

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2200 of 2016

ORDER:

This is a husband's revision under Article 227 of the Constitution of India assailing the orders, dated 04.02.2016, of the learned Judge, Family Court, Panga Reddy District, passed in I.A.No.1605 of 2015 in O.P.No.1899 of 2015 filed by the petitioner/ husband under Section 26 of the Hindu Marriage Act, 1955, read with Section 151 of the Code of Civil Procedure, 1908, requesting to grant visitation rights to visit his minor twin children, namely, Master Vihan, and Baby Hasini, both aged 5 ½ years, on every Saturday and Sunday and during all holidays and school vacations, as well, at the residence of the petitioner/ husband.

2. I have heard the submissions of *Ms. M.Venkateswari*, learned counsel for the revision petitioner and *Sri D.Prakash Reddy*, learned senior counsel appearing for Sri Avinash Desai, learned counsel for the respondent. I have perused the material record.

3. At the outset, it is to be noted that the learned Judge of the Family Court partly allowed the petition of the husband. The operative portion of the said order dated 04.02.2016 passed by the learned Judge, reads as under:

“In the result, the petition is allowed partly and the petitioner and his parents are permitted to visit the children on every Sunday from 10.00 AM to 1.00 PM in the presence of mutual friend or relative of both sides at his home or some other choice of place which is convenient to both the parties and to that affect they are advised to file the memo before the court and at the same time the petitioner shall not take out the children out of the said place and the respondent is directed to take the children to the said place and collect them after 1.00 PM. No costs.” (Reproduced verbatim)

Aggrieved thereof, the husband filed this revision petition.

4. The marital relationship between the spouses is admitted. The twin children are the children of the couple is also admitted. The OP was filed by the husband under Section 13(i)(ia) of the Hindu Marriage Act, 1955, for dissolution of the marriage on the ground of cruelty. The OP was disposed of. This revision is filed against the interlocutory orders passed in the said FCOP, which was disposed of. A new OP No.1017 of 2016 filed by the husband under the provisions of Guardians & Wards Act, 1890, is stated to be pending.

5. The case of the husband is as follows:

The respondent/ wife harassed and tortured him and his family members and prevented them from seeing the children and deprived the children of the love and affection of the father and paternal grandparents and caused mental cruelty to the petitioner. The respondent also deprived her children of the pleasure of meeting their cousins. She did so just for the sake of properties. The school authorities of the children informed the petitioner and his father that the son is totally disturbed and missing his father. The respondent is not really interested in the children but she is only having thirst for money and properties. Therefore, she is withholding the children and denying them the love and affection of their father and paternal grandparents. The children were brought up by the paternal grand parents in a very congenial, affectionate and lovable atmosphere and in a family culture. If the children were to be in the care and custody of the petitioner, they would grow in a healthy, affectionate and traditional atmosphere. The petitioner and his parents took good care of the children and their interests since their birth; and looked after them well by providing good and congenial atmosphere, good health conditions, best education and environment, which inculcate ethics, good principles and humanity. The welfare of the children is of paramount consideration and it is the prime concern. The petitioner being the father, it is his pious duty and obligation to take optimum care of his children and he was

doing so till the respondent has left his house with the children. The respondent is neither taking care nor responsibility in the upbringing of the children nor is she having any interest in their welfare. She has no love and affection towards the minor children. She is only interested in harassing the petitioner for the sake of properties. The minor children can grow well mentally and physically under the care and custody of the father, the petitioner. Hence, the petitioner is constrained to file the subject application for grant of visitation rights.

6. *Per contra*, the wife in her counter, while denying the pleading of the husband, averred her contentions with regard to cruelty meted out to her by her husband and further *inter alia* pleaded as under:

She suffered at the hands of the petitioner and his parents right from the inception of the engagement ceremony and she is continuing to suffer till date, for one reason or the other and she and her children were deprived of normal peaceful life, leave alone happy life. The petitioner and his parents tortured her and her parents on various occasions. She is a traditional and spiritual minded person by nature. She is interested in keeping the marital bond strong under all circumstances and she was shattered and shocked when the petitioner filed an application for grant of divorce. The petitioner never made any attempts to patch up the differences. The petitioner and his parents never treated the children with love and affection. The petitioner is always busy with his work and traveled a lot out of India during most of the years and was hardly available at home even on a Sunday. The mother of the petitioner is a cancer patient. She always required help. The petitioner and his parents never spent even a day with the children. They never agreed to visit Master Vihan when his hand was fractured and did not make visits even once from May 2015 at any place. The grandparents always avoided and neglected the children for silly reasons, particularly, after coming to know about the impotency of the petitioner and the fact that the children were born under

Inter-Uterine Insemination (IUI) procedure. They used to neglect and scold the children for no fault of the children and used to address the children by saying that they are the children of Sndhu, that is, the children of the respondent. They never helped and assisted the respondent even on the days the children were unwell and bed ridden and required medical treatment in the hospitals. The pains and anguish, the respondent went through are unexplainable. The children never experienced the love and affection of the petitioner and his parents. There is a long gap since separation between the petitioner and his parents on one hand and the children on the other. The children are not well connected to their grandparents and the petitioner; and they never visited the children since May 2015. The children will be attending school from Monday to Friday and the school timings are from 8 AM to 4 PM. They have to attend their homework on everyday and special assignment works during week ends. The children are also attending drawing and swimming classes on every Saturday and Sunday in the morning hours from 10 AM to 1 PM. The extracurricular activities are very important for a balanced and complete growth of the children both mentally and physically. If the children are forced to visit the petitioner and their grandparents at their residence, they feel afraid and threatened and it is not good for their happiness, health, comfort and welfare and any force applied would affect them mentally and physically.

7. This Court extracted the relevant pleadings and submissions shorn off unnecessary details as while deciding the issues involved in the present *lis*, it is not necessary to deal with the allegations traded by the spouses against each other. Though the petition of the husband was partly allowed and visitation rights are granted, his grievance is that despite a review petition filed, the order is not correctly clarified and ultimately visitation rights are only granted to visit the children on every Sunday between 10 AM and 1 PM in the presence of a mutual friend or a relative of both the sides at such person's residence or some other place, which may be convenient to both the parties; but, visitation

rights, facilitating enjoyment of the company of the children in the house where the petitioner and his parents are living, are not granted by the Court below.

8. Apart from ventilating the said grievance, the learned counsel for the petitioner/ husband contended as follows:

The trial Court ignored the fundamental fact that the person seeking visitation rights is father of the minor children and that he is having a legitimate right over his children and that on account of the disputes between the wife and the husband, he cannot be deprived of his right to have custody of the children at least periodically at his house, if not continuously. The trial Court while giving visitation rights to the petitioner erred in restricting the right to visit the children either at the house of a mutual friend or a relative of the parties, and in not directing to have the visitation rights at the house of the petitioner, where the grandparents are also living and where the children will have congenial family atmosphere. Had the trial Court granted visitation rights by directing visits to the residence of the petitioner, the children would have enjoyed the company in the same environment in which they were earlier brought up till the separation. The petitioner and his parents are feeling very inconvenient and uncomfortable to meet the children at any place other than the house of the petitioner. The trial Court failed to properly consider the conduct of the respondent/ wife inspite of the fact that she alleged in her counter about the impotency of the petitioner and non-consummation of the marriage with the petitioner. On certain occasions when the petitioner met his children in malls, lot of inconvenience and discomfort was felt both by the petitioner and his parents as well as the children. Hence, the petitioner may be permitted to have the visitation rights at his house by directing the respondent to send the children to the house of the petitioner on the dates of the visits.

9. The learned senior counsel appearing for the respondent wife while reiterating her case and while supporting the orders of the Court below would submit as follows: “The order of the trial Court was passed appreciating the facts correctly and the legal position in correct perspective. The order was passed keeping in view the welfare of the children, which is of paramount consideration. The trial Court took note of the fact that husband was used to travelling in connection with his professional work and was hardly available in the house even during the week ends when the parties were living together and that the grand parents were not showing love and affection and treating the children as the children of the wife alone in the peculiar circumstances they were born. The trial Court took note of the fact that the children are pursuing their education and that it is not advisable to disturb their daily routine and schedule while granting the visitation rights to the husband. The trial Court thus perfectly balanced the interests of both parties while passing the orders. Therefore the order impugned which is a well considered order does not call for interference.”

10. I have gone through the pleadings of both the parties.

11. Now the point for determination is – ‘whether the husband had made out valid and sufficient grounds for modification of the order impugned?’

12. POINT:

Both parties traded serious allegations in their respective pleadings in the main proceeding and also in the interlocutory application. The issues raised for consideration in the main petition were resolved and the main petition was disposed of. However, the husband’s new petition seeking custody of children filed under the provisions of the Guardian and Wards Act is pending. The dispute with regard to permanent custody of the children would be resolved in the said pending Original Petition.

12.1 There is no dispute about marital relationship between the parties. There is not dispute that the children were born under lawful wedlock and that they are now aged about 7 years. The children are now with the mother and they are attending to school and are pursuing education. During the pendency of the main petition, the husband, who is father of the children, sought interim visitation rights. After the orders impugned in this revision were passed, the main OP was disposed of. As already noted another new OP filed for custody of children is pending trial. The trial Court granted visitation rights to visit the children on every Sunday from 10.00 AM to 1.00 PM in the presence of a mutual friend or a relative of both sides and at such person's home or some other choice place, which may be convenient to both the parties. It is stated before this Court that the father and his parents were meeting the children mostly at shopping complexes or malls.

12.2 Now, the husband is seeking visitation rights on every Saturday and Sunday and during all holidays and on school vacations, as well, at the his residence *inter alia* stating that meetings at the malls are inconvenient to both the sides and are not ideally suited for expressing and sharing natural love and affection in full measure on account of known constraints to be observed at such public places. Therefore, the learned counsel for the husband, that is the father of the children, submits that the father may be permitted to have the company of the children at his house and that his place is safe and convenient and that at that place the children can also the enjoy the company of their cousins in a cozy family atmosphere where love and affection can be expressed and shared in full measure. She therefore prayed for modification of the orders to the said extent. The wife's further contentions as per the submissions made by the learned senior counsel are as follows: 'The husband and his parents did not meet the children at the place fixed for meeting during Deepawali festival. The husband did not avail the benefit of the orders of the Court below for four or five times till date. He did not attend the place fixed

for meeting the children on four or five occasions as he was busy otherwise. When the father is not able to spare his time to meet his children and is not in a position to spend time with the children and is not inclined to give preference to the welfare of the children by making himself available even during week ends and is also staying away from the house during week ends also on account of his work or other preoccupations as in the past, there is not point in complaining against the well considered orders of the trial Court. There is no justification in seeking modification of the orders of the Court below. In the absence of the father at the house during the week ends, no purpose would be served even if the children are to be sent to his house for having visitation rights. On account of long gap since May 2015 and time lag after separation, the children cannot be exposed to sudden change by forcing them to go to the house of the father more particularly when the children are feeling afraid and threatened. Further, the grandparents always avoided and neglected the children for silly reasons, particularly, after coming to know about the impotency of the petitioner and the fact that the children were born after Inter-Uterine Insemination (IUI) procedure. They used to neglect and scold the children for no fault of the children and used to address the children by saying that they are the children of Sindhu, that is, the children of the respondent. They were never comfortable with the presence of the children in the house and their expressions lacked warmth and affection.'

12.3 In deciding the question of granting custody or interim custody or visitation rights, the welfare of the minor is the paramount consideration. The welfare of the minor has been pointed out as the guiding factor in various precedents. The word "welfare" must be taken in its widest sense. The moral or religious welfare of the child must be considered as well as its physical well being. Nor can the ties of affection be disregarded. Age of the child, the character of the spouse seeking the relief, the capacity of such spouse and other factors unique to the case have to be considered. Where the minor is old

enough to make an intelligent preference, the wishes of the minor should be considered by the Court. No doubt, minor's preference is not conclusive on the matter. Further, the welfare of the child is not to be measured by money a spouse has or by physical comfort only, which one spouse can provide. (See: Samuel Stephen Richard v. Stella Richard¹). Even when one spouse is acrimonious towards the other spouse, it may not be a ground to deny the right of such spouse to see the children and continue to have the parental/filial bond. (See: Manoj Anslem Rebeiro v. Candace Elizebath Rebeiro²). If the time lag between the date of separation and the date of request for the relief made by one spouse is considerably long and on account of the said reason if the minor children developed roots at their present place of stay with the other spouse, even in such a case, if the facts of the case warrant consideration of the request, then, instead of granting long duration rights straight away, opportunities to have short meetings shall be created in the form of parenting time or short time visitation rights at Court hearings or some such other safe places as the court may decide to enable the distanced spouse to slowly re-establish a bond. In all cases, except in cases involving out of the ordinary circumstances, to the extent possible, keeping in view the welfare and interests of the children, which is of paramount consideration, the Court shall see that the children are not denied the love and affection of one of the spouses, be it the father or the mother.

12.4 I have given earnest and thoughtful consideration to the facts and submissions. As rightly pointed out by the learned senior counsel, the wife already indicated ten choice places (houses of common friends and relatives and other places) at which meetings can be had, if not at the malls; however, the husband did not come forward with his ten such options. Had the husband also filed list of such places, this Court, by now, would have identified, from

¹ AIR 1995 MADRAS 451 (V.42, C.123 Aug)

² 2016 Law Suit (SC) 512

the options of both parties, one or two common places, with the consent of the parties, for having visits at such places, which are not public places exposed to public gaze. It is to be noted that the children with pure hearts attend a fixed place with the hope of meeting a distanced parent; if such parent absents himself/ herself and does not meet the children, the children get disappointed; and such situations will not augur well for the distanced parent. In the facts and circumstances of the case, this Court is satisfied that the order of the trial Court is justified and that the said impugned order if sincerely followed continuously at least for some time, it would certainly help the father in re-establishing the bond with the children and in strengthening it. If necessary, after some time, when there is a possibility to accept that the husband has re-established a bond and that the children are totally comfortable in his company and that there is harmony in the company, he can endeavour to impress upon the Court concerned to have the visits at his house; and till then it would be in the interests of both parties to continue to have the visits as directed in the orders of the Court below.

12.5 On the above analysis, this Court finds that there is no merit in the revision and that the order of the trial Court needs no interference at this stage.

13. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

20th December 2016
RAR

M. SEETHARAMA MURTI, J