

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4834 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the petitioner/husband is filed assailing the order dated 26.06.2014 of the learned Judge, Family Court, City Civil Court, Secunderabad passed in OP(SR).No.3120 of 2014.

2. I have heard the submissions of the learned counsel for the petitioner. I have perused the material record.

3. The aforementioned OP(SR) is filed by the petitioner against his wife under Section 7(1)(d) of the Family courts Act read with Section 26 of the Code of the Civil Procedure, 1908 seeking the following reliefs:

'a) to restrain the respondent, her relatives, her friends or her colleagues from communicating in any manner whatsoever with the petitioner or his family members, relatives r friends;

b) to restrain the respondent, her relatives, her friends or her colleagues from visiting place of work (future work place if any) of the petitioner or his family members, relatives or friends;

c) to restrain the respondent, her relatives, her friends or her colleagues from visiting the residence of the petitioner, his family members, relatives, her friends or her colleagues from visiting the residence of the petitioner, his family members, relatives r friends;

d) to restrain the respondent, her relatives, her friends or her colleagues from communicating with the petitioner in public places especially at Courts where the cases are being heard; and

e) to restrain the respondent, her relatives, her friends or her colleagues from visiting the residence of the petitioner, his family members, relatives, her friends or her colleagues from defaming the image/reputation of petitioner, his family members, his relatives or his friends;

f) award costs of the suit

g) and pass such other order or orders which deem fit and proper in the circumstances of the case and to achieve the ends of justice.

[Reproduced verbatim]

4. The proceeding as per the submissions now made before this Court was originally filed before the Family Court, Hyderabad. The said Court had returned the said OP originally filed before that Court for presentation to a proper Court on the ground that the respondent is a resident of Secunderabad. On that the petitioner had re-presented the OP before the Family Court, Secunderabad. The office of the Family Court, Secunderabad had returned the OP with certain objections a few number of times. The petitioner, having complied with the objections/answered the objections, had re-presented the proceedings before the said Court. Ultimately, by the order impugned, the OP was rejected on the point of jurisdiction giving liberty to the petitioner to file the same before appropriate Court having jurisdiction. In the circumstances, the learned counsel for the petitioner would submit that both the Family Courts at Hyderabad and Secunderabad are not entertaining the petition without appreciating the fact that the nature of the reliefs sought for can be granted by either of the two Courts and that without even registering the OP, the Court below which rejected the OP made observations by entering into the merits

of the matter to the effect that the provisions are not applicable and that the Court has no jurisdiction. He would also submit that the jurisdiction is a question of fact and that in the OP, necessary averments were made constituting the cause of action which clothed the Family Court at Secunderabad with jurisdiction to entertain and try the proceedings and that, therefore, the rejection order without entertaining the OP is unsustainable under facts and in law.

5. I have gone through the pleadings including the reliefs claimed in the OP. The order impugned reads as under:

‘The infringement of the rights of the plaintiff had not taken place within the Court’s jurisdiction. The plaintiff wants to invoke this Courts jurisdiction on the ground of defendant’s residence. But none of the reliefs under HM Act are prayed in this petition. So said provision is not applicable. Plaintiff is assuming jurisdiction here as Hyderabad Family Court returned it. Plaintiff only filed the Xerox copies of the documents though their CCs can be obtained. He wants take the shelter u/s 14 of Family Courts Act which says ‘may’ but not ‘shall’. So he cannot file the Xerox copies as of right. As it is a sensitive issue of privacy this Court required the atleast the CCs, which were not filed. When this court has no jurisdiction to entertain this matter, is accordingly ‘rejected’ with a liberty to file in the court having jurisdiction.’

[Reproduced verbatim]

The subject matter is purely a matrimonial issue and has nothing to do with any immovable property. Therefore, considering the fact that the wife is a resident of territorial jurisdiction of the Court of the learned Judge, Family Court at Secunderabad, this Court is satisfied that it is a fit case to direct

the learned Judge, Family Court, Secunderabad to entertain the OP, if it is otherwise in order without raising the issue of jurisdiction and by leaving the said issue open to be decided on merits at an appropriate later stage, in case the issue of jurisdiction either is raised by the respondent or falls for consideration.

6. Viewed thus, this Court finds that the order impugned brooks interference.

7. In the result, the Civil Revision Petition is allowed and the order rejecting the OP on the point of jurisdiction is set aside. As a sequel, the Court below is directed to entertain the petition subject to the observations aforementioned. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

25.02.2016

Vjl