

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3498 OF 2016

ORDER

This Revision is filed under Article 227 of the Constitution of India challenging the part of the direction issued by the Judge, Family Court, Secunderabad regarding permitting the respondent to take the child to Visakhapatnam if he chooses.

The respondent herein filed petition under Section 26 of Hindu Marriage Act, in a petition filed by the petitioner under Section 13 (1) (ia) of Hindu Marriage Act, for custody of minor child. The undisputed facts are that the marriage between the petitioner and the respondent was performed on 17.02.2008 and they are blessed with a child who is six years old by June, 2016 and the petitioner is residing at Secunderabad whereas the respondent is residing at Visakhapatnam in connection with his employment. The trial Court passed an order granting visitation rights and temporary custody for two days in every fortnight from Friday evening to Sunday evening ensuring the safety of child and permitting access to grant parents i.e., parents of the respondent herein and the respondent shall pick and drop the child either from the petitioner's house or from any mutually agreed venue permitting the respondent to take the child to Visakhapatnam, if chooses so.

Learned counsel for the petitioner Sri M.V.Suresh contends that there is every danger to the child if the respondent is allowed to take the child to Visakhapatnam. Unless such a relief is prayed, the Court is not supposed to grant an order permitting the respondent

to take child to Visakhapatnam. Whereas the counsel for the respondent states that grand parents i.e., parents of the respondent are staying at Visakhapatnam and they must have access to the child.

In view of the rival contentions, the point for consideration is

“whether the Judge, Family Court is competent Court to grant relief which is not claimed, if not whether granting permission to take the child to Visakhapatnam from Secunderabad to have access to the grand parents of the respondent herein is in accordance with law.”

It is clear from the petition that the respondent sought for interim custody of Abhinav Allaboyina for two days for every fortnight from Friday evening to Sunday evening, whenever respondent want to see his son. He did not claim any relief in the petition seeking permission to take the child to Visakhapatnam which is a far of place to the petitioner herein, but the Judge, Family court granted such relief which is not sought for in the pleadings. Therefore, the order is beyond the scope of relief claimed in the petition.

The only contention of the counsel for the petitioner before the Judge, Family court is that the grand parents must have access to the child.

No doubt, parents are entitled to claim visitation rights, but grand parents are not. Section 26 of the Act permits the Courts to pass any order of interim custody including the maintenance and

education of minor, consistently with their wishes. The disputes between the wife and husband are governed by the Act and the grand parents are unconcerned with the custody of the child except in rarest circumstances. Therefore, Section 26 is limited to enjoy visiting rights either by mother or father, but not by the grand parents. Hence, granting permission to take child to Visakhapatnam only to have access to the grand parents is against the purport of Section 26 of the Act and without any claim, and the Courts normally shall not travel beyond the pleading and grant reliefs, since pleading is the basis to decide the lis pending before the Court. The Apex Court in ***Kalyan Singh Chouhan vs. C.P. Joshi***¹ held that the Court cannot travel beyond pleadings and issues cannot be framed unless there are pleadings to raise the controversy on particular fact or law.

Therefore, the order to the extent of granting permission to the respondent herein to take child to Visakhapatnam is hereby set aside while maintaining the other part of the order.

With the above modification, the revision petition is allowed. No costs. As a sequel, miscellaneous petitions pending if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

Date: 26.08.2016
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¹ AIR 2011 Sc1137