

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.951 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order dt.08.02.2017 in I.A.No.1051 of 2014 in O.P.No.1107 of 2013 passed by Additional Family Court, City Civil Court, Hyderabad, ordering temporary custody of second daughter to the petitioner/father until further orders or till disposal of the main OP.

2. Father/Ashok Yalamati/petitioner filed petition under Section 26 of Hindu Marriage Act, requesting to grant custody of his daughters namely Jahnvi and Niyathi aged 11 and 4 years respectively from 24.12.2014 to 29.12.2014 and on all occasions when the petitioner visits India and stays at Hyderabad or for any reasonable period, pending disposal of the OP and, pass such other orders.

3. The petitioner/husband and respondent/wife also filed two identical applications for similar reliefs in I.A.No.792 of 2013 and I.A.No.1168 of 2013 under Section 26 of Hindu Marriage Act, for grant of interim custody of the children and the Court on 24.12.2013, passed the following Order:

“ Accordingly, both the points are answered. In the result, IA No.792 of 2013 is allowed. Petitioner is permitted to hold the custody of the children Jahnvi and Niyathi until further orders. I.A.No.1168 of 2013 is allowed in part. “Petitioner/husband is permitted for visiting rights. The petitioner/husband is permitted to take both the children on 25.12.2013 and 29.12.2013 at 8 am in the house of advocate J. Ramani from the respondent/wife and to handover the children at 6 pm to the respondent in the house of Advocate Ramani.

The petitioner further permitted to take both the children today i.e., 24.12.2013 at 6 pm in the house of advocate Ramani from the respondent and to handover the children at 8 pm, at the house of advocate Ramani to the respondent. The relief claimed by the petitioner to take the children to his house at Pasivedala from 22.12.2013 to 01.01.2014 is disallowed”.

4. The trial Court already passed well considered order granting custody of the children while father is allowed to enjoy the visiting rights on particular dates.

5. After disposal of those two petitions by common Order, the present petition is filed by the husband/father of the child for the relief of temporary custody as stated in para No.1.

6. It is alleged in the affidavit that two daughters were much attached to him and used to spend most of their time with him while they were living in USA and even now they are fond of him, but they were threatened and tutored by their mother/respondent herein to be away from him and still he had communications with the children. It is further contended that the matter was posted to 30.12.2014 and he came to India on Sunday i.e., 14.12.2014 to meet his children on 17.12.2014 as it was the birthday of younger

daughter and his children were happy to see him and spent very good time.

7. Again, he has to go back on 31.12.2014 and during his stay, he wish to stay with his two children Jahnvi and Niyathi aged 13 and 6 years for few days, being father and requested to pass order.

8. The respondent filed Counter raising several contentions denying material allegations made in the affidavit. But, those allegations mentioned in the Counter are not necessary for the propose of deciding the present issue before this Court.

9. It is relevant to note here that this Court by Order dt. 14.12.2016 in CRP No.5811 of 2016 directed the Judge, Family Court, to take up the matter on day to day basis and dispose of the petition in accordance with law and in fact, the respondent filed petition, which was not-pressed, but the petitioner filed Counter claim seeking dissolution of the marriage by decree of divorce on various grounds. As the counter claim is survived after not-pressing the main petition, therefore, this Court directed to enquire into and decide the counter claim on day to day basis.

10. The Presiding Officer, who passed the Order, is the Presiding Officer of XIII Additional Chief Judge(FTC), FAC Additional Family Court, City Civil Court, Hyderabad, on one day i.e., 08.02.2017. In view of the order passed by this Court in the revision petition

referred to supra, the Officer recorded the evidence of Pw.1 in part on 08.02.2017 and posted the matter to 09.02.2017 at request of learned counsel for the petitioner for further cross examination. But, as regular Presiding Officer of the Judge, Family Court, recorded further cross examination on 09.02.2017, 10.02.2017, 13.02.2017 and on all other subsequent dates. But, the Presiding Officer of XIII Additional Chief Judge (FTC), allegedly heard the counsel for the petitioner Sri Shyam S. Agarwal, who appeared for the petitioner and as the counsel for the respondent did not advance any argument, decided the petition on the same day.

11. It can be seen from the Order that the Presiding Officer disposed of the petition with utmost haste without adverting to the allegations made in the Counter and so also the petition and the scope of the relief claimed in the petition under Section 26 of Hindu Marriage Act, simply recorded that the counsel for the respondent did not advance any arguments and verified few documents and passed the Order, though the common Order in I.A.No.792 of 2013 and I.A.No.1168 of 2013 in O.P.No.1107 of 2013 attained finality.

12. No doubt, Sri V. Hari Haran, learned counsel for the respondent, contended that due to changed circumstances, the custody of the children from the custody of the respondent can be removed as she shifted to USA in connection with her employment while leaving the child with paternal grand parents. Therefore, that

is the strong reason for passing the impugned Order under challenged circumstances. But, surprisingly, the Presiding Officer did not take note of such changed circumstances to pass the impugned order.

13. When the parties filed their pleadings including petition and Counter, the Court is expected to advert to the rival contentions while deciding the petition pending before it. But, simply adverted to the allegations made in the petition and few documents, which are marked in the main OP, but not in this Petition, reference of such document is again in contravention of Rule 60 of CPC and passed this cryptic Order, without assigning any reason.

14. This Order is totally contrary to the principle laid down by the Apex Court in *Joint Commissioner of Income Tax, Surat, Vs. Saheli Leasing and Industries Limited*¹. In para No.7 of the Judgment, the Apex Court laid down certain guidelines for drafting judgments and orders and they are extracted hereunder:

- "7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-**
- a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.**

¹ 2010 (253) ELT 705 (SC).

- b) ***After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."***
- c) ***The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.***
- d) ***Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.***
- e) ***Language should not be rhetoric and should not reflect a contrived effort on the part of the author.***
- f) ***After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.***
- g) ***It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."***

If these principles are applied to the present facts of the case, the impugned Order is liable to be set aside.

15. Recording of reason is the heart and soul of any Order or judgment and in the absence of such reason, the Judgment or Order is liable to be set aside. But, in one of the judgments of the Apex Court in *Board of Trustees of Martyr Memorial Trust and another Vs. Union of India and another*², the Apex Court held that it is the duty of the Court to state its reasons on each issue by

² 2012 10 SCC 734

due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or order without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves.

16. The Order under challenge is totally contrary to the principles laid down in the above two judgments and totally dispensed with process of reasoning. Therefore, the Order is set aside, while remanding the petition to the Judge, Family Court, for fresh consideration keeping in mind the principles laid down in the above two judgments.

17. With the above direction, this Civil Revision Petition is allowed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 14-07-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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