IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2025

CORAM:

THE HON'BLE MR. JUSTICE M.JOTHIRAMAN

CRP.No.3407 of 2023
CMP.No.21138 of 2023
and CMP.No.12969 of 2025

[redacted] ... Petitioner

vs.

[redacted] ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 27.06.2023 passed in I.A.No.1 of 2023 in O.P.No.2378 of 2022 by the I Additional Family Court, Chennai.

For Petitioner : M/s.K.Sumathi

For Respondent : Mr.K.Chandru

ORDER

The petitioner/wife has preferred this Civil Revision Petition. The petitioner / wife has filed an application under Section 13(1)(i-a) and Section 25 of the Hindu Marriage Act, 1955 [in short "Act"] in O.P.No.2378 of 2022, seeking for divorce and also for grant of a sum of Rs.75,00,000/- towards permanent

alimony as per Section 25 of the Act. When the case was pending, the respondent / husband filed an application under Section 26 of the Act in I.A.No.1 of 2023 in O.P.No.2378 of 2022, praying to grant visitation rights to him to see his minor chil[redacted] aged about 7 years, every weekend on Saturday and Sunday till the disposal of the main petition and the same was allowed partly on 27.06.2023 by the Court below with a direction to produec the child at the Child Care Centre attached to the Family Court at Chennai on the 1st Saturday and 3rd Saturday, every month at 11.00 a.m. To 2.00 p.m with certain conditions. Aggrieved over the same, the petitioner/wife has filed the present Civil Revision Petition.

2. The learned counsel appearing for the petitioner would submit that the petitioner has filed a petition for maintenance of the girl child, aged about 8 years, as early as in the month of February, 2023 and the respondent/father has failed to pay even a single rupee towards the child's maintenance till date. The Trial Court has failed to see that the petitioner is residing at Hosur along with her minor daughter and she has to avail leave from work to attend the hearings before the I Additional Family Court at Chennai and therefore, the order impugnd directing the petitioner to bring the tender child to Chennai to facilitate the respondent's

visitation rights is against equity and justice. It would be extremely cumbersome and would cause serious strain to a tender child of 8 years to travel to Chennai from Hosur on every Saturday enbling her father to visit her child. The learned counsel for the petitioner would further submit that the Court below has failed to see that the cost of travel both for the petitioner and the yound child should be borne by her and the Court below ignored the fact that the respondent has failed to maintain the minor child and this has led to the petitioner herein filing a petition for maintenance. The learned counsel for the petitioner further submits that the petitioner is working in Bangalore and she is taking care of the minor child and whileso, travelling from Chennai to Bangalore along with the child causes enormous physical and emotional pain to the petitioner. It is further submitted that the petitioner filed I.A.No.2 of 2023 in O.P.No.2378 of 2022, seeking for maintenance and till date, the respondent has not paid any amount towards maintenance to the child and the order impugned granting visitation rights to the respondent / father causes severe hardship to the petitioner. A mother maintaining a child without the support of a father ought not to have been directed to bring her child to Chennai on her own cost to enable the father visit the child that too without any responsibility tagged on him. The learned counsel for the petitioner /

wife further submits that the respondent / father may be permitted to vist her child at Hosur.

3. *Per contra*, learned counsel appearing for the respondent /father would submit that there is a threat to the respondent's life from the petitioner's side since the petitioner's father is an influential person in the locality and there is apprehension to his life when he goes to Hosur and he is ready to visit the child at Vellore, which is a common place for both of them.

4. Heard the learned counsel for the parties and perused the materials available on record,.

5. It is not in dispute that the minor child is with the mother/revision petitioner and the petitioner is residing at Hosur and working in Bangalore. The fact remains that in order to facilitate the respondent/father to comply with the order of visitation passed by the Court below, the petitioner/wife has to travel from Hosur to Chennai along with her 8 years old minor female child. The biological parents' afffection is to see their child and so also the child have an

affection over both of them, namely father and mother.

6. The Court has to ensure visitation rights to the biological parents in a manner known to law. When the custody of the child is entrusted to one of the parents, well being of the child should be taken into consideration while granting the right of visitation to another. Welfare of the child alone is of paramount consideration while dealing with cases pertaining to grant of visitation rights. No doubt the respondent / father is entitled for visitation rights, but at the same time, it should not disrupt the child's schooling, physical, moral, emotional and intellectual development.

7. Article 51-A of the Constutition of India, which deals with Fundamental Duties, more particularly Clause (k) thereof says that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen.

8. In ***Yashita Sahu v. State of Rajasthan [(2020) 3 SCC 67]***, the Hon'ble Supreme Court held that the welfare of the child is paramount in matters relating

to custody. In this context, we may refer to para 22 thereof, which reads as follows:

> "22. A child, especially, a child of tender years requires the love, affection, company, protection of both parents. This is not only the requirement of the child but is his/her basic human right. Just because the parents are at war with each other, does not mean that the child should be denied the care, affection, love or protection of any one of the two parents. A child is not an inanimate object which can be tossed from one parent to the other. Every separation, every renuion may have a traumatic and psychosomatic impact on the child. Therefore, it is to be ensured that the court weights eacn and every circumstances very carefully before deciding how and in what matter the custody of the child should be shared between both the parents. ***Even if the custody is given to one parent, the other parent must have sufficient visitation rights to ensure that the child keeps in touch with the other parent and does not lose social, physical and psychological contact with any one of the two parents. It is only in extreme circumstances that one parent should be denied contact with the child. Reasons must be assigned if one parent is to be denied any visitation rights or contact with the child. Courts dealing with the custody matters must while deciding custody define the nature, manner and specifics of the visitation rights***."
>
> (emphasis supplied)

9. In cases involving minor child particularly visitation rights or welfare matters, the Court's paramount consideration should be to secure the best interest of the child. The Court's primary concern is to ensure that the child's physical, emotional and psychological well being is not disturbed. The child interest take precedence over those of the parents/guardians. The Court has to consider the child's age, needs and requirements. The Court also should assess the ability of the parents to provide suitable environment. Age of the child, maturity and her wishes to be taken into account.

10. In the case on hand, the female minor girl child is aged about 8 years and therefore, the child's need and well being are of utmost importance. This Court has to carefully consider the child's best interest and to take a decision promoting her welfare and development. Considering the age of the child, physical and psychological hardship she would face, if she is permitted to travel from Hosur to Chennai in order to facilitate the respondent's visitation rights as per the order of the Court below and also the apprehension of threat expressed by

the respondent/father, this Court is inclined to modify the condition imposed by the Court below.

11. Accordingly, the order dated 27.06.2023 passed in I.A.No.1 of 2023 in O.P.No.2378 of 2022 on the file of the I Additional Family Court at Chennai is modified to the effect that instead of the petitioner/wife and the minor girl child travelling from Hosur to Chennai, the respondent/father shall have the visitation rights to see his minor child [redacted], aged 8 years, on 1st Saturday and 3rd Saturday of every month from 11.00 a.m. To 2.00 p.m. at the Child Care Centre attached to the Family Court at Krishnagiri. In all other aspects, the order of the Court below remains unaltered.

12. This Civil Revision Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition are closed.

17.09.2025

Intex : Yes/No
Internet : Yes/No
Jvm

To
I Additional Family Court,
Chennai.

M.JOTHIRAMAN, J.

Jvm

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