

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 607 OF 2011

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 21-12-2010 in M.P.No. 434 of 2010 in M.C.No. 234 of 2004 on the file of the learned Judge, Family Court at Visakhapatnam (for short, 'the Court below'), whereby the Court below appointed an advocate commissioner for the specific purpose of taking petitioner No. 2 and the respondent herein to Truth Labs at Hyderabad for getting Deoxyribonucleic Acid (for short, 'DNA') test conducted.

2. The main reason assigned by the respondent is that petitioner No. 1 filed M.C.No. 234 of 2004 on the file of the Court below. In the counter affidavit, the respondent denied the paternity of the minor child-petitioner No. 2 and sought for examination and DNA test to be conducted in Forensic Department at Hyderabad and the said petition was allowed on 16-04-2010. Thereafter, DNA test was not conducted. Therefore, sought for appointment of advocate commissioner to take the respondent and petitioner No. 2 to Truth Labs for conducting DNA test.

3. Petitioner No. 1 filed counter affidavit denying the material allegations *inter alia* contending that DNA test cannot be conducted in private laboratories and the order in M.P.No. 73 of 2010 in M.C.No. 234 of 2004 on the file of the Court below is suffice to conduct DNA test in Government laboratory but no steps were taken for getting it conducted. Five months thereafter from the date of passing the earlier order, advocate commissioner cannot be appointed for the above purpose and prayed for dismissal of the petition.

4. The Court below upon hearing argument of both counsel appointed Sri N.Haranath, Advocate, Visakhapatnam, as commissioner for the said purpose on payment of his fee of Rs.3,000/-. The said order is now impugned in this revision on the sole ground that when the earlier application was disposed of by the Court below, another application for appointment of advocate commissioner to take the respondent and petitioner No. 2 to Truth Labs, Hyderabad, is not maintainable since the respondent cannot choose a particular laboratory of his choice, more particularly when the respondent himself sought reference of the test to be conducted in Forensic Department, in his earlier application and the Court below committed an error in ordering the petition and prayed to set aside the same.

5. Learned counsel for the petitioners has drawn the attention of this Court to the affidavit filed along with the petition and the earlier order dated 16-04-2010 in M.P.No. 73 of 2010 to contend that in view of the earlier order, M.P.No. 434 of 2010 is not maintainable and apart from that, there is any amount of delay in prosecuting the proceedings and therefore commissioner cannot be appointed for the purpose referred above but the Court below did not consider this contention in proper perspective and committed an error.

6. At the hearing, Smt. A.Vara Lakshmi, learned counsel for the respondent, has reported that she has no objection to refer the DNA test to be conducted to Government Forensic Laboratory, Hyderabad.

7. Undisputedly, the petitioners filed M.C.No. 234 of 2004 on the file of the Court below seeking for maintenance and the respondent, disputing the paternity of petitioner No. 2, filed M.P.No. 73 of 2010. By order dated 16-04-2010, the Court below referred the respondent and petitioner No. 2 to Forensic Department at Hyderabad for conducting DNA test. However, no steps are taken thereafter and filed the present petition on 19-11-2010 seeking to appoint an advocate

commissioner for the purpose referred above with a specific request to refer the respondent and petitioner No. 2 to Truth Labs, Hyderabad, for conducting DNA test. There is no specific reason in choosing the Truth Labs for conducting DNA test. However, at the hearing, learned counsel for the respondent has requested this Court to refer the respondent and petitioner No. 2 to any Government laboratory for conducting DNA test.

8. In view of the acceptance of both learned counsel, the respondent and petitioner No. 2 are referred to Andhra Pradesh Government Forensic Science Laboratory at Amaravathi for conducting DNA test and the advocate commissioner appointed by the Court below is directed to take the respondent and petitioner No. 2 to the abovementioned laboratory.

9. The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, in this civil revision petition shall stand closed in consequence. No costs.

Date: 23-02-2018.

JSK

M.SATYANARAYANA MURTHY, J.

