

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

Civil Revision Petition No.2017 of 2017

ORDER:

The petitioner has come up with the above revision, challenging an order of the Family Court by which his application to be represented by his father, who is General Power of Attorney Holder was allowed, however, subject to a condition.

2. Heard Mr. Ghanta Rama Rao, learned senior counsel appearing for the petitioner and Mr. K.R. Sasidharan Nair, learned counsel for the respondent.

3. The respondent filed O.P.No.95 of 2016 on the file of the Family Court, Vijayawada, seeking to appoint her as the guardian of her minor daughter. Since the petitioner is a citizen of the United States of America, he took out an application in I.A.No.184 of 2016 seeking permission to be represented by his father and G.P.A. holder. Though the Family Court allowed the application, the Family Court directed the petitioner to be present as and when called upon and also to be present at the time of reconciliation.

4. Contending that there is no proceeding for divorce or restitution of conjugal rights and that what is pending before the trial Court is only a petition for appointment of the respondent as the guardian of the minor child, which may not be warrant the parties to participate in the reconciliation, the petitioner has come up with the above revision challenging the condition imposed by the Court below.

5. At the outset, there seems to be a discrepancy between the fair order and the docket order. The docket order passed by the Court below on 05-12-2016 reads as follows:

"In the result, this petition is allowed. Permitting the petitioner to be represented by his father without causing prejudice to the respondents rights to insist the presence of the petitioner/respondent when O.P. 95/16 is posted for adducing his evidence before that he has to attend for reconciliation on or before 17-1-2017 failing which petition shall stand dismissed."

6. The operative portion of the fair order found in paragraph 8 reads as follows:

"In the result, this petition is allowed, permitting the petitioner to be represented by his father without causing prejudice to the respondent's right to insist the presence of the petitioner/respondent when O.P.95/16 is posted for adducing his evidence. Before that he has to attend for reconciliation."

7. Thus, it is clear that the default clause found in the docket order is not found in the fair order. As a consequence, the petitioner appears to have been set *ex parte* by the Family Court on 17-1-2017 and his petition itself is dismissed. This is completely contrary to law. There cannot be any discrepancy between an order recorded in the docket and the fair order. It is the fair order that is actually communicated to a party. Therefore, if the default clause is not found in the fair order, he will not be expected to know the default clause.

8. In any case, the Family Court should apply its mind to the nature of the proceeding and decide at what stage the presence of the petitioner may be necessary. Even at the stage of allowing the application to be represented by the G.P.A. holder, the Court could not have put the cart before the horse.

9. Therefore, the Civil Revision Petition is allowed, the condition imposed alone in the impugned order is set aside and the trial Court is directed to proceed further. It will be open to the Family Court at an appropriate stage, if it considers the presence of the petitioner necessary, for an amicable settlement of the dispute, to insist upon his presence. The petitioner may take steps to set at naught the consequential orders passed by the Family Court.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 02-06-2017

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