

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CIVIL MISCELLANEOUS APPEAL No.836 of 2008

and

CONTEMPT CASE No. 2 of 2015

COMMON JUDGMENT: (*Per VRS,J*)

The civil miscellaneous appeal arises out of an order passed by the District Court, granting permanent custody of two minor children born in the wedlock between the appellant and the respondent, to the respondent-father. In the course of hearing of the main appeal, certain interim orders were passed, on the basis of an understanding given by the respondent-father. But, the respondent-father went back on the understanding given, forcing this Court to initiate contempt proceedings in C.C.No.2 of 2015. But, the respondent-father could not be served with notices in Form-I twice. The notices returned with the endorsement '*not residing*'.

2. It appears that the children, for whose custody the respondent-father filed G.O.P.No.589 of 2006 under the Guardians and Wards Act, 1890, were born on 07.09.1999 and 07.05.2002. Therefore, the elder child is due to attain majority in a period of three months and the younger child is also 15 years of age. According to the learned

counsel for the appellant-mother, both the children are with the appellant-mother and the respondent-father did not seek either the custody of the children or the visitation rights. In such circumstances, we took the appeal itself for hearing, since the respondent-father having appeared before this Court and after having given an understanding, absconded without even capable of being traced.

3. Heard Mr. P. Prabhakar Reddy, learned counsel for the appellant.

4. The respondent-father sought the custody of the children, on the ground that he was subjected to harassment in the matrimony, that his wife filed criminal complaints, and that she was only using the children as pawns to take revenge on him.

5. Before the District Court, the respondent-father examined himself as P.W.1 and he also examined his mother as P.W.2. The legal notice sent by him and the postal receipt were marked as Exs.A.1 and A.2 respectively.

6. The appellant-mother examined herself as R.W.1. No documents were marked on her side.

7. Unfortunately, the Court below went elaborately into the disputes between the appellant-wife and the respondent-husband and

came to the conclusion that the appellant was unable to maintain herself, and that, therefore, she was seeking maintenance. On the basis of the said finding, the trial Court came to the conclusion that she may not be financially capable of taking care of the children. It is on this only ground that the guardianship petition was allowed by the trial Court.

8. But, time and again, the Courts have cautioned that financial capacity is not the only parameter, on which the question of custody of children could be decided. The parameters for deciding the interest and welfare of the minor children are too broad and extensive. Even the persons, who contracted a second marriage after divorce, were held by the Hon'ble Supreme Court to be not disentitled from seeking custody. Though the term "*best interest of the child*" may stand as an abstract doctrine, there are well laid down intellectual milestones for a Judge to decide as to how to find best interest.

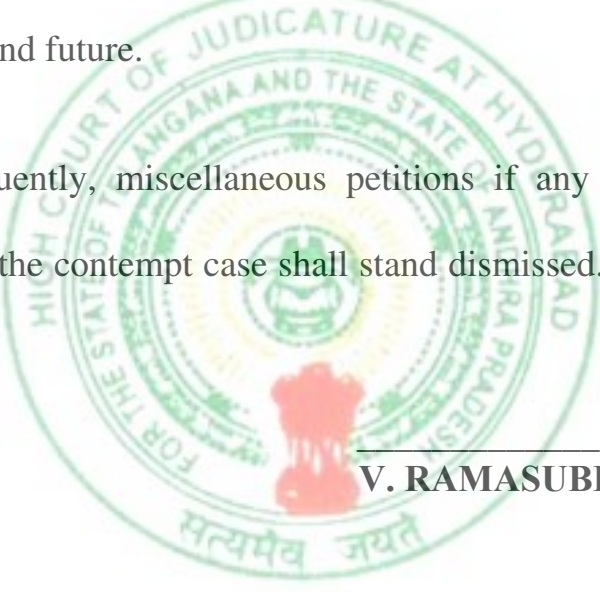
9. Despite the appellant-wife pleading financial inability while seeking maintenance from her husband, she has been able to bring up the children and the children have now reached almost 18 years and 15 years of age. The moment a direction was given by this Court to the respondent-father to pay maintenance, he has absconded.

Therefore, it is clear that it was the respondent-father and not the appellant-mother who was using the children as pawns.

10. Therefore, we are of the considered view that the Civil Miscellaneous Appeal deserves to be allowed. Accordingly, it is allowed and the judgment and decree of the trial Court are set aside.

11. In view of the order passed in the above civil miscellaneous appeal, we close the Contempt Case, leaving it open to the appellant-wife to work her remedies, with regard to the maintenance – past, present and future.

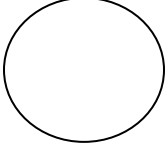
Consequently, miscellaneous petitions if any pending in the appeal and in the contempt case shall stand dismissed. No order as to costs.



V. RAMASUBRAMANIAN, J

M.S.K. JAISWAL, J

14th June, 2017
cbs



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AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL



CMA No.836 of 2008 and CC No.2 of 2015
(appeal-allowed & contempt-closed)

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% 14-06-2017

CMA No.836 of 2008

Jeela Rajitha

.. Appellant

Vs.

\$ Jeela Thirupathi

.. Respondent

<GIST:

>HEAD NOTE:



! Counsel for appellant : Mr. P. Prabhakar Reddy

^ Counsel for respondent : ---

? CASES REFERRED : ----

