

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.859 OF 2017

O R D E R

This civil revision petition relates to the custody battle between the parents over their 8 year old son, Ayush Krishab Gadde. By order dated 14.02.2017 passed in I.A.No.685 of 2016 in O.P.No.2222 of 2016, the learned XV Additional District Judge, Ranga Reddy District, Kukatpally at Miyapur, granted temporary custody of the child to the mother. Aggrieved thereby, the father is before this Court under Article 227 of the Constitution.

Heard Sri D.Prakash Reddy, learned senior counsel representing Sri N.V.Anantha Krishna, learned counsel for the petitioner/father, and Sri S.Niranjana Reddy, learned senior counsel appearing for Ms.Gorantla Sri Ranga Pujitha, learned counsel for the respondent/mother.

O.P.No.2222 of 2016 was filed by the respondent (*hereinafter*, 'the mother') under Section 7 of the Guardians and Wards Act, 1890 (for brevity, 'the Act of 1890'), seeking custody of the child. Therein, she filed I.A.No.685 of 2016 seeking temporary custody of the child pending disposal of the main O.P. This I.A. was hotly contested by the petitioner (*hereinafter*, 'the father'). Various contentious issues touching upon the merits of the matter were raised by both parents. The father also contended in his counter that the mother had, on the one hand, filed I.A.No.678 of 2016 in the O.P. seeking an injunction restraining him from taking custody of the child from her pending disposal of the O.P. but, on the other hand, she also sought temporary custody of the child pending disposal of the case, *vide* I.A.No.685 of 2016 filed in the O.P..

Sri D.Prakash Reddy, learned senior counsel, would point out that the affidavits filed in support of I.A.No.678 of 2016 and I.A.No.685 of 2016 filed in the O.P. were practically identical but for the prayer portion and contend that the mother was not even clear as to who had actual custody of the child. He would further point out that the Court below failed to consider any of the issues raised before it and by merely extracting pleadings at random, the Court below granted temporary custody to the mother. Learned senior counsel would therefore assert that this is a fit case where the order under revision should be set aside and the matter be remitted to the Court below for consideration afresh of all relevant issues.

Sri S.Niranjan Reddy, learned senior counsel, would concede that the order passed by the Court below leaves a lot to be desired and that this Court would be justified in remanding the matter, but would contend that it is still within the power of this Court to make a suitable arrangement for interim custody of the child, pending the hearing of the I.A. afresh by the Court below, keeping in mind the paramount interest and welfare of the child.

Perusal of the order under revision leaves this Court in no doubt that the Court below dealt with the matter in an utmost casual and perfunctory manner. Having referred to the fact that the main O.P. runs into 24 pages and that the counter was also voluminous, running into 43 pages, the Court below surprisingly did not even refer to the issues raised before it, which were pertinent to interim custody of the child pending disposal of the O.P. Significantly, the Court below also referred to a Memorandum of Understanding and recorded that the father admitted his signature therein. Sri D.Prakash Reddy, learned senior counsel, would however point out

that no such admission was ever made, be it in writing or orally. This aspect of the matter is not disputed by the other side.

The Court below simply referred to case law which held to the effect that the paramount consideration in selecting a guardian for a minor child should be the welfare and well-being of the child and baldly stated as under:

‘In view of the circumstances of the case, in view of the arguments on both sides and in view of the decisions referred to above, I feel that it is a fit case to grant temporary custody of the child to the petitioner.’

Having noted that the paramount consideration should be the welfare and well-being of the child, the Court below surprisingly did not even interact with the child. This Court is informed that, at one stage, the Court did consider doing so but for reasons which are not forthcoming from the order, the Court below did not meet the child to gauge what would be within his welfare and well-being. Mere reference to allegations and counter-allegations made by the parents was wholly insufficient for the Court below to come to an informed decision as to who, between the two parents, should have the temporary custody of the child pending disposal of the O.P.

Reference in this regard may be made to the edict in **GAURAV NAGPAL V/s. SUMEDHA NAGPAL**¹ that the paramount consideration in determining the question as to who should be given custody of a minor child is the ‘welfare of the child’ and not the rights of the parents under the Act of 1890 or what they say. The Supreme Court observed that the Court has to give due weightage to the child’s ordinary contentment, health, education, intellectual development and favourable surroundings but, over and above physical comforts,

¹ (2009) 1 SCC 42

moral and ethical values also have to be noted as they are equal, if not more important than the others. The Supreme Court further observed that mature thinking is necessary in such a situation and when confronted with conflicting demands made by the parents, the Court not only has to look at the issue on a legalistic basis but human angles should also be considered. It was further pointed out that the object and purpose of the Act of 1890 is not merely physical custody of the child but due protection of the rights, health, maintenance and education of the child and that the power and duty of the Court is to ensure the child's welfare.

In the backdrop of the above settled legal position, this Court has to hold that the Court below miserably failed in living upto the required standard while assessing the case on hand and in deciding the issue of Ayush's interim custody. The order under revision therefore deserves to be set aside on this short ground and the Court below necessarily has to undertake fresh adjudication of the I.A., keeping in mind the settled legal position as stated *supra* and on proper consideration of the facts and circumstances of the case.

However, pending adjudication of the I.A. afresh by the Court below, this Court must deal with the issue as to who should be granted temporary custody of Ayush. This Court is mindful of the fact that the issue has to be decided by the Court below in the first instance and it would therefore be wholly premature for this Court to even venture into the merits of the matter. The limited purpose of the present consideration is only to decide upon an *ad hoc* arrangement in relation to the custody of the child pending adjudication of the I.A. by the Court below, upon remand. This Court had interaction *in camera* with not only the child but also the

parents. Admittedly, Ayush has been with his father since November, 2016. He only had occasion to meet his mother a few times at school. In the course of his conversation, the child stated that he loved both his parents but professed that he loved his father more. As he has been with his father for the past several months and has not even seen his mother, except for a few times, this bonding with his father is perhaps to be expected. However, the child did confess that he also loved his mother. As the mother has not been with her son since November, 2016, there is every possibility of the child getting alienated from her. This Court already found signs of such alienation, maybe because of his separation from her over the past several months. This estrangement from the mother at the tender age of eight, due to obtaining circumstances, is definitely not in the overall interest of the child.

Needless to state, the child needs the love, affection and guidance of both the parents for proper, wholesome and all-round development. Separation from one parent would invariably have an adverse impact upon the child's growth. This Court finds no reason to suspect, at this stage, that the interest of the child would be adversely affected by being with the mother, from whom he has been separated for several months. At the same time, he must also have the love and affection of his father, with whom he has a strong bond. Keeping in mind the best interests of the child, in terms of his healthy development, this Court is therefore of the opinion that he should remain with his mother pending disposal of the I.A. Ayush's custody shall therefore be handed over to the mother tomorrow, viz., 28.02.2017, after school hours. The father shall however be permitted to see the child and spend time with him every day in the

evening hours at the mother's residence, so that Ayush does not develop animosity towards his mother for being separated from his father. Both the parents shall endeavour to keep the child's best interests at heart, over and above their own bitter disputes. They shall therefore strive wholeheartedly to give effect to this order.

This arrangement is however being made without reference to the merits of the contentions and counter-contentions of the parents and the Court below shall adjudicate the I.A. uninfluenced by this order and the arrangement made hereunder.

The civil revision petition is allowed to the extent indicated above. The order dated 14.02.2017 passed in I.A.No.685 of 2016 in O.P.No.2222 of 2016 on the file of the learned XV Additional District Judge, Ranga Reddy District, Kukatpally at Miyapur, is accordingly set aside. The I.A. is remitted to the Court below for consideration afresh on merits and in accordance with law, uninfluenced by this order and any observations on merits made herein. The Court below shall endeavour to dispose of the I.A. expeditiously and, in any event, not later than eight (8) weeks from the date of receipt of a copy of this order. Both parties are given liberty to adduce additional documentary evidence, if they so choose, which shall be given due weightage while considering the I.A. on its own merits. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

27th FEBRUARY, 2017

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