

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.6904 of 2017

ORDER

Pending disposal of the main petition O.P.No.922 of 2017 filed by the father of the minor child Sanjit, aged about nearly 7 years seeking to appoint him as guardian and also grant permanent custody of the child from the mother/ OP respondent, he filed an interlocutory application in I.A.No.964 of 2017 seeking interim custody of minor son supra on Saturdays and Sundays and school holidays or alternatively to grant visitation rights on every Saturday and Sunday of the month and for such other just orders.

2. The learned Judge, Addl.Family Court, Hyderabad by impugned order dt.18.11.2017 allowed the application particularly from the paras-13 and 14 after referring to the pleadings and contentions that when the child was interviewed in the Chambers of the learned Judge on 27.10.2017, he responded saying he wants both father and mother and he wants to live with both of them, with the observation that since child has been staying since long time exclusively with OP respondent-mother, naturally there would be some influence on him from the mother, even then the minor child reported to the Court that he wants both the father and mother. The Court tried to convince the OP respondent-mother to live with the petitioner but she did not incline though the OP petitioner intended to live with her and held therefrom that there is impossibility before the Court so as to see that both the parties live with their son together. However

to accomplish the welfare and wish of the minor son, the Court has to grant interim custody of the child in favour of the petitioner during week ends once in 15 days of the month and during school holidays so that minor son would be happy and in these circumstances inclined to grant interim custody of the minor son in favour of the petitioner on every 2nd and 4th Sunday of the month from 7A.M. to 6.00P.M. and first half of Dashara holidays, Christmas holidays, Sankranti holidays and summer vacation pending disposal of the main petition. It is however, observed that the OP petitioner is permitted to take the minor son to Visakhapatnam during the said period stated supra as the OP petitioner is staying there.

3. The present revision is filed impugning the order so far as the shifting of the minor child from the jurisdiction of the Court concerned mainly apart from other attack regarding the intermittent custody pending disposal of the main petition.

4. On perusal of the impugned order, the same is passed pursuant to the prayer in the petition of seeking interim custody during Saturdays and Sundays and school holidays so that he can spend with the minor child so to direct to hand over the minor child to respondent and if it is not possible for any reason to grant visiting rights on Sundays and Saturdays and to pass such other orders as the Court deems fit and proper.

5. The contention of the learned counsel for OP respondent is that the impugned order is beyond the scope of the prayer in the petition which is untenable.

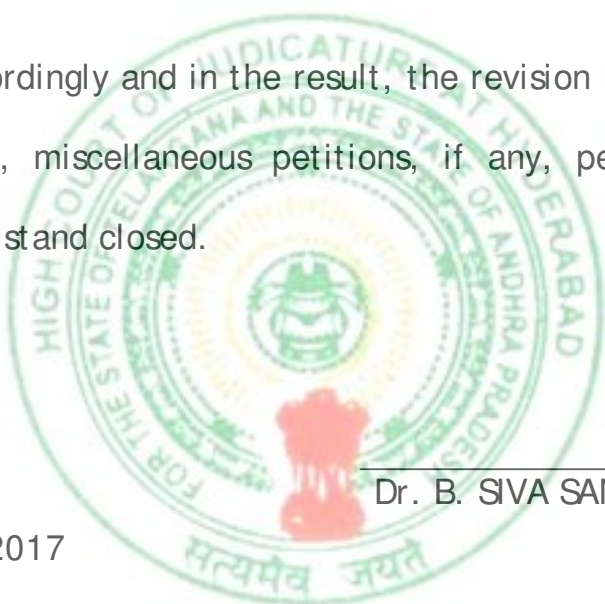
6. Whereas, it is the submission of the learned counsel for the OP petitioner that the Court got discretion in the custody matter for the welfare of the child but when interviewed, the child expressed that he wants both the parents, hence there is nothing to interfere with the impugned order for this Court while sitting in revision.

7. It is the settled law that guardianship is different from custody. Irrespective of the rights of the parties, it is the welfare of the child that is paramount in consideration for the Court, apart from custody matters shall never be final. Further for any change from the circumstances even time to time, the Court may modify and pass appropriate order in *suo moto* without even any application however, in the larger interest and welfare of the child. Once such is the case, whether it is beyond the scope of the prayer or confined to the prayer or within the prayer is not mainly germane and from the elasticity of the law and power, the main aspect is welfare of the child. Once such is the case, so far as permitting on Sundays and Saturdays and half of the period in the respective holidays etc., concerned, there is nothing to interfere for nothing shown such order is not in the welfare of the child but for the attack regarding the taking of the child to Visakhapatnam more particularly in saying the child is undergoing

treatment at Hyderabad may be in panic and may not live for a long time beyond the care and presence of the mother.

8. Taking into consideration of these facts, the order of the lower Court permitting to shift the child to Visakhapatnam for spending by the father of the child is modified to spend with the child by confirming the periods permitted above, within the jurisdiction of the Court at Hyderabad at any place and there is nothing more to interfere with the impugned order of the lower Court.

9. Accordingly and in the result, the revision is disposed of. Consequently, miscellaneous petitions, if any, pending in this revision shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Date:18.12.2017
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