

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION Nos.5605 and 5674 of 2017

COMMON ORDER :

Both the matters came for common hearing, at the request of both the counsel, since one is for interim maintenance dismissal order in impugment and the other is for the pending disposal of F.C.O.P. the custody guardianship petition for the interim stay sought by the father for the visiting rights under the impugment.

2. From hearing of both sides, the undisputed facts between the parties are that their relationship, earning, affluent to take care of minor children and both are expressing their endeavour to take care of the minor children.

3. Impugment of the order of the learned Judge, Family Court, dated 28.08.2017 in I.A.No.1077 of 2015 in F.C.O.P.No.848 of 2015 filed by the wife against the husband seeking divorce, pending disposal, she is seeking for interim maintenance of the two children, daughter and son, aged about 11 and 6 years respectively, that was dismissed, particularly, from para-6 clause (iv) observation of the lower Court, which reads as follows:

“iv) It may be true that petitioner is only meeting the expenses of the minor children regarding their education, tuition, food and shelter. Being children of first respondent, minor children of petitioner will have every right to claim maintenance under section 125 of the Criminal Procedure Code or Hindu Adoption and Maintenance Act. But petitioner cannot invoke section 24 of Hindu Marriage Act to claim maintenance, as she is working as a Doctor in a Super Specialty Hospital.”

In fact, the said observation is *per se* unsustainable and contrary to the settled law. Pending disposal of the divorce petition filed by either side, not only the wife but also the children are entitled for interim maintenance even she is affluent. When the father also affluent, it is also the duty of the father to provide interim maintenance to the children. The dismissal of the impugned order stating that there is a remedy under Section 125 Cr.P.C. if at all to claim regular maintenance for the children is since unsustainable, the same is set aside, as the petition is maintainable.

4. With the above observation, the matter is remitted back to the lower Court, with a direction to decide the quantum of maintenance and father of the children also liable to pay, subject to other merits, within a period of 15 days from the date of receipt of copy of this order.

5. Coming to the order dated 28.08.2017, in partly allowing I.A.No.819 of 2016 pending disposal of F.C.O.P.No.848 of 2015, the father of the children, who is respondent in F.C.OP. sought for interim custody of the minor children under Section 26 of the Hindu Marriage Act, the lower Court, after hearing, permitted visiting rights to the father of the children on every Sunday from 10 a.m. to 5 p.m. and for three hours on their birthdays, festivals and public holidays and on special occasions as per the convenience of the parties and the father is directed to pick up and drop the children with prior intimation to the mother of the children, in whose custody they are.

6. From hearing of both sides, several contentions for and against raised, against the order saying also unworkable including in saying what are the special occasions and what is meant by as per the convenience of the parties, that too, when both are working and both are having the time to spend in the public holidays and festivals in particular. Instead of going into and modifying the impugned order, by disposal of the civil revision petition with observation that this interim visiting rights order no way prejudice to the rights of the parties and also no way influence the lower Court in final disposal of the main F.C.O.P. for any entitlement of visiting rights or custody, as the case may be, leave about another remedy of the father available under the Guardians and Wards Act, 1980, if at all for

regular custody, to seek. Needless to say, even in the impugned order granting visiting rights including Section 26 of the Hindu Marriage Act, even did not mention the Guardians and Wards Act, for enforcement of the order concerned also, by virtue of this order, the provisions of the Guardians and Wards Act that apply.

7. Having regard to the above, any difficulty in enforcement of the impugned order by the either side, the parties can approach the learned Judge, Family Court for it and any such petition pending with reference to the above, the learned Judge shall dispose of the same within 15 days from the date of receipt of copy of this order.

8. Accordingly, the C.R.P.No.5674 of 2017 is allowed and C.R.P.No.5605 of 2017 is disposed of directing the Judge, Family Court, Secunderabad, to dispose of F.C.O.P.No.848 of 2015 within a period of six months from the date of receipt of copy of this order. For the welfare of the children, the lower Court, may, at any stage, alter the final order. No order as to costs.

9. Miscellaneous petitions, if any pending, shall stand closed.

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Dr. B. SIVA SANKARA RAO, J

Date:30-10-2017

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