

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

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For the State of Telangana and the State of Andhra Pradesh

MAIN CASE NO: C.M.A.NO.430 OF 2015

Between:

Pokuri Maruthi Prasad

.. Appellant(s)

And

Telanakula Kasi Viswanadham

.. Respondent(s)

DATE OF JUDGMENT PRONOUNCED: 30.07.2015

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

1. Whether Reporters of Local news papers Yes/No

may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No

marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordship wish to Yes/No

see the fair copy of the Judgment?

HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

C.M.A.No.430 OF 2015

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JUDGMENT : (Per Hon'ble Sri Justice R.Subhash Reddy)

This Civil Miscellaneous Appeal is filed by the appellant/petitioner aggrieved by the order and decree dated 04.02.2015 in I.A.No.251 of 2014 in G.WO.P.No.1 of 2014 passed by the X-Additional District Judge, Gurazala, dismissing the application filed by the plaintiff under Order IX Rule 9 of C.P.C., seeking to set aside the order dated 24.09.2014, by which the said petition is

dismissed for default.

2 . The appellant/petitioner herein has filed the aforesaid G.W.O.P. to appoint him as natural guardian of the minor girl, Pokuri Neeraja and also for grant of the custody of the said minor girl. When the matter was coming up for enquiry on 24.09.2014 (wrongly mentioned the date as 14.09.2014), he was unable to attend the Court, and hence, it was dismissed for default. The appellant filed I.A.No.251 of 2014 to set aside the order dated 24.09.2014 and restore the main G.W.O.P. for enquiry. The same was dismissed by the learned Judge on the ground that the appellant did not choose to file any medical certificate to support his contention.

3. It is the case of the appellant that when the case was adjourned for enquiry on 24.09.2014, he could not attend the Court due to ill-health i.e. he suffered with severe typhoid fever along with jaundice from 18.09.2014 to 18.10.2014.

4. Heard Ms T.V.Sridevi, learned counsel appearing for the appellant and Sri Dr Challa Srinivasa Reddy, learned counsel appearing for the respondent.

5. We have perused the order dated 04.02.2015 passed in I.A.No.251 of 2014. The said I.A is mainly rejected on the ground that there is no medical report to substantiate the plea of the appellant that he has suffered with Typhoid fever along with jaundice for the period from 18.09.2014 to 18.10.2014. A copy of the petition filed in G.W.O.P is also placed on record. It appears that the minor girl is the daughter of the appellant and the respondent herein is his father-in-law. It is stated that the respondent also filed a petition for maintenance, in M.C.No.25 of 2012 on the file of the I-Additional District Judge, Gurazala claiming maintenance of Rs.15,000/- per month to maintain the minor child stating that he has no means to maintain her. As much as the dispute relates to custody of the minor child, we are of the view that merely because medical report is not filed, that itself could not be a ground to reject I.A.No.251 of 2014. When an affidavit is filed by the appellant stating that he suffered with

typhoid fever along with jaundice during the period 18.09.2014 to 18.10.2014, there is no reason to disbelieve the same.

6 .For the aforesaid reasons, the impugned order dated 04.02.2014 in I.A.No.251 of 2014 in G.W.O.P.No.1 of 2014 passed by the X-Additional District Judge, Gurazala is liable to be set aside.

7. Accordingly, this Civil Miscellaneous Appeal is allowed setting aside the order dated 04.02.2014 in I.A.No.251 of 2014 in G.W.O.P.No.1 of 2014 passed by the X-Additional District Judge, Gurazala and consequently, I.A.No.251 of 2014 stands allowed.

8. As a sequel, miscellaneous petitions pending, if any, in this appeal shall stand closed. No order as to costs.

R. SUBHASH REDDY, J

A.SHANKAR NARAYANA,J

30.07.2015

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HON'BLE SRI JUSTICE R. SUBHASH REDDY
AND
HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

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