procedure Code to issue subpoena to the respondent's second wife herein, namely Priya, residing at No.21, Angamman Koil Street, Redhills, Chennai – 52 directing her to appear before the Court below to give evidence with regard to the custody of the child in I.A.No.13 of 2024 in G.W.O.P. No.137 of 2018 passed by the Principal District Judge, Thiruvallur.

For Petitioner

:

Mr.J.Kalidas



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ORDER

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This civil revision petition arises against the order dated 25.10.2024 passed by the learned Principal District Judge at Thiruvallur in I.A.No.13 of 2024 in G.W.O.P.No.137 of 2018.

2. The civil revision petitioner is the third respondent in G.W.O.P. No.137 of 2018. One Eswari is the civil revision petitioner's sister. She married the respondent. A child was born from the wedlock. Unfortunately, the said Eswari died by suicide. Soon thereafter, the civil revision petitioner's parents removed the child from the custody of the respondent and the child has been with them ever since.

3. As the natural guardian of the child, the father filed a petition before the Principal District Judge at Thiruvallur invoking Sections 6 and 7 of The Guardians and Wards Act, 1890. This petition was numbered as G.W.O.P. No.137 of 2018. Counter has been filed and evidence has also commenced.

4. During the course of cross examination of the respondent, a question was put to the respondent if he had remarried. He admitted his remarriage. Therefore, the petitioner took out an



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application under Order XVI Rule 1 of Code of Civil Procedure to examine the second wife of the petitioner. This petition was received as I.A.No No.13 of 2024. After a detailed discussion, the learned Principal District Judge proceeded to dismiss the petition. Hence this revision.

5. I heard Mr.Kalidas for the civil revision petitioner.

6. Mr.Kalidas pleads that the examination of the second wife is essential since it is possible that the respondent would have suppressed from her, the factum of his previous marriage and the birth of the child as well as the pendency of the guardianship proceedings. He states that as per the Guardians and Wards Act, a Court has to come to a conclusion that the child should be in the custody of a person who would best serve the interests of the child. He pleads that, in case custody is granted to the respondent, then it is the second wife who would be taking care of the child and therefore examining her is essential.

7. I have carefully considered the plea of Mr.Kalidas.

8. The admitted facts are that the respondent herein married the daughter of one Devaraj and Sundari viz., one Eswari and the



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wedlock produced a child. She passed away. Soon after her death, the child has gone to the custody of his grandparents. Pending the proceedings, the civil revision petitioner was impleaded as a respondent. He has taken out an application to examine the second wife of the sole respondent. The purpose for examination as given in the affidavit is as follows:

"I state that the said second wife of the respondent has to be necessarily examined as a witness in the above case in the interest of justice".

9. In terms of Order XVI Rule 1 of CPC, it is the duty of the person taking out a petition for summons to state the reason and purpose for which summons has to be issued. It is only after the Court is convinced about the said reason and after recording the reason in writing, a Court can pass an order calling upon the party to appear before the Court. Therefore, giving of cogent reasons for the purpose of summoning the witness is *sine qua non* for filing a petition under Order XVI Rule 1 of CPC. In the present case, absolutely no reasons have been set out. It looks like since the child is in the custody of the civil revision petitioner and his parents, such kind of applications are being filed to avoid final orders being passed in G.W.O.P. No.137 of 2018. I find absolutely no merits in the



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revision. The civil revision petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

10. Learned Principal District Judge at Thiruvallur shall take note of the fact that G.W.O.P. No.137 of 2018 is pending for the past six years and shall expedite the trial and dispose of the same within a period of three months i.e., on or before 28.02.2025.

25.11.2024

Index:Yes/No

Neutral Citation:Yes/No

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To

The Principal District Judge,
Thiruvallur.



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V. LAKSHMINARAYANAN,J.

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