

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.2708, 2715 & 2716 OF 2016

COMMON ORDER :

Since these three Revisions arise out of the same G.W.O.P. No.278 of 2014 on the file of the Principal District Judge, West Godavari, Eluru, they are being disposed of by this common order.

2. The said OP was filed by the respondent against the petitioner seeking his appointment as guardian of his minor children and for their custody.

3. Counter affidavit was filed by the petitioner in the said OP opposing grant of such reliefs to the respondent.

4. Issues were framed. Trial commenced and respondent examined PWs.1 & 2. Petitioner also examined her witnesses. Thereafter written arguments were filed by the respondent on 04.09.2015. Later the matter was reopened for further hearing.

5. At that juncture, the petitioner filed I.A.No.2696 of 2015 to reopen the matter for further cross-examination of PW1; I.A.No.2697 of 2015 to recall PW1 for further cross-examination; and I.A.No.2698 of 2015 to issue witness summons to the Disbursement Officer, Naval Base, Visakhapatnam, where the respondent was working, for causing production of the salary particulars of the respondent.

6. It is the contention of the petitioner that at the time of preparation of written arguments, the petitioner noticed that she could not cross-examine the respondent/PW1 properly regarding the welfare measures of the children and it is necessary to further cross-examine the respondent in this regard. It was also stated that the respondent/PW1 had given different versions before different Courts with regard to his income, that he exhibited his Salary Certificate as Ex.A8 and since she is of the opinion that the income mentioned therein is not true and correct, it is essential to examine the Disbursement Officer of the respondent and cause production of the salary particulars of the respondent.

7. Respondent filed counter affidavit opposing these applications. He contended that the counsel for the petitioner had cross-examined him(PW1) at length covering all aspects relating to Ex.A8, that salary particulars of the respondent/PW1 for the month of November, 2014, which is the latest salary certificate was marked without any objection from the petitioner's side, that when the respondent was examined in the maintenance case at Bhimavaram, his salary was less, but the same got increased subsequently by the time he gave evidence before the Principal District Judge, West Godavari, Eluru. He stated that when he produced the salary certificate, Ex.A8, it was not objected to by the petitioner. So he contended that there is no necessity to issue

witness summons to the Disbursement Officer and these applications are filed with a malicious intention to procrastinate the matter. He also contended that he had been cross-examined as PW1 by the counsel for the petitioner at length covering all the aspects in the presence of the petitioner; after conclusion of evidence on either side, when the matter is posted for arguments, both sides also advanced arguments at length; and then the present applications have been filed after the matter was posted by the Court below for orders. It is also stated that the respondent had already filed his written arguments. He also referred to order dt.17.08.2015 in CRP.No.672 of 2015 passed by this Court wherein this Court directed the Principal District Judge, West Godavari District, Eluru to dispose of the GWOP by the end of December, 2015. He contended that the petitioner was aware of this order and in spite of the same, she filed these applications, which are vexatious.

8. By a common order dt.07.04.2016, I.A.Nos.2696 and 2697 of 2015 were dismissed and on the same day by a separate order I.A.No.2698 of 2015 was dismissed.

9. The Court below observed that although the petitioner had contended that PW1 had stated different salary particulars in different Courts and raised a plea that summoning of the Disbursement Officer is necessary, the main petition being for custody of minors, income of either

party is only a point for consideration and exact income particulars of the respondent are not necessary. It was also stated that the petitioner did not explain how she came to know that the particulars stated in Ex.A8 are false. It therefore held that there was no reason to summon the Disbursement Officer, Naval Base, Visakhapatnam. It also held that the contention of the petitioner that while preparing written arguments certain discrepancies were found, cannot be accepted, since these applications have been filed four months after filing of the written arguments by the respondent.

10. In para 8 of the order in I.A.Nos.2696 and 2697 of 2015, the Court below observed as under:

“Perused the petition. As per the material on record, P.W.1 was cross examined on 23.02.2015. Thereafter, the petitioner herein under application recalled PW2 and also filed written arguments on 04.09.2015. However, the matter was reopened for further hearing. At that juncture, this petition is filed on 29.12.2015.”

11. Counsel for the petitioner contends that this statement is incorrect; in fact it was the respondent who got recalled PW2 and filed written arguments on 04.09.2015 and not the petitioner; and it was this error which prompted the Court below to dismiss these three applications.

12. I am unable to agree with the said submissions. Even assuming for the sake of argument that the statement in the order of lower Court extracted above is incorrect, still that does

not explain the conduct of the petitioner in filing the applications four months after the written arguments were filed by the respondent and after oral arguments had already been advanced by both sides. It is not the case of the petitioner that she had objected to Ex.A8 when it was marked in evidence. When the said document discloses the salary particulars of the respondent, without disclosing on what basis the petitioner is finding fault with the contents of Ex.A8, petitioner cannot be permitted to summon the Disbursement Officer of Naval Base, Visakhapatnam to produce salary particulars of the respondent. In my opinion these three applications are only filed to procrastinate the matter. When this Court in CRP.No.672 of 2015 had directed the Court below to decide the matter by December, 2015 and the petitioner was a party to the said order, the petitioner vexatiously filed these applications on 29.12.2015 for the above reliefs.

13. I am of the opinion that the conduct of the petitioner is not thus bonafide and she is not entitled to any relief in these applications.

14. Accordingly, these three Civil Revision Petitions are dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

17th June, 2016
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