

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

Civil Revision Petition No.6533 of 2018

Order:

Smt.Lingam Sudharani, the petitioner has challenged the legality of the order, dated 06.07.2018, passed by the Family Court, Secunderabad, whereby the learned Family Court has allowed the petitioner, limited visitation right, namely, to interact with the minor child, Lingam Sai Surya, on every second Saturday and Sunday, from 10:30 a.m. to 5:00 p.m. in the premises of Family Court, Secunderabad.

2. Briefly stated the facts of the case are that the respondent-husband, Lingam Divakar Rao, had filed a petition under Order 39 Rule 1 of C.P.C., seeking an interim injunction against the petitioner-wife in order to restrain her, her parents and family members from taking away the minor child, Lingam Sai Surya, from his custody and possession. According to the respondent-husband, since the petitioner-wife was suffering from schizophrenic disorder, and mental illness, it would not be in the interest of the child to be kept with the mother. For, keeping the child with the mother may also adversely affect the psychology of the child. In order to buttress his plea that the petitioner-wife was, indeed, suffering from psychological difficulties, he submitted certain documents, namely, Ex.P7, P8 and P9. However, by the impugned order, the learned Family Court has granted a limited visitation right to the petitioner. Since the petitioner is aggrieved by the fact that only limited rights have been given to her, she has filed the present petition before this Court.

3. The learned counsel for the petitioner submits that the child was in the petitioner's custody till 13.01.2018. On 13.01.2018, the respondent-husband has whisked him away. Therefore, the petitioner had filed an FIR against the respondent-husband. He further submits that the documents submitted by the respondent-husband are fabricated. Therefore, the learned Family Court has erred in relying upon the same. Further, Section 6 of the Hindu Minority and Guardianship Act, 1956 ('the Act', for short) clearly stipulates that if the child is below the age of 5 years, ordinarily the mother should have the custody of the child. Since the child is less than 5 years, the learned Family Court should have given the custody of the child to the petitioner-mother, and not to the respondent-father. Therefore, the impugned order deserves to be set aside by this Court.

4. Heard the learned counsel and perused the impugned order.

5. Section 6 of the Act is as under:

"Natural guardians of a Hindu minor.—*The natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—*

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;"

6. It uses the word "ordinarily", which clearly indicates that although "generally" the mother would have the right to the custody of the child, but under "extraordinary circumstances", the mother can be deprived of the right to have the custody of the child.

7. Therefore, the question before this Court, and before the learned Family Court, was whether such extraordinary circumstances have been pointed out by the respondent-father for preventing the mother from having the custody of the minor child, or not?

8. The respondent had produced certain documents, namely, Ex. P.8 and P.9, which clearly disclose that the petitioner was an inpatient in the BBR Super Speciality Hospital for treatment by Dr.Rama Subba Reddy, a doctor working as a Psychiatrist in the said Hospital. The treatment was for three days namely 17.03.2014 to 19.03.2014. Ex. P.8 further discloses that the petitioner had consulted Dr. P. Vanaja Reddy, who also works in the Psychiatry Department, on 05.06.2014, 27.09.2014, 11.10.2014, 22.11.2014, 04.05.2015 and 31.08.2015. Subsequently in the year 2017, she consulted the Omni Hospital. Ex. P.9, the record of the Omni Hospital discloses that she consulted Dr. Padala Subramanyam, a gynecologist on 14.08.2017, with a request to terminate the pregnancy for psychiatric reasons. Moreover, even Ex. P.14 is a medical report which clearly discloses that she was admitted in Asha Hospital from 06.09.2017 to 16.09.2017 when she was not taking medicines.

9. Even during the pendency of the proceedings, the learned Family Court requested the Superintendent of Government Hospital to submit his report with regard to the mental status of the petitioner. The Superintendent of the Government Hospital for Mental Care, clearly stated in his report that the petitioner is suffering from mental illness named as paranoid psychosis, and

that she needs regular medication and follow up with the psychiatrist.

10. In the impugned order, the learned Family Court has further noted the fact that during the interaction within the court between the minor child and his parents, *“the minor child is scared of his mother i.e. respondent and refused to go nearer to the respondent during interaction session. Minor child appears to be extremely comfortable and happy in the company of petitioner (the father)”*.

11. Despite all the facts noted above, keeping in mind that mother cannot be deprived totally of the company of her child, the learned Family Court has allowed limited visitation rights to the petitioner as mentioned herein above.

12. Needless to say, it is the interest of the child which has to be kept paramount while considering the case of a child custody. Despite the fact that the learned Family Court had noticed the mental status of the petitioner, and the fact that the minor child was uncomfortable in the company of his mother, still, the learned Family Court has granted limited visitation rights as mentioned herein above. Therefore this Court does not find any illegality or perversity in the impugned order.

13. This petition being devoid of merits is, hereby, dismissed.

14. Miscellaneous petitions if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN,J)

Date:21.12.2018

msb

