

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.1503 of 2015

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner-wife against the respondent-husband having been aggrieved of the order, dated 10.03.2015, of the learned Senior Civil Judge, Tadepalligudem of West Godavari District, passed in IA.no.972 of 2014 in HMOP.no.86 of 2013 filed under Section 151 of the Code of Civil Procedure, 1908, seeking the following relief: 'to direct the respondent to either appear before the Pass Port Renewal Authority to renew the Pass Port of, Gutta Srikar, the minor son of the petitioner and the respondent or submit U.S. Notary notarized affidavit before the Pass Port Renewal Authority on the date fixed by the pass port authorities on or before 06 July, 2015.'

2. I have heard the submissions of Sri Y. Ramatirtha, learned counsel for the petitioner-wife, and of Sri S. Syam Sunder Rao, learned counsel for the respondent-husband. I have perused the material record.

3. It is to be noted that the Original Petition (HMOP) is filed by the wife under Section 13 of the Hindu Marriage Act, 1955, for dissolving the marriage between the parties and grant of a decree of divorce. The said petition was filed on the grounds of cruelty and desertion. The husband is resisting the said petition. In the said OP, the afore-stated interlocutory application was filed for the aforesaid relief. However, the Court below dismissed the petition of the wife and refused to grant the relief sought for with regard to the renewal of passport of the minor child of the parties by holding, *inter alia*, that the main case, that is, HMOP is not filed for the custody of the minor son and that it is filed for grant of divorce and, therefore, the relief claimed in the

interlocutory application is beyond the scope of the relief claimed in the said HMOP.

4. However, during the pendency of this revision, learned counsel for the petitioner-wife sought appropriate orders for renewal of the passport of the minor child of the parties mainly on the ground that the wife as well as the husband are presently in India and, therefore, if the husband extends necessary co-operation the passport of the minor child, which has expired, can be renewed and any complaints of violation of law can be avoided as the minor child whose passport has expired was born in USA and is a citizen of USA and is presently staying with the mother in India on the strength of 'Persons of Indian Origin Card' issued, for the period from 09.09.2010 to 08.09.2025, by the issuing authority of Consulate General of India, New York. He would also submit that, in the facts and circumstances of the case, renewal of the passport of the minor son is necessary in the interests of justice and the welfare of the minor, which is of paramount consideration.

5. When an order to direct the parties to appear before the concerned authority for renewal of the passport of the minor child was sought on the ground that the husband is also available in India, this Court having heard the learned counsel for both the parties directed for appearance of the parties before the Court on 27.12.2016 at 10:30 AM keeping in view the interests of the minor which are of paramount consideration. On 28.12.2016, as per directions, dated 21.12.2016, of this Court, the petitioner-wife and the respondent-husband appeared before this court and they were identified by their respective counsel. On enquiries made by the Court, in open court, the wife expressed her preparedness to have the passport of the child renewed with the co-operation of the husband; however, the husband, having stated about the pendency of the cases and having claimed that the child was abducted from USA and that he is not being allowed even to see the child and that a Guardian

OP is pending between the parties, stated that he will go by the law and that he will not extend co-operation for renewal of the passport of the child. Therefore, submissions of the counsel in the revision petition were heard with regard to the directions, if any, that may be given with regard to the renewal of the passport of the minor child of the parties, namely, Gutta Srikar, who was admittedly born on 02.05.2010 in USA and is a citizen of USA.

6. Learned counsel for the petitioner contended that the presence and co-operation of the husband is necessary for renewal of the passport of the son of the parties. However, learned counsel for the respondent stated that in view of the stand already personally disclosed by the husband before the Court, it is manifest that the husband is not prepared to extend any co-operation for renewal of the passport of the minor son. The counsel further contended that though the passport of the minor son has expired, the concerned issuing authority of Consulate General of India has admittedly issued 'Persons of Indian Original Card' to the minor son and that the date of expiry of the said card is 08.09.2025 and that, therefore, the minor son can legally stay in India and that hence, at this stage there is no need to give any directions to renew the passport more particularly in the light of the fact that a separate proceeding for custody of the child is pending in an appropriate forum and the observation of the trial court that the relief claimed in the interlocutory application is beyond the scope of the relief claimed in the HMOP filed by the wife for divorce.

7. In this setting of facts and submissions, it is necessary to refer to the pleadings of the parties in the interlocutory application.

8. The case of the petitioner-wife as stated in her affidavit filed in support of the petition, in brief, is this: 'She gave birth to the minor male child, Srikar, under lawful wedlock. The child is living under her guardianship since

childhood. She is looking after the welfare of the son since childhood. She is not having any adverse interest against her son. Since the son was born in USA, he is a citizen of USA. He is having passport of USA. The date of expiry of the said passport is 06.07.2015. According to the rules and regulations, the passport application in respect of minors under the age of 16 years has to be submitted in person at a passport agency and the minor must be present along with both the parents before the authority concerned; and, if one of the parents is unable to appear in person, then DS 11 application shall be accompanied by a signed notarised form DS - 3053: the statement of consent from the non applying guardian. The marital relationship between the parties is strained and the parties are living separately and are leading independent lives. She filed the main petition/ original petition (HMOP) for grant of divorce on the grounds of cruelty and desertion. The husband is having liability to attend before the passport authorities or submit DS 11 and notarised form DS 3053 before the passport authority for renewal of the passport of the son of the parties. Since the husband proclaimed that he will not attend before the passport authorities for renewal of the passport of the son and as the passport authorities do not renew the passport on failure of the husband to appear before the said parties, the petition is filed seeking appropriate directions to the respondent. If the passport is not renewed, the son suffers irreparable loss, which cannot be compensated in terms of money. Hence, it is necessary to give necessary directions to the respondent-husband.'

9. The case of the respondent-husband in his counter, in brief, is this: 'The material allegations in the affidavit filed in support of the petition are false. He is looking after the welfare of the minor child since childhood. It is false to say that son is living under the guardianship of the petitioner-wife since childhood. The petitioner-wife forcefully took away the child from the custody of this respondent and the said act is nothing but abduction of minor. The

petitioner is not even allowing the respondent to see his own son. She is not living in Nallajerla as mentioned in her petition. She is living at Hyderabad by leaving her child in her maternal home. US passport is the property of United States of America and attending before the passport authority for renewal of the passport is not a liability under Indian law. No legal aspects in regard to liability to appear before the passport authority and to submit the DS 11 and DS 3503 forms are stated. The US passport extension proceedings do not come within the jurisdiction of Senior Civil Court, Tadepalligudem and the said Court lacks jurisdiction to give directions as sought for by the wife. The wife is harassing the husband. The petition is filed to harass him. The provision of Section 151 of the Code has no application. The petition may be dismissed with exemplary costs.

10. Learned counsel for the parties reiterated the pleaded cases of the parties. Submissions made are already noted. I have bestowed my attention to the facts and submissions.

11. The fact that Gutta Srikar is the son of the parties and he was born on 02.05.2010 in one of the States of United States of America and that he is an American citizen and that he holds a passport of USA and that the date of issue of the passport is 07.07.2010 and its expiry date is 06.07.2015 and that in view of the expiry of the passport his passport is to be renewed are all facts, which are not in dispute. The further facts that the parties are living separately and that the son is under the care and custody of the wife and that there are cases pending between the parties and that in the pending litigations, both the parties traded serious allegations are not in dispute. The main case is filed by the wife for grant of divorce on the grounds of cruelty and desertion. The husband is resisting the said petition of the wife. In the present context there is no need to deal with the traded allegations and rival contentions as the same have no relevance to the present issue. In the present revision filed under

Article 227 of the Constitution of India, the only question is as to what is the appropriate order to be made in regard to for renewal of the passport of the minor son of the parties. The wife is prepared to have the passport of the son renewed by approaching the concerned authority in India subject to the co-operation of the husband. The husband is not willing to extend co-operation. Therefore, in the facts and circumstances of the case, this Court is not inclined to compel the husband to do an act which he is unwilling to do. However, the passport of the minor is to be renewed is an admitted fact. Though the minor son was issued 'Persons of Indian Origin card' by the concerned issuing authority and the said card which was issued on 09.09.2010 is valid upto 08.09.2025, it does not obviate the necessity of renewing the expired passport of the minor son of the parties. The son is having 'Persons of Indian Origin Card' with expiry date till 08.09.2025 is no ground to reject the request of the wife to have the passport of the son renewed. Be it noted that the welfare of the minor son is of paramount consideration and, therefore, in a matrimonial proceeding between the parties, a petition of this nature cannot be entertained is a contention which cannot be countenanced. The wife need not be driven to another forum and need not be directed to file an appropriate independent proceeding for renewal of the passport of the minor son. In a divorce proceeding between the parties, the Courts are competent to give necessary directions in regard to custody of the children and permanent alimony, if the facts of the case warrant giving such directions, leaving the rights of the parties to be finally decided in that regard in appropriate further proceedings, if the parties choose so to do. Therefore, this Court is inclined to accept the submission of the wife to the extent that the passport of the minor son shall be renewed and that the Court is having jurisdiction to give suitable directions in that regard. However, since the husband is not co-operating, this Court is of the considered view that the revision petition can be disposed of with appropriate directions.

12. Further, it is well settled that when the minor son is presently in the exclusive care and custody of the mother, the petitioner herein, and the father, who is estranged from the mother, is living separately and is not extending co-operation for the renewal of the expired passport of the minor son, a mother being also the natural guardian can act as a guardian of the minor son even during the lifetime of the father, without the matter going to the Court when the father is unwilling to extend co-operation and the mother is exclusively in-charge of the minor. In a situation like this, the father can be considered to be absent and the mother being a recognised natural guardian can act voluntarily on behalf of the minor as his guardian till a competent Court passes an appropriate order in an appropriate proceeding in regard to legal guardianship of the minor son of the parties. This view is feasible on a harmonious construction of the relevant provisions of Hindu Minority and Guardianship Act, 1956. (see: Githa Hariharan v. Reserve Bank of India [AIR 1999 SC 1149]). Therefore, the wife of the respondent, who is the mother of Master Srikar, alone, can make an application for renewal of the passport of her said minor son by following the due procedure.

13. On the above analysis, this Court holds that sufficient cause is made for granting appropriate relief subject to certain terms.

14. In the result, the Civil Revision Petition is allowed in part and the order impugned is set aside and the wife is granted liberty and is held entitled to approach the appropriate passport renewing authority like the Consulate General and submit necessary applications and papers as the mother and natural guardian of the minor son for renewal of the passport bearing no.472371996 of her minor son, Gutta Srikar, born on 02.05.2010. This Court further directs that on submission of such application with necessary enclosures, if any, by the petitioner-wife, the authority concerned shall, in accordance with the rules and regulations, process the application of the wife

and renew the passport of her said minor son in accordance with procedure established and governing the renewal of the passport of the minor son. However, if the said authority is of the view that on the request of the mother of the boy alone, the passport cannot be renewed, it is needless to state that the said authority while returning the application for renewal of the passport shall pass an appropriate speaking order by making a reference to the relevant rule position to enable the petitioner to pursue further remedies, which the law permits.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed. There shall be no order as to costs.

23rd February, 2017
Vjl



M. SEETHARAMA MURTI, J