

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2152 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 26.03.2016 passed in I.A.No.331 of 2016 in O.P.No.1213 of 2015 on the file of the Additional Family Court, Hyderabad, whereby, the learned Judge, Family Court, granted visitation rights to respondent herein/father, to visit the minor child at the house of revision petitioner/mother on every second Saturday between 10:00 AM to 12:00 Noon in the presence of Ms.B.Shailaja, Advocate Commissioner, fixing Advocate Commissioner's fee at Rs.4,000/- per month.

2. The respondent herein/father filed an application before the Court below contending that he is natural guardian father of the minor child Aryan, who was born prematurely in sixth month with medical complications and that the revision petitioner filed the main O.P. for restitution of conjugal rights and that in the said OP, respondent filed I.A.No.15 of 2016 for visitation rights of minor child, as the revision petitioner is residing separately and she was not allowing him to see the minor child to him; on that, the Court below appointed Advocate Commissioner in the said application directing her to visit the minor child and to verify from Rainbow Hospital and L.V.Prasad Hospital with regard to treatment provided to minor child and inform the condition of minor child to respondent, but the Advocate Commissioner returned the warrant stating that she could not execute the same due to non co-operation of the revision petitioner and her counsel; the minor child, therefore, shall be produced so as to enable respondent to see him.

3. Revision petitioner herein did not file any counter in the said interlocutory application.

4. The Court, below, upon hearing the advocate for respondent herein, *inter alia* held that O.P. was filed by revision petitioner seeking restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955; in that O.P., respondent herein filed I.A.No.15 of 2016 for visitation rights of minor child; thereupon, Court below appointed Ms.B.Shailaja as Advocate Commissioner to monitor the treatment given to minor child at Rainbow Hospital and L.V.Prasad Hospital and other hospitals and directed to take extracts of relevant records and to visit the minor child from time to time and submit periodical report once in a month with regard to condition of the minor child; accordingly, Advocate Commissioner filed report on 14.03.2016 stating that she could not execute the warrant due to non cooperation of revision petitioner herein and her counsel; Advocate Commissioner, in her report, stated that she visited revision petitioner's house and Rainbow Hospital, Banjara Hills and made necessary enquiries and found that minor child was not brought to Rainbow Hospital for treatment after delivery and on enquiry from neighbours, she found that that revision petitioner is not residing at Narayanaguda address and minor child was admitted in hospital by her natural guardian-father; in view of the above circumstances, arguments of counsel and the anxiety of the respondent to know about the health condition of the minor child, it is necessary to grant visitation rights to respondent to visit the minor child and accordingly, granted visitation rights to respondent herein as stated *supra*.

5. The present revision is filed on the ground that respondent filed similar application before the Court below claiming visitation rights and during pendency of that application, present revision is filed and a petition to advance the petition was also filed, but without intimating the same and without affording reasonable opportunity to the revision petitioner, Court below advanced the hearing of petition posted to file counter.

6. During hearing, Sri N.V.Anantha Krishna, learned counsel for the revision petitioner submitted as follows:- "I.A.No.331 of 2016 was filed on 17.03.2016 before the Court below and it was returned with certain objections; on 21.03.2016, respondent re-presented the petition after service of notice by registered post along with postal receipt and proof of service; on 22.03.2016, respondent was called absent and the Court below posted the matter to 24.03.2016 for notice and counter; on 24.03.2016, the Court below posted the matter to 26.03.2016 by observing that revision petitioner was called absent and there is no representation on her behalf; on 26.03.2016, the impugned order was passed; similarly, I.A.No.333 of 2016 was adjourned several times and was finally disposed of by order dated 26.03.2016. He further submitted that no notice was served on the revision petitioner in I.A.Nos.331/2016, 332/2016 and 333/2016 and passing an order without notice to other side is illegal and against the principles of natural justice and therefore, the order under challenge is liable to be set aside."

7. *Per contra*, learned counsel for the respondent herein contended that notices were sent to revision petitioner by Registered Post with Acknowledgement due and proof of service is also filed before the Court

below while re-presenting the application on 22.03.2016 and, therefore, the contention that the applications were disposed of without affording any opportunity of hearing to the other side is baseless and prayed to dismiss the revision.

8. In view of the above rival contentions, the point that arise for consideration is as follows:-

“Whether any opportunity was afforded to the revision petitioner to file counter; and if so, whether the order under challenge is liable to be set aside.”

9. In view of the controversy, this Court called for entire record from the Court below to find out whether notice was served on the revision petitioner in I.A.Nos.331/2016, 332/2016 and 333/2016 or not. As seen from the record, in I.A.No.331/2016, I.A.No.332/2016, I.A.No.333/2016 and I.A.No.15/2016 filed in O.P.No.1213 of 2015, respondent filed a memo on 24.03.2016 along with four postal acknowledgements dated 09.03.2016, 23.03.2016 to establish that notice was duly served on the revision petitioner in the said interlocutory applications. Learned counsel for the respondent also filed postal receipts along with the letters addressed to the revision petitioner in I.A.No.331/2016, I.A.No.332/2016 and I.A.No.333/2016. All the three letters dated 22.03.2016 would establish that respondent sent notices in I.A.No.331/2016, I.A.No.332/2016 and I.A.No.333/2016 to the revision petitioner and postal receipts filed along with the letters would establish that those notices were sent by registered post under three different registered letter numbers. The track events of the postal department show that the letter dated 22.03.2016 was served on the addressee on 23.03.2016 at 11:05 PM and the item was received as per

the entry in the fourth column. Similarly, the other two letters were also received as per the record. If really notices were not received by respondent, the question of postal authorities recording that the item was received by the addressee in the postal department track events does not arise. Therefore, the track events recorded by the postal authorities is sufficient to conclude that the notices were sent to revision petitioner herein in I.A.No.331/2016, I.A.No.332/2016 and I.A.No.333/2016. The other four postal acknowledgements bears stamp of the post office dated 23.03.2016 evidencing service of notice and return of postal acknowledgement to the sender.

10. Learned counsel for the revision petitioner, disputing the signature appearing in the column provided for signature of the addressee, contended that somebody has signed on it but not the revision petitioner. This contention cannot hold good since it is clear from the date underneath the signature of the addressee that the registered post covers were received on 19.03.2016, but whereas the notices were sent on 22.03.2016. Therefore, those postal acknowledgements do not pertain to postal receipts bearing Nos.101018252, 101018266 and 101018271. It is the contention of Sri B.Nalin Kumar, learned counsel for the respondent herein that postal acknowledgement relates to the earlier notices and the track events pertain to the notices issued after ordering notices to the respondent. Accepting postal department track events, service of notice on the addressee can be held sufficient and the contention of the learned counsel for revision petitioner that the revision petitioner did not receive notice in I.A.No.331/2016, I.A.No.332/2016 and I.A.No.333/2016

cannot be accepted. Therefore, on this ground, the order cannot be set aside.

11. The other contention urged by the revision petitioner is that there is every apprehension that the respondent may kill the child. To erase this apprehension from the mind of the revision petitioner, I deem it appropriate to direct the revision petitioner to produce the child before the Secretary, District Legal Services Authority, Hyderabad, on the day and time appointed by the Court below permitting the respondent to visit the child in the presence of the Secretary, District Legal Services Authority, Hyderabad. However, the respondent is directed to bear the transportation expenses of revision petitioner and the child for this purpose, since the Advocate Commissioner was discharged due to return of warrant to the Court below.

12. Subject to the above modifications in the order under challenge, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand dismissed as a sequel.

27th September, 2016
Bvv

M. SATYANARAYANA MURTHY, J