



C.R.P.(PD)NO.2913 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04/12/2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.(PD)NO.2913 OF 2023

AND

C.M.P.NO.18029 OF 2023

R.Vaishnavi

... Petitioner/Respondent/
Respondent

Vs.

S.Magesh Kumar

... Respondent/Petitioner/
Petitioner

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated March 24, 2023 made in I.A.No.4 of 2022 in O.P.No.4172 of 2018 on the file of the II Additional Principal Family Court, Chennai.

For Petitioner : Ms.Kanimozhi Mathi

For Respondent : Mr.K.M.Gokulesh

ORDER

Page No.1 of 7



C.R.P.(PD)NO.2913 OF 2023

The Revision Petitioner married the Respondent on September 08, 2011. In their wedlock, they were blessed with a male child, namely, S.M.Kaarthik Vishnuvardhan born on July 23, 2014. Thereafter, some misunderstandings arose between the Revision Petitioner and the Respondent, and the Revision Petitioner-Wife filed the Original Petition in O.P.No.1864 of 2016 before 'the II Additional Principal Family Court, Chennai' ['Family Court' for short], to dissolve the marriage by a decree of divorce. In turn, the Respondent-Husband filed a petition under Sections 7 to 10 and 25 of the Guardian and Wards Act, 1890, seeking custody of minor child-S.M.Kaarthick Vishnuvarthan in G.W.O.P.No.4172 of 2018 on the file of the Family Court.

2.The Respondent - Husband is working as a Marine Engineer and has to go sailing for a long period of time every year. Though he came to India on September 03, 2021, because of Covid-19 pandemic, he could not reach any convenient port and reached Chennai only on March 01, 2022. In these circumstances, the Guardian and Ward Original Petition filed by the Respondent-Husband against the Revision Petitioner-Wife, was dismissed for default on November 25, 2021. Hence, the Respondent-Husband filed a petition in I.A.No.1 of 2022 to restore the Original Petition and also filed another petition under Order III Rule 2 of

Page No.2 of 7



the Code of Civil Procedure, 1908, in I.A.No.4 of 2022 seeking permission to appoint Mr.Ganesan Munusamy as his Power Agent. The Revision Petitioner - Wife, who is the respondent in I.A.No.4 of 2022, filed a counter and opposed it by stating that the alleged Power Agent of the Respondent - Husband is not a family member and not at all related to him.

3.The Trial Court after hearing both sides, relied upon a decision of this Court in ***R.R.Paulya -vs- Kanagavel*** reported in ***2014 (5) CTC 177*** and allowed the petition on the condition that the Power Agent can plead, appear and act on behalf of the principal, but he cannot enter into a witness box on behalf of the principal. Further, held that the Respondent-Husband shall appear before the Trial Court as and when required, such as for mediation and other proceedings.

4.Feeing aggrieved by the Order, the Respondent therein has preferred this Civil Revision Petition.

5.Ms.Kanimozhi Mathi, learned Counsel appearing for the Revision Petitioner-Wife submits that the Respondent-Husband cannot be allowed



to appear through a Power Agent, as the Power Agent is neither related to the Respondent-Husband nor related to the Revision Petitioner-Wife. The proposed Power Agent is a third party. In a custody matter, a third party cannot be permitted to take part in the proceedings, that too when a Family Court proceedings are an in-camera proceedings. The Power Agent being a third party has no *locus standi* to participate in the Family Court proceedings. Further, in the Original Petition, enquiry commenced and absence of the Respondent - Husband would only prolong the case for an indefinite period. The Family Court without considering the entire facts and circumstances of the case, erred in allowing the petition. Accordingly, she prays to allow this Civil Revision Petition and set aside the Order passed by the Family Court.

6.In response to the above submissions, Mr.K.M.Gokulesh, learned Counsel appearing for the Respondent-Husband would submit that the Respondent is working in a Merchant Navy Ship. Being so, he cannot be present before the Family Court for each and every hearing. Hence, he sought to appoint Mr.Ganesan Munusamy to represent him as Power Agent and conduct the case on his behalf. The Family Court rightly appreciated the facts and circumstances of this case and allowed the



Interlocutory Application in I.A. No.4 of 2022. There is no need to interfere with it. Accordingly, he prays to dismiss the Civil Revision Petition and sustain the Order of the Family Court.

7. Heard on either side and perused the materials available on record.

8. In view of the fact that the Respondent - Husband is working in a Merchant Navy Ship and that he would not be available in India for major part of the year, he has a valid ground to appoint a Power Agent to conduct the case on his behalf. It is true that the Power Agent cannot enter into a witness box and depose on behalf of the principal; he cannot participate in trial on behalf of the principal. However, he can conduct the case on behalf of the Respondent-Husband. The Family Court rightly appreciated the facts and circumstances of the case and allowed I.A. No.4 of 2022 subject to the condition that the Respondent - Husband shall appear as and when required by the Family Court. In view of the occupation of the Respondent - Husband, this Court is of the considered view that he may be permitted to be represented by the Power Agent and the Respondent herein shall appear through Video Conferencing Mode as well, unless his physical presence is required by the Family Court. The



C.R.P.(PD)NO.2913 OF 2023

Respondent - Husband shall co-operate with the Family Court for speedy disposal of the matter.

9. In view of the facts and circumstances of the case, this Court does not find any error or irregularity or illegality in the Order passed by the Family Court. Hence, the Civil Revision Petition has no merits and deserves to be dismissed.

10.Resultantly, this Civil Revision Petition is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

04/12/2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
pam

To

The II Additional Principal Family Court,
Chennai.

Page No.6 of 7



WEB COPY



C.R.P.(PD)NO.2913 OF 2023

R. SAKTHIVEL, J.

pam

C.R.P.(PD)NO.2913 OF 2023

04/12/2025

Page No. 7 of 7