

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.3956 OF 2016

ORDER:

Heard Mr.Murali Lincoln for petitioner and Mr.A.Jaya Sankara Reddy for 1st respondent.

One R.Ramya See/revision petitioner filed I.A.Nos.276 and 277 of 2014 in G.O.P.No.26 of 2003 in the Court of the I-Additional District Judge, Kurnool under Order I Rule 10 CPC to implead her as 2nd respondent in the above G.O.P proceedings to enable her to prosecute her case effectively and declare her as major respectively. I.A.No.276 of 2014 was dismissed by the order impugned in the revision and I.A.No.277 of 2014 was allowed. Ramya See admittedly is the only daughter of late Dr.Prasanna Lakshmi and Kanala Mahesh/1st respondent herein. Dr.Prasanna Lakshmi was working as Veterinary Assistant Surgeon, Animal Husbandry Department. On 08.07.1999, Dr.Prasanna Lakshmi, it is alleged, died in a fire accident. Ramya See was aged about 3 years at the time of her mother's demise. As is evident from tenacious assertions and denials in affidavit and counter affidavit, the relationship between 1st respondent and vis-à-vis Ramya See and the in-laws of 1st respondent are severely affected. Ramya See was looked after by Rachakonda Nagaraja Sharma/ 2nd respondent herein. The 1st respondent herein filed G.O.P.No.26 of 2003 for custody of Ramya See/revision petitioner. During the pendency of G.O.P, the 2nd respondent filed I.A.No.1715 of 2004 to direct the Assistant Director, Animal Husbandry Department, Adoni to deposit the entire death benefits of Dr.Prasanna Lakshmi and

arrears of family pension in the name of his minor grand daughter R.Ramya Sree in a nationalized bank in interest fetching deposit and deposit monthly family pension into the recurring deposit till the minor attains the age of majority.

On 28.12.2004, notice in I.A.No.1715 of 2004 was served on 1st respondent herein. The 1st respondent, through his counsel, endorsed as follows:

“No objection to keep the amounts in the court custody till the minor attains majority.”

On 28.12.2004, the learned I-Additional District Judge, Kurnool passed the following order:

“Notice given to the respondent’s counsel. He endorsed no objection, if the amount is kept in court’s deposit till the minor attains the age of the majority. The counsel for the petitioner also expressed that the amount is to be sent for by the court and invested in a nationalized bank for the benefit of the minor girl.

In the given circumstances, send for the amount mentioned in the petition.”

The grapple for monetary benefits left behind by Dr.Prasanna Lakshmi was quelled in the manner noted above. On 30.09.2009, G.O.P.No.26 of 2003 filed by 1st respondent was dismissed and the operative portion of the order reads thus:

“The respondent is called and present. Petitioner is called and absent. No representation. Minor girl Ramyasree is produced by the respondent. Counsel for respondent present. The minor is examined in open Court about her willingness to join the petitioner/father. She stated that she is not willing to join her father. The wish of the minor and her welfare

are the prominent considerations in guardianship cases. Since the minor expressed her unwillingness to join the petitioner, I deem it fit to dismiss the petition. Accordingly, the petition is dismissed.”

Ramya See filed I.A.Nos.276 and 277 of 2014 for the reliefs of adding Ramya See as 2nd respondent in the G.O.P and for declaring Ramya See as major to prosecute G.O.P.No.26 of 2003 in her capacity as major.

The case of revision petitioner is that by order dated 28.12.2004 in I.A.No.1715 of 2004, the death benefits, arrears of family pension etc., were deposited to the credit of G.O.P.No.26 of 2003. In proof of revision petitioner's case, the revision petitioner has enclosed xerox copy of SSC marks memo showing her date of birth as 07.07.1995. She refers to the instructions of Sub-Treasury Officer, Kurnool to get herself declared as major so that the pension can directly be paid to the revision petitioner. The revision petitioner submits that for all practical purposes the revision petitioner shall be treated as a party to G.O.P., as the subject matter related to her custody. As per the directions of the trial Court, the amounts have been deposited during the minority of petitioner, the G.O.P was dismissed, now the revision petitioner has become major and entitled to receive the amounts deposited and continue to receive the family pension regularly. In other words, it is alleged that she is alone entitled to withdraw the amounts deposited to the credit of G.O.P.

The learned I-Additional District Judge on 04.02.2016 disposed of I.A.No.277 of 2014 as follows:

“As per the settled law the petition for major declaration of the petitioner ought to be filed in the court where the GOP is pending.

As per the proposed petitioner version itself though the above GOP was dismissed on 30.9.2009, but yet Disbursement Officer, Assistant Director, Animal Husbandry Department, Adoni was remitted the family pension regularly to the credit of above GOP till she attained age of majority i.e., till 6.7.2013.

Hence, in these circumstances and also there is no objection that the petitioner attained majority I feel there is nothing wrong in declaring the petitioner as major.

In the result, the petitioner is declared as major and 2nd respondent is discharged from the status of guardian. Thus, the petition is disposed off accordingly.”

However, the prayer in I.A.No.276 of 2014 is rejected and the operative portion reads thus:

“Though there is some force in the contention of the first respondent, but it is also an admitted fact that there was continuation of remittance of death benefits etc of the mother of the petitioner by her Disbursing Officer on account of the order in I.A.No.1715/2004 till the date of attaining the majority of the petitioner. However, even if the arguments of the counsel for petitioner is taken to be correct and the petitioner be allowed to add as respondent to the above GOP no purpose would be served why because the intention of the petitioner to implead herself as respondent is to claim the death benefits of her deceased mother as the death benefits are credited into the above Guardian OP. It is observed that along with the petition even respondent No.1 is also legal heir of deceased Dr.Prasanna Laxmi has right over the death benefits being estate of the deceased Dr.Prasanna Laxmi and adjudication as to the quantum of share

of each legal heir of the deceased Dr.Prasanna Laxmi can be adjudicated by the civil Court. But same cannot be adjudicated in the Guardian OP as the scope is very limited in disposing of the Guardian OP. Therefore, the remedy for the petitioner lies elsewhere for which she requires to take steps in accordance with law. Hence, the petition is devoid of merits and is liable to be dismissed”.

In the result, the petition is dismissed.”

Hence, the revision.

Mr.Murali Lincoln for petitioner contends that the dismissal of I.A.No.276 of 2014 is illegal, arbitrary and amounts to refusing to exercise the jurisdiction conferred on the Court for giving quietus to the *lis* between parties. According to him, the orders in I.A.Nos.276 and 277 of 2014 are contradictory to each other and the impugned order is liable to be set aside. According to him, by accepting the prayer in I.A.No.277 of 2014 the trial Court has substantially cleared the obstacle for the revision petitioner herein to continue to prosecute the ancillary applications, work out the reliefs which are necessary, having regard to the peculiar fact situation of the case. He further submits that the stand now taken by 1st respondent is contrary to the endorsement dated 28.12.2004 and the order passed by the trial Court in I.A.No.1715 of 2004. The findings of the Court below that for working out the reliefs against the amounts deposited, the revision petitioner has to take steps in accordance with law, are illegal and unsustainable.

Mr.A.Jaya Sankara Reddy disputes the correctness of endorsement dated 28.12.2004 as well as legality of order dated

28.12.2004. According to him, even if the amount is deposited in a Nationalized Bank, the revision petitioner has to file a separate suit for working out her share in the death benefits of revision petitioner's mother and 1st respondent's wife, and not to work out the prayer on interlocutory application. These questions cannot be considered and disposed of in G.O.P.No.26 of 2003 for the same was dismissed on 30.09.2009 and likewise cannot be considered in I.A.No.276 of 2014. He prays for dismissing the revision.

I have taken note of the trials and trivials of revision petitioner which started with the demise of her mother on 08.07.1999. The 1st and 2nd respondents herein were parties in G.O.P.No.26 of 2003. The claim of 1st respondent for custody, it needs no elaboration, is for person and property of revision petitioner. The claim was rejected and the order of trial Court has become final. The affidavit in I.A.No.1715 of 2004 needs to be reproduced to appreciate the totality of circumstances, more particularly as to whether the findings recorded by the trial Court in the order under revision are tenable or not?

“The respondent herein tried to knock away all the death benefits of his wife R.Prasanna Laxmi (i.e., my daughter) by claiming himself to be the guardian having interest in the welfare of his minor daughter, though, in fact, he never cared even to see his minor daughter. Our timely representations to the petition schedule authority prevented him from knocking away all the death benefits, for which the minor is entitled to receive. Later on, pending disposal of this O.P., the and Maintenance Case, so as to create some documentary evidence to show that he is interested in the welfare of the minor, the respondent herein addressed a letter

dated 13.10.2003 to the petition schedule authority giving his consent for deposit of entire death benefits.

I, the petitioner herein, respectfully submit that the death benefits and arrears of family pension of my daughter, R.Prasanna Laxmi, are lying with the petition schedule authority. If the petition schedule authority is directed by this Hon'ble Court to deposit the entire death benefits of R.Prasanna Laxmi in the name of minor, R.Ramyashree, till she attains the age of majority in any nationalized Bank in any interest fetching deposit, and also the monthly family pension into the Recurring Deposit, the minor, i.e., my grand daughter, will be benefited after she attains the age of majority. Hence, this petition.

I, therefore, pray that this Hon'ble Court may be pleased to direct the petition schedule authority to deposit the entire death benefits of my daughter, R.Prasanna Laxmi, and arrears of family pension, in the name of my minor grand daughter R.Ramyashree, in any nationalized Bank in any interest fetching Deposit, and also the future monthly family pension into the Recurring Deposit, till minor attains the age of majority. Else, minor grand daughter would be put a great loss and hardship."

The 1st respondent reported no objection to keep the amount in Court till the minor attains majority. Further, from the order dated 28.12.2004, it is evident that learned counsel, representing the 1st respondent herein/Advocate by profession, expressed that the amount is to be sent for by the Court and invested in a nationalized bank for the benefit of the minor girl. The statement of learned counsel representing 1st respondent/Advocate cannot and could not be overlooked while disposing of an application filed in continuation of the order dated 28.12.2004, more particularly for

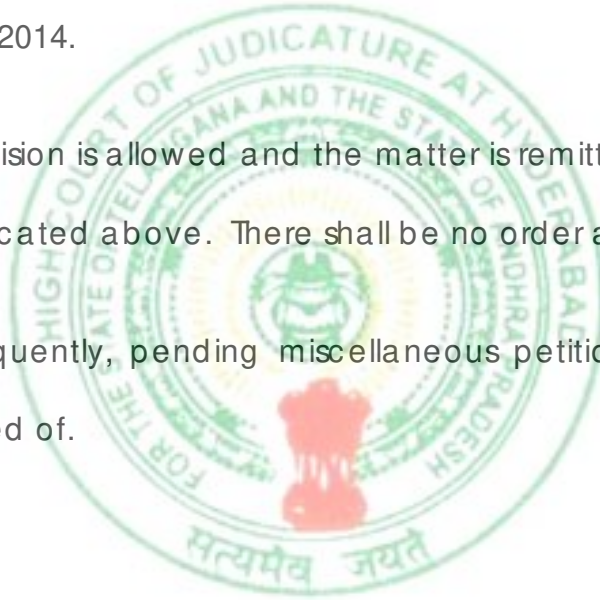
taking the amounts available to the credit of G.O.P.No.26 of 2003. The 1st respondent resiles from the conduct borne out by record and has raised the dispute of maintainability of present applications and the objection was accepted by the trial Court by the order impugned in the revision. The request on hand is to be examined from a standard illustration of parties filing cheque petitions even after the disposal of the main case. The revision petitioner is now declared as a major and from the date of her attaining the majority, she is entitled to independently receive family pension of her mother. The legal effect of order in I.A.No.277 of 2014 cannot be overlooked. In other words, for all purposes, the trial Court has accepted the petitioner to receive current family pension from the date of attaining majority. To the extent of amounts deposited and arrears of family pension, the trial Court has directed the petitioner to work out her remedies by filing a separate suit. In my considered view, the arrangement of deposit to the credit of G.O.P was made with the consent of 1st respondent and for the benefit of the revision petitioner, then a minor girl. For a non-existing issue, asking the revision petitioner to file a separate suit, amounts to continuing the trials and trivials she started undergoing with the demise of her mother. The trial Court was unduly persuaded by the legal objection raised by the 1st respondent and directed filing separate suit. It is to be held that the interim order is always subject to final order in the *lis*. In the case on hand, the final order does not disturb the arrangement made through I.A.No.1715 of 2004. Therefore, as a Court of competent jurisdiction, the trial Court should not have directed to work out the relief by filing a separate suit for realizing

amount deposited as per the agreed arrangement. The deposit is made into the credit of G.O.P and in the same suit the prayer for withdrawal or disbursement ought to be considered. The reasons recorded are untenable.

The order impugned in the revision is set aside and the matter is remitted to the trial Court for consideration and disposal in accordance with law. The petitioner is given liberty to file a petition as observed for appropriate relief for withdrawal of amount deposited to the credit of G.O.P since she is declared as major in I.A.No.277 of 2014.

The revision is allowed and the matter is remitted to the Court below as indicated above. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.



S.V.BHATT, J

04th January, 2017

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