

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3272 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed challenging the Order dt.20.04.2016 in I.A.No.110 of 2016 in O.P.No.794 of 2015 on the file of Judge, Family Court, Hyderabad, wherein the petitioner/father sought visitation rights of his children i.e., Master K. Raghvendra and Master Sujayendra, who are in the custody of his wife/respondent.

2. The petitioner filed petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights and the custody of the children. For welfare of the children, the petitioner has deposited a sum of Rs.18 lakhs in their names and also gave an amount of Rs.15 lakhs to the respondent. Though the children also have affection for the petitioner, the respondent is coming in the way of their meeting together for enjoying each other's company. The petitioner, in the capacity of natural guardian of the minor children, is entitled to meet his children and as such, he requested the Court to pass an Order granting visitation rights.

3. The respondent filed Counter denying the allegations made in the petition, *inter alia*, contending that the allegation of petitioner depositing an amount of Rs.18 lakhs in the name of two children and that he has given Rs.15 lakhs to the

respondent herein is false and baseless and that the petitioner is an irresponsible person and he has never in the past shown fatherly love and affection towards the children and has never taken responsibility for their welfare and the children were brought up exclusively by the respondents herself and they are not interested in meeting the petitioner and thus she requested the Court to dismiss the petition.

4. The Judge, Family Court, upon examination of the child i.e., Master K. Raghvendra and Master Sujayendra, in compliance of the requirement under Section 17 (3) of Guardian and Wards Act and during examination, they expressed their disinclination to have a company of their father and thereby the trial Court dismissed the petition.

5. Aggrieved by the said Order, the present Civil Revision Petition is filed on various grounds.

6. During hearing, Sri Vanam Vishwanatham while contending that even if the children are not willing to meet their father, visitation rights cannot be denied, as held by the Apex Court in *Lekha v. Anil Kumar*¹ and *K.M.Vinaya v. B.R.Srinivas*².

7. Though Notice was served, none appeared on behalf of respondent.

¹ Laws(SC)-2006-11-78

² Laws(SC)-2015-5-91

8. The Judge, Family Court dismissed the petition only on the ground that children are not willing to have a company of their father and they are aged 11 and 12 years and totally under the influence of the mother. In normal circumstances, when the children are not in a position to exercise intelligent preference, it is difficult to accept their preference because of their age and even otherwise, as per the Judgment reported in Lekha's case, though the children are not willing to have a company of their father, visitation rights cannot be denied and it is a right of the natural guardian, who is the father. In another judgments of the Apex Court reported in K.M.Vinaya's case, the Apex Court granted visitation rights though the children are not willing to have a company of the father. Section 17 deals with parameters for appointment of a guardian and not for visitation rights. Even otherwise, the petitioner, being a father, is entitled to have visitation rights. But, the Judge, Family Court did not consider the law laid down by the Apex Court in the judgments referred above, and passed the impugned Order erroneously and the same is liable to be set aside.

9. In the result, this Civil Revision Petition is allowed setting aside the Order dt.20.04.2016 in I.A.No.110 of 2016 in OP No.794 of 2015 on the file of the Judge, Family Court, Hyderabad permitting the revision petitioner to visit the children on every Second Sunday and 4th Sunday of the month between 4.00 pm and 07.00 pm in the presence of respondent at their convenient place. No costs.

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

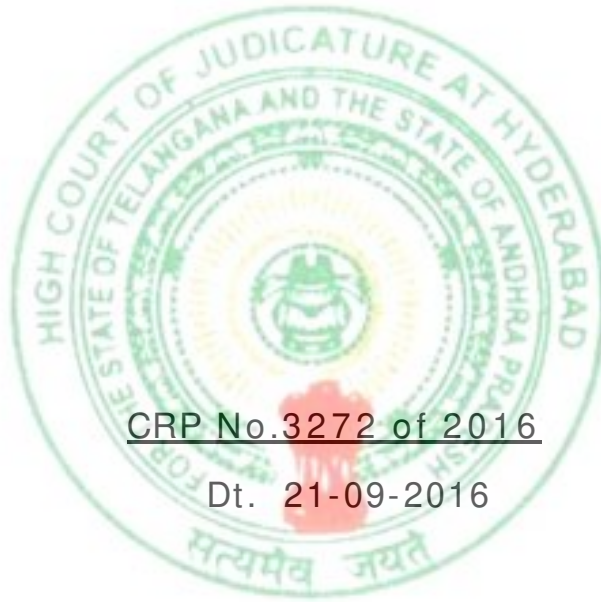
M. SATYANARAYANA MURTHY, J

Date: 21-09-2016.

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Dt. 21-09-2016

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