

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOS.2903 & 3047 OF 2017

Date: 21.07.2017

CRP No.2903 of 2017:

Between:

Gone Naveen Kumar, S/o Venkatram Narsaiah,
Aged 30 years, Occu: Employee in BSNL,
r/o H.No.1122-636, Kashibugga, Warangal.

..... Petitioner

and

Gone Nikhitha @ Sirsala Rajni, W/o Gone Naveen Kumar
D/o Venkateswarlu, R/o H.No.2-1-90, Saraswathi Nagar,
Gopalpur Road, Hanamkonda, Warangal District.

.....Respondent



The Court made the following:

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COMMON ORDER:

Heard Sri J.Venkateshwara Reddy, learned counsel for petitioner and Smt Padmavathi, learned counsel for respondent.

2. Petitioner herein is petitioner in I.A.Nos.128 and 129 of 2017 in O.P.No.59 of 2012 on the file of Family Court at Warangal. I.A.No.128 2017 is filed to re-open the O.P., to enable the petitioner to file an application for obtaining sample writings of the respondent in open Court in accordance with the contents of Ex.A5 and I.A.No.129 of 2017 is filed under Section 45 read with Section 73 of the Indian Evidence Act to obtain sample writings of the respondent in the open Court in accordance with contents of Ex.A5 and send the same to Hand Writing Expert, FSL, Hyderabad along with Ex.A5 for comparison of writings and submit report.

3. On 01.05.2017, by separate orders, both applications were dismissed. Though separate orders are passed, the reason assigned in both applications is one and the same. Paragraphs 5 & 6 of the orders under challenge read as under:

“IA No.128 of 2017 in OP No.59 of 2012:

5. Point: This case is posted for respondent's evidence and petitioner's counsel already made cross examined to RW.1 and Ex.B.1 also marked. Petitioner filed petition u/S.151 C.P.C in favour of respondent for re-open the petitioner evidence.

6. This Court observed that petitioner also marked Ex.A.5 and the same is admitted by respondent in their cross-examination. Respondent not denied to diary i.e., Ex.A.5 and Ex.B.1. It is not a fit case for r-open at this belated stage and not useful their case.

IA No.129 of 2017 in OP No.59 of 2012:

5. Point: This case is posted for respondent's evidence and petitioner's counsel already cross examined to RW.1 and Ex.B.1 also marked. Petitioner filed petition u/S.45 r/w.73 of Evidence Act for send document diary to forensic lab for confront expert opinion Ex.B.1 & Ex.A.5 hand writing.

6. This Court observed that petitioner also marked Ex.A.5 and the same is admitted by respondent in their cross-examination. Respondent not denied to diary i.e., Ex.A.5 and Ex.B.1 and at this stage need not necessary to send to forensic opinion."

4. Learned counsel for petitioner points out that in the cross-examination of the respondent, respondent clearly denied that she has never maintained any diary, Ex.A5, whereas learned trial Court holds that the respondent has not denied to existence of diary i.e. Ex.A5. This reasoning assigned by the trial Court is contrary to the record. Though trial Court recorded respective contentions elaborately, when it comes to recording of findings on the prayers sought by the petitioner, only on the ground that respondent has not denied to Ex.A5, prayer sought was rejected. This finding is contrary to the record.

5. Having regard to this, both counsel agreed for setting aside the orders impugned in these two revisions and remanding the matters to the trial Court for consideration of both IAs afresh and passing a reasoned order. The orders under challenge are set aside and the matters are remitted to the Family Court at Warangal, for consideration of I.A.Nos.128 and 129 of 2017 in O.P.No.59 of 2012 afresh. The Family Court shall afford due opportunity to learned counsel representing respective parties and

after hearing them, pass a reasoned order. The order shall be passed as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order. Learned counsels appearing for the respective parties shall cooperate for passing the orders within the time stipulated.

6. Civil Revision Petitions are accordingly allowed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in these revisions petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 21.07.2017
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