

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

CIVIL REVISION PETITION No.6852 of 2017

Between:

D.N. Manimanjari

.....Petitioner

And

S. Virupaksheswara Rao

.....Respondent

Date of Judgment pronounced on : 21-12-2017

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

*** HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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< **GIST:**

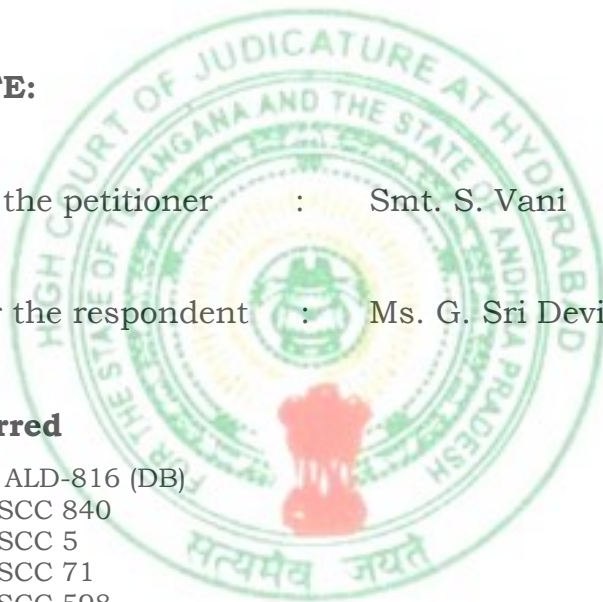
> **HEAD NOTE:**

! Counsel for the petitioner : Smt. S. Vani

^ Counsel for the respondent : Ms. G. Sri Devi

? **Cases referred**

1. 1996 (3) ALD-816 (DB)
2. (1973)1 SCC 840
3. (2001)8 SCC 5
4. (2001)4 SCC 71
5. (2000)6 SCC 598



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**CIVIL REVISION PETITION No.6852 of 2017****ORDER:**

The revision petitioner is no other the wife of the revision respondent. The O.P.No.1084 of 2013 was filed by the revision petitioner by name Smt. D.N. Manimanjari, advocate as per the revision cause title, against her husband by name S.Virupakshewara Rao, for divorce under Section 13 of Hindu Marriage Act and therein she also sought for permanent custody of the minor children i.e., Master S. Pradyumna born on 03.09.2003 and baby S.Pravalika born on 22.05.2006 and also sought for permanent alimony of Rs.25,00,000/- and Rs.50,000/- per month towards maintenance and education expenses of the 2 minor children and for costs.

The said divorce petition with custody petition, permanent alimony and maintenance reliefs was filed on 07.08.2013 and the same is under contest. She also filed it appears DVC.No.58 of 2014. In the pending DVC, Crl.M.P.No.1605 of 2014 filed by her husband under Section 21 of PWDV Act seeking visitation rights of the 2 children. On contest by order dated 24.03.2016, the learned IV Metropolitan Magistrate, Hyderabad, dismissed the petition while saying relationship not in dispute and the 2 children are staying with mother who are away to the petitioner and the 2 children were when interviewed as to willing to meet their father, they stated they are not interested and thereby they cannot be compelled to meet their father to consider his request for visitation rights, but for to decide in a custody petition in considering the interest of the children and thereby without

consent of children he cannot direct the children to visit their father. Leave about the correctness of the order and any appeal filed under Section 29 of PWDV Act against it or not, even from the very order that is not the be all and end all in considering any entitlement to custody and visitation rights or not. That order in DVC case was dated 24.03.2016. The father of the children filed in the main divorce-cum-custody-cum-permanent alimony and maintenance petition supra, I.A.No.534 of 2014 seeking visitation of rights of children on every Saturday and Sunday. It is in saying the mother of the children who is his wife not allowing him to see the children for the last one year which swindles the love and affection of the children towards him and vice versa and he is liking the children a lot and he is curious of seeing them a lot.

The counter filed in opposing by mother of the children with whom the children are is with the contest that he never tried to reach the children nor expressed love and affection and was arrogantly behaving with the children and even beating cruelly and threatening them with dire consequences and the son got disturbed and went in depression and was treated by psychiatrist and the children are very much afraid of the behaviour of the father and are reluctant to interact with their father on account of previous experience hence to dismiss the petition. From that contest by impugned order dated 06.10.2017, the learned Judge Family Court, Hyderabad, permitted the father of the children to see and interact on every Sunday between 10 AM and 12 Noon before the Secretary, District Legal Services Authority, City Civil Court, Hyderabad and with observations in support of that order that the main petition O.P.No.1084 of 2013 is under contest and

evidence is in progress since coming for respondent's evidence after petitioner's evidence recorded and it may consume some more time for its disposal. The children are in the care and custody of the mother and the petitioner being the father of the children apart from natural guardian is also entitled to see and interact with the children to share love and affection and such interaction and sharing of love and affection would go long way for healthy growth and nourishment of children and it gives encouragement and motivation to the children besides acquire knowledge by sharing the love and affection of their father equally which is like the affection they are sharing with the mother and thereby entitled to that limited visiting rights. It is impugning the same, present CMA is filed by mother of the children with the contentions that the impugned order of the lower Court is unsustainable, contrary to law, even doctor advice the father of the children not to confront the child until get back to normalcy since in disturbed condition, it was not considered by the lower Court and the son is studying 9th class and daughter is studying 7th class. The father of the children never felt any responsibility in up bringing the 2 children and not even paid a single pie for the past 3 years and already in DVC case for the visitation rights sought, it was ended in dismissal. There was an order in DVC case exparte for payment of interim maintenance and it is under execution and with great difficulty paid some time and stopped for past 3 months and when the visitation rights of the children application in I.A.No.534 of 2014 pending before the Court since past 2 years all of a sudden in allowing the same when the matter is in progress of trial is also contended as unsustainable that too

even children are expressing their unwillingness as can be seen from the order in DVC case and the learned Judge of the Family Court did not even examined the children of their views before ordering the visitation rights and thereby the order is liable to be set aside.

The learned counsel for the revision petitioner, mother of the children, in support of the grounds urged in the revision reiterated the same impugning the order of the lower Court. Whereas the learned counsel for the revision respondent/father of the children supported the order of the lower Court in saying, but for no separate appeal, the lower Court itself should have been granted more time for spending with the children in providing the visitation rights and thereby there is nothing to interfere with the order of the lower Court and the CMA is liable to be dismissed.

Heard both sides and perused the material on record.

Before coming to the facts, it is necessary to mention on the scope of law that custody is different from guardianship though custody can be continued with the guardian generally as held by a Division Bench of this Court in **Mohd.Shaharyarkhan V. Hussain Khan**¹. In fact, the Apex Court in **Rosy Jacob V. Jacob A.Chakramakkal**² at page 855 Para 15 observed as follows:

“15. The children are not mere chattels: nor are they mere playthings for their parents. Absolute right of parents over the destinies and the lives of their children has, in the modern changed social conditions, yielded to the considerations of their welfare as human beings; so that they may grow up in a normal balanced manner to be useful members of the society and the guardian court in case of a

¹ 1996(3) ALD-816 (DB)

² (1973)1 SCC 840

dispute between the mother and the father, is expected to strike a just and proper balance between the requirements of welfare of the minor children and the rights of their respective parents over them”.

In ***Halsbury’s Laws of England*** the law pertaining to the custody of children has been stated at Para No.809 that

“Wherein any proceedings before any Court, the custody or upbringing of a minor is in question, the Court, in deciding that question, must regard the welfare of the minor as the first and paramount consideration, and must not take into consideration whether from any other point of view the claim of the father in respect of such custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the father. In relation to the custody or upbringing of a minor, a mother has the same rights and authority as the law allows to a father, and the rights and authority of mother and father are equal and are exercisable by either without the other”.

It is true in ***Bimlenda Kumar Chatterjee V. Dipa Chatterjee***³ the apex Court held that humanitarian approach is necessary for solving the disputes regarding custody and guardianship and it was held that even custody retained with mother, the right of father to see the child at intervals cannot be ignored.

In ***R.V.Srinath Prasad V. Nandamuri Jaya Krishna***⁴ it was also held that since custody matters are sensitive issues involving emotions of parties concerned, the Courts have to strike a balance between the emotions and the welfare of minor, which

³ (2001)8 SCC 5

⁴ (2001)4 SCC 71

is a matter of greater importance as held in **Jai Prakash Khadria V. Shyam Sunder Agarwalla**⁵.

The fact that in the pending DVC case, the visiting rights of the children sought by the father dismissed is not be all and end all for such an order is even prone to an appeal under Section 29 of DVC Act before the Court of Sessions and from the observation therein as referred supra of such visitation matter to be decided in the custody petition pending in the matrimonial lis and for the present children expressed unwillingness to go to the father not chosen to give visitation rights. Apart from even coming to the counter contentions in this petition before the lower Court of the son got disturbed and went in depression and needs treatment of Psychiatrist or children afraid of the so called psychic behaviour of the father and reluctant to interact from the alleged previous experience concerned, there is basically but for the averments including in the main divorce petition no any record of the father of the children is a psycho or sadist much less to appreciate any argument in this revision in this regard. It is also the duty of the mother to convince the children who are with her for a little while for few hours once in a week or so to go and spend with the father of the children as what is provided even from the order of the lower Court is to spend few hours before the Legal Services Authority and not even of taking away the children by the father to somewhere. Even from the grounds of the revision urged about the boy underwent treatment under Psychiatrist Dr. Lakshmi Pingali and counseled by Dr. Jayanthi at Roshini Counselling centre and that is not a ground to refuse once in a week few

⁵ (2000)6 SCC 598

hours by the father to spend with the children to shower the love and affection. In fact the Apex Court in **Bimlendra Kumar Chatterjee supra** held that the Court has to adopt humanitarian approach necessary for solving the disputes regarding custody and guardianship. Even custody remained with the mother, right of the father to see the children at the intervals cannot be ignored and as per the **Halsbury's law of England** referred supra the father and mother got equal right to shower their love and affection to the children and as held in **Rosy Jacob supra** the Court dealing with custody and guardianship matters and the disputes between the father and mother in relation to the custody of the children is expected to strike a just and proper balance on the rights, requirements and sentiments.

Having regard to the above, the order of the lower Court in allowing the petition to the extent of permitting the father of the children to see and interact with the children on every Sunday between 10 AM and 12 Noon before the Secretary, District Legal Services Authority, City Civil Court, Hyderabad, no way requires interference, but for to cooperate even by the mother of the child to implement the order instead of driving the Family Court to implement with legal coercion by invoking the provisions of Sections 25, 26 and 40 to 45 of Guardians and Wards Act.

Accordingly and in the result, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.12.2017

Note: L.R. Copy to be marked (B/o) ska