

**HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

FCA No.203 of 2014

JUDGMENT: (Per Justice R. Subhash Reddy)

This appeal is filed, by the Appellant/Respondent, under Section 19 of the Family Court Act, read with Section 47 of the Guardian and Wards Act, 1890 aggrieved by the order and decree dated 09.07.2014 in O.P. No.457 of 2011 passed by the learned Judge, Family Court, Ranga Reddy District. The respondent herein filed the aforesaid O.P before the Family Court, under Section 25 of the Guardian and Wards Act, 1890, for permanent custody of the minor child by name Rohitakshaya. The Family Court by order dated 09.07.2014 partly allowed the petition with the following conditions:

- i) The Petitioner-father is granted visiting rights to see his daughter Rohitakshaya whenever the petitioner comes to India, at the school premises.
- ii) The Petitioner and his parents shall not visit the house of the respondent or the place of her employment.
- iii) The Petitioner-father can take the child from the school premises on 2nd Saturday and Sundays or on holidays with a prior notice to the respondent and her parents. The Petitioner has to handover the child to the respondent or to her parents at the school premises after completion of holidays.
- iv) The parents of the petitioner are also granted visiting rights to see their grand daughter Rohitakshaya at the school premises or in a nearby temple or park to the school, every 2nd Saturdays and Sundays from 10.00

A.M to 12.00 noon and the Respondent and her parents shall bring the child during the said hours and after completion of the said hours they can take the child with them to their house.

- v) The petitioner and the respondent shall have custody of the child during the summer vacation sharing equally the vacation and the petitioner can take the daughter with him during the said period, and he has to hand over the child to the respondent or her parents after the completion of the vacation.
- vi) The Petitioner-father shall have the right to monitor the future and welfare of the child ie., the decisions with regard to her education, health and important events in her life, and the respondent-mother shall allow for the same and she shall not take decisions about the same on her own.
- vii) The Respondent is not married for the second time, at present the custody of the child is retained with the respondent and her parents, if the respondent marries again some other person, then the custody of the child would be given permanently to her father, who is petitioner herein.

2) In the present appeal, the learned counsel for the appellant contended that, though there are directions from the Family Court, regarding visiting rights given to the respondent herein, at school premises, the school authorities are objecting the same and hence it is difficult to implement the directions. Further, it is submitted that the condition imposed in the order, giving custody of the child permanently to the respondent herein in the event of remarriage, of the appellant, is not sustainable.

3) On the other hand, the learned counsel for the respondent submits that the respondent herein may be permitted to take the child from the house of the appellant, on

second Saturdays, Sundays and holidays, and leave the child by evening, at the residence of the appellant. It is further submitted that there is no illegality in the order granting custody of the child to the respondent in the event of remarriage by the appellant with any other person.

4) Heard the learned counsel for both the parties. It is not in dispute that the appellant and the respondent are residing in United States of America at present.

5) It is to be noticed that visiting rights are given to the respondent herein, on second Saturdays, Sundays and holidays. However, the child would not attend school on those days as much the school does not work. In that view of the matter, we deem it appropriate to modify the said condition and permit the respondent herein or his parents to take the child from the house of the appellant or her parents (maternal grand parents of the child) on second Saturdays, Sundays and holidays at about 9.00 A.M and hand over the child back, by 6.00 P.M, on the respective day.

6) Further, it is not in dispute that the respondent herein is already remarried. We are of the view, that the condition of giving permanent custody of the child to the respondent herein in the event of remarriage by the appellant, cannot be sustained, for the reason that the child is a female child and is admittedly staying with the appellant mother. In that view of the matter, the condition to the extent of ordering permanent custody to the respondent herein, in the event of remarriage by the appellant-mother, stands set aside.

7) The appeal is partly allowed, with the directions as indicated above. Consequently, miscellaneous petitions, if any, pending in the appeal stand disposed of. No order as to costs.

JUSTICE R. SUBHASH REDDY

Dr. JUSTICE B.SIVA SANKARA

RAO
February 5, 2014
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