

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

F.C.A.No.92 OF 2016

DATED:- -01-2017

Between:

Shishir Kumar

..... APPELLANT

AND

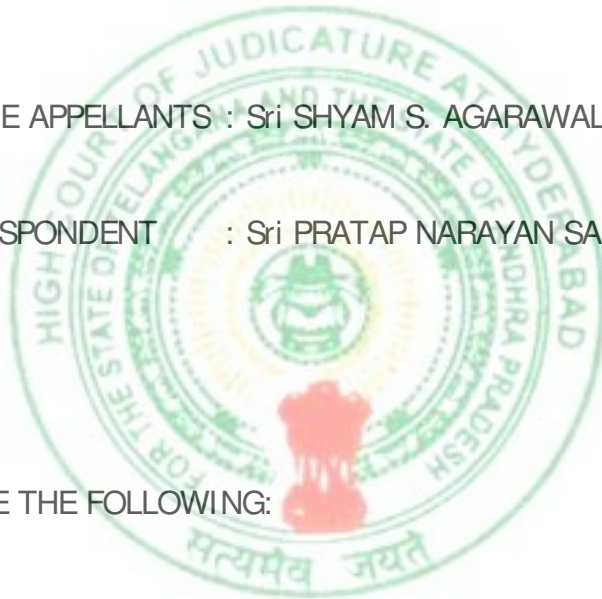
Roopa Devi

.....RESPONDENT

COUNSEL FOR THE APPELLANTS : Sri SHYAM S. AGARAWAL

COUNSEL FOR RESPONDENT : Sri PRATAP NARAYAN SANGHI

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

F.C.A.No.92 of 2016

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellant/petitioner is the husband of the respondent and he filed O.P.No.665 of 2011 on the file of the Additional Family Court, City Civil Court, Hyderabad, for the custody of the minor child by name Sudhansh under Section 6 of the Hindu Minority and Guardianship Act and under Section 25 of the Guardians and Wards Act.

2. There is no dispute insofar as the relationship between the parties is concerned. The marriage between the petitioner and the respondent was performed on 24.02.2000 and the same was consummated and the minor child was born on 06.04.2005 with the help of medical intervention. Since 15.10.2010 the respondent is living separately from the petitioner with her father. The child is staying with the respondent. He is studying in Howard Public School. In between the parties, there were several cases pending. The respondent/wife filed O.P.No.1136/2012 for dissolution of marriage, permanent alimony, return of jahez articles, but subsequently withdrew the relief of dissolution of marriage. The son of the petitioner and respondent/wife also filed M.C.No.29 of 2014 under Section 125 Cr.P.C. She also initiated proceedings under the provisions of Domestic Violence Act and also launched criminal prosecution against the petitioner and his people under Section 498-A I.P.C.

3. The appellant/petitioner on his part has filed the present O.P. seeking custody of the minor child and also a petition under Section 9 of the Hindu Marriage Act for restitution of conjugal rights and the same is registered as O.P.No.438 of 2011. The reasons for the respondent staying away from the

appellant/petitioner are elaborately spoken to by the respondent and briefly stated, it is her case that she has been subjected to cruel treatment by the appellant/petitioner and his people, forcing her to live separately from them, that the appellant/petitioner also suffers from certain medical ailments and that he was frequently in and out of different hospitals. According to the respondent, the petitioner is addicted to drugs and alcohol, which resulted in adversely affecting his health and also making him unfit for matrimonial life and therefore they had to resort to the method of IUI under the supervision of an infertility centre for begetting their son.

4. The appellant/petitioner is no doubt a legal guardian of the minor child. Ever since the birth of the child and till now, he has been in the custody of the respondent. He is studying in Howards Public School. The respondent who is living with her parents is being taken care of by her people.

5. According to the appellant/petitioner, he is part of a joint family and they had different business establishments such as *two shops under the name and style of Tarun Furniture, Amar Enterprises and Amar Furniture, Bhavani Steels, Siddhanth Furniture, Gopathi Furniture, big godowns for storing the furnitures, big industrial shed at Katedan, two four storied houses at Ghansi Bazar having a lift, four storied building at Moosabowli and also a commercial complex at Abids*. That however, due to his being entangled in the litigation with the respondent, he had to separate himself from his father and start his own business under the name and style of Bhavani Steel Industry. It is also on record that the mother of the appellant/petitioner died during the pendency of the present proceedings, and he has no female support in the family, except for the wives of his brothers and a sister who are living separately.

6. While deciding the custody of a minor child, the paramount consideration should be the welfare of the child but not the rights of the warring parents under

any statute for the time being in force. The appellant/petitioner has not placed any evidence to show that ever since October, 2010 when the respondent and his minor child left the matrimonial home, he visited the minor child. Therefore, in the interest of the child, it may not be advisable to give his custody to the petitioner.

7. The learned Judge, Family Court, has rightly dismissed the petition for the custody, but however, failed to even afford visiting rights to him. Therefore, while sustaining the decree, the petitioner being the father of the minor child can be given certain visiting rights so that the bondage of affinity in between the father and the son is not affected.

8. In the result, the appeal fails and the same is dismissed, subject however to the condition that the appellant/petitioner is entitled to take the custody of the minor child from the respondent on every alternate Sunday from 10.00 a.m., to 05.00 p.m. The respondent is directed to handover the custody of the child to the appellant/petitioner on his being approached. The appellant/petitioner shall deliver back the child by 05.00 p.m., on the same day to the respondent.

Pending miscellaneous applications, if any, shall stand closed in consequence.

C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: .01.2017
Smr