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C.R.P.Nos.5014 & 5016 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.Nos.5014 & 5016 of 2024 &
CMP.Nos.28164 & 28174 of 2024

Dinanath J

.. Petitioner in both CRPs.

Versus

Sumitha Ayyath Kizhakkekkara

.. Respondent in both CRPs.

Prayer in CRP.No.5014 of 2024: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.5 of 2023 in HMOP.No.5423 of 2021 dated 04.09.2024 on the file of the I Additional Family Court, Chennai.

Prayer in CRP.No.5014 of 2024: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.1 of 2023 in HMOP.No.128 of 2023 dated 04.09.2024 on the file of the I Additional Family Court, Chennai.

For Petitioner in
both CRPs.: Mr.S.Elambharathi

For Respondent in



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5. The husband *inter alia* contended that since he has not been given access to the child, the prayer to strike off is not maintainable.

6. The learned Trial Judge came to a conclusion that there was arrears of Rs.3,70,000/- from 20.09.2023. Consequently, she ordered the applications. Aggrieved by the same, these two revisions are before this Court.

7. I heard Mr.S.Elambharathi for the civil revision petitioner and Ms. Tanvi Srivatsan for the respondent.

8. I pointed out to Mr.S.Elambharathi, as admittedly there are arrears in maintenance, the husband cannot insist of compliance of visitation as a ground to pay the maintenance.

9. Mr.S.Elambharathi very fairly stated that the husband will clear the arrears on or before 20.01.2025.

10. I also suggested that as the child is being taken to Child Care Centre in the Family Court, there is nothing for the child to look forward when the father exercises his right of visitation inside the premises of the Court. Therefore, I suggested to Ms.Tanvi Srivatsan that she come up with



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alternatives where the father can exercise his right of visitation and spend quality time with the child. Accordingly, I adjourned the matter to today.

11. When the matter was taken up today, both Mr.S.Elambharathi as well as Ms.Tanvi Srivatsan stated that the arrears till December 2024 has been cleared.

12. In addition, Ms.Tanvi Srivatsan suggested the following places in order to facilitate the father and child to have meaningful visitation rights:

(a) Marina Mall, 13/1A, Old Mahabalipuram Road, Egattur, Tamil Nadu - 603 103.

(b) Starbucks cafe, BSR Mall, IT Corridor, Express Way, 1/609, OMR Road, Seevaram, Thoraipakkam, Tamil Nadu – 600 097.

(c) Phoenix Market City, Velacherry Road, Indira Gandhi Nagar, Velacherry, Chennai, Tamil Nadu – 600 042.

13. As the arrears till December 2024 have been cleared, the basis for striking of the defence does not exist anymore. It is beyond cavil that the court retains the power in itself to enforce orders of maintenance passed by



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it. This is done by invoking Section 151 of the Code of Civil Procedure to strike off the defence of the defaulting party.

14. Taking note of the subsequent events that had occurred during the pendency of the revision, I am of the view that the defence of the husband and his right to prosecute his petition for conjugal rights should be restored.

15. Insofar as visitation rights being exercised by the father, by consent, the parties shall meet at Palladium Mall, Phoenix Market City, Velacherry Road, Indira Gandhi Nagar, Velacherry, Chennai, Tamil Nadu – 600 042. The date and time of the visits as fixed by the Trial Judge shall continue. Instead of facilitating the father to meet the child in the Child Care Centre at Family Court, they shall meet at the aforesaid venue.

16. If, for any reason, the child is not brought to the venue fixed under this Order, the father shall be entitled to a compensatory visitation right in the following week.



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17. Accordingly, the order passed by the learned I Additional Family Judge, Chennai in I.A.No.5 of 2023 in H.M.O.P.No.5423 of 2021 and I.A.No.1 of 2023 in H.M.O.P.No.128 of 2023 dated 04.09.2024 are set aside.

18. It is made clear that the Family Court need not wait for the wife to file a separate petition to strike off in case of any arrears in future. On filing of the memo by the wife stating that there is arrears in payment of maintenance, the court shall direct the husband to pay the same immediately. In case, despite such a direction, the arrears continue for more than a month, the Court is entitled to *suo motu* exercise the power and strike off the defence and dismiss the restitution petition.

19. With the above observation, the civil revision petitions stand allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

20.01.2025

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Index : yes/no
Speaking order/Non-speaking order



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Neutral Citation : yes/no
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To

The I Additional Family Court, Chennai.



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V.LAKSHMINARAYANAN, J.

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