

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2384 of 2016

ORDER:

This Petition under Article 227 of the Constitution of India is filed challenging the Order dt. 24.03.2016 in I.A.No.521 of 2015 in O.P.No.1491 of 2014 on the file of Additional Family Court, Hyderabad.

2. The Revision Petitioner/Syed Imad Hassan Naqvi, filed petition under Order 12 of Guardians and Wards Act, 1890 (for short 'the 1890 Act'), for grant of interim custody of a minor child/Mustafa. The revision petitioner is the father of minor child, who is aged 6 years by now and who is studying L.K.G. The main ground urged for grant of interim custody is that the petitioner is interested in the welfare of the minor child since the respondent herein is not providing anything to the minor, the bright future of the child is at stake and hence, he sought for interim custody of the minor child.

3. The respondent herein filed Counter denying material allegations, *inter alia* contending that the revision petitioner had no source of income to maintain the minor child and he is not taking care of the child and the interim custody sought for is not in the interest of the minor child. Further, it is contended that the child is studying L.K.G, and in case, the interim custody is given to the revision petitioner, the welfare of the minor child would be at stake and prayed for dismissal of the petition.

4. The trial Court, upon hearing argument of both the counsel, instead of granting interim custody, permitted the revision petitioner to visit the child at the respondent's house in the presence of Advocate Commissioner, by name Shaikh Abdul Khader, on payment of Rs.1000/- per each visit.

5. Challenging the said Order, the present Revision is filed by the revision petitioner on various ground and mainly contended that granting visiting rights once in a month i.e., on every 3rd Sunday of a month, would not serve any purpose and that the revision petitioner is unable to take care of the child on one visit per month and therefore, prayed for interim custody of the child modifying the Order.

6. At the stage of admission, heard learned counsel for petitioner and the learned counsel for respondent.

7. The Petition in I.A.No.521 of 2015 in O.P.No.1491 of 2015 had filed under Section 12 of the 1890 Act, for interim custody of the minor child, and that the main petition was filed under Section 7 of the 1890 Act, for custody of the minor child.

8. The revision petitioner and respondent herein are governed by Muslim Law since they belong to Muslim community. The provisions of Guardians and Wards Act are applicable to Muslims also. Section 12 of Guardians and Wards Act, 1890, deals with the powers of the Court to pass interim order for interim custody and according to Section 12 (1) of the Act "(1) if any

person having custody of the minor shall produce the minor or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper. 2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub Section (1) for her production shall require her to be produced in accordance with the customs and manners of the Country.

9. In the present case, the minor child is a male and sub Section 2 of the 1890 Act has no application to the present facts of the case, but for ordering custody or interim custody, the prime consideration is the welfare of the minor child and his wishes. According to settled law that the intelligent preference of the minor child, if he is able to form any opinion, is to be considered for granting interim custody of a minor child. Here, the trial Court did not examine the intelligent preference of the minor child for granting custody, but granted visitation rights since the minor is aged six years. The only request made before this Court is that instead of handing over the minor child at the house of the respondent herein, the place may be changed. In view of the submission of the learned counsel for revision petitioner, the respondent herein is directed to produce the child before the Secretary, District Legal Services Authority, City Civil Court, Hyderabad, on every 3rd Saturday of every month between 11.00 am to 1.00 pm and be permitted the

revision petitioner to visit the child and spend time with him during the said period.

10. The learned counsel for the revision petitioner also contended that he sought for interim custody of a child twice in a week, but the trial Court rejected the same on the ground that the child is school going child i.e., 6 years and it is in the welfare of the minor. Therefore, I find no error in the order passed by the trial Court in rejecting interim custody or visiting rights twice in a week. But now the Order is modified permitting the respondent herein to produce the child before the Secretary, District Legal Services Authority, City Civil Court, Hyderabad, on every 3rd Saturday in a month between 11.00 am to 1.00 pm and be permitted the revision petitioner to visit the child and spend time with him till 5.00 pm and the Advocate Commissioner, who is appointed by the trial Court, is hereby discharged from his duties and therefore, the revision petitioner could not pay any amount to the Advocate Commissioner hereinafter.

11. With the above modification, this Revision is disposed of.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06-09-2016.

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