

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2056 OF 2016

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ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 28.03.2016 passed in I.A.No.266 of 2016 in O.P.No.1787 of 2015, on the file of Additional Family Court, Hyderabad, wherein the petition is allowed granting visiting right and interim custody of the minor children, Harchit Kaur and Achal Kaur to the petitioner once in a fortnight on every Second Sunday and Fourth Sunday, directing the respondent to handover the minor children to the petitioner at his house at 6.00 p.m. on Saturday and collect them at 8.00 p.m. on second Sunday and fourth Sunday.

2. The petitioner/husband filed I.A.No.266 of 2016 in O.P.No.1787 of 2015 claiming interim custody of the minor children referred supra, as the petitioner being father wanted to take care of the children and the children are happy and very much attached to him and his parents. There is no change in the attitude of the respondent since the date of filing of the petition and she is spending lot of time on talking to her friends on phone and not taking care of her children. Her father, uncle and sister misguided her and provoked against the petitioner. Therefore, she filed O.P. to declare herself as guardian of the minor children. The grant of interim custody is in the welfare of the minors and prayed to grant interim custody.

3. The respondent/wife filed counter denying the material allegations contending that the petitioner had no love and affection towards minor children and denied the alleged company of minor

children with the petitioner since October, 2015 raising several other contentions regarding taking away the children from school without informing her on 14.12.2015 and lodging complaint to the police at Banjara Hills and thereby the children could not attend half yearly examination. She also denied the other allegations like love and affection towards the child and his ability to take care of the welfare of the children and prayed to dismiss the petition.

4. During the course of hearing, no witnesses were examined and no documents were marked on either side. Upon hearing the argument of both counsel, the trial Court passed the aforesaid order.

5. The legality of the order is challenged now raising several contentions regarding difficulty in handovering the children as directed by the trial Court, as it adversely affect the education of the children.

6. During hearing Sri K.Anoop Kumar, learned counsel for the revision petitioner contended that the school timings starts from morning 8.00 a.m. and children must be get ready by 7.00 a.m. to undertake journey in the school bus and the mother has to spend much time on the children, if the children were ordered to be hand over to father i.e., petitioner at 6.00 p.m. on Saturday and collect them at 8.00 p.m. on second Sunday and fourth Sunday, it is difficult for the revision petitioner herein to get the children ready for the school and to prepare for the next day classes. Secondly the timings have to be changed by this Court.

7. Sri M.A.K.Mukheed, learned counsel for the respondent supported the order in all respects, while contending that the children can continue to study while under the custody of the father, the petitioner before the trial Court, no inconvenience would

be experienced by the children and never reported such convenience in preparation for the next day school and prayed to dismiss the petition.

8. The power of this Court under Article 227 of the Constitution of India is limited and it is purely a supervisory in nature over the subordinate Courts and tribunals and if the subordinate Courts or tribunals passed any order exercising power which is not conferred on it or passed any order considering extraneous evidence or passing an order exceeding the authority conferred on it, the Court can interfere by exercising power under Article 227 of the Constitution of India. But the Court cannot interfere when the order is not in flagrant violation of law, while exercising power under Article 227 of the Constitution of India, hence, I would like to deal with the contentions of the petitioner in detail.

9. The petitioner's contention before this Court is that the children have to attend school at 8.00 a.m. on Monday and if the children are allowed to be taken back at 8.00 p.m. from the father, it is difficult for the mother to get them prepared for the next day school timings and he filed several documents before this Court which were not marked before the trial Court since, the documents were not filed following procedure for receiving documents in revision. Therefore, this Court could not consider those documents while deciding the issue pending before this Court. In that view of the matter as directed by the Judge, Family Court, the revision petitioner/mother can take back the children at 8 p.m. on second and fourth Sunday and still there will be 12 hour time to go to school and revision petitioner/mother can make them ready to attend to school on Monday. Therefore, it is not a ground to modify

the timings for handing over the taking back the children from the custody of the respondent-father.

10. The other contention raised before this Court is that the children may not attend to their studies, while in the custody of father. But this contention is not based on any material and no material is placed before this Court evidencing adverse effect on the studies of the children after ordering interim custody. The father is also equally responsible to take care of the children and interim custody given to the father would not have any effect on the studies of the minor children. Hence, the contention of the petitioner that interim custody ordered by the trial Court affected the studies or education of the children cannot be accepted in the absence of any material i.e., securing less marks than earlier after handing over the custody etc., hence, on this ground, the time cannot be modified.

11. The third contention raised before this Court is the children are not maintaining good health, whenever custody was handover to the father. But no material is placed before this Court. However, during hearing, the learned counsel for the petitioner contended that it is difficult to handover the children during examinations. Taking into consideration of the examinations of the children, I find that it is a fit case to modify the order to the extent of handing over children on second and fourth Saturdays at 6.00 p.m. and take back on second and fourth Sundays at 8 p.m. is exempted during the period of quarterly, half yearly and final examinations.

12. With the above modification, the Civil Revision Petition is dismissed. No costs.

13. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 23.08.2016

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