

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Revision Case No.2702 of 2017

ORDER :

This Criminal Revision Case is filed aggrieved by the order dated 6.7.2017 in M.C. No.113 of 2017 on the file of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Hyderabad.

2. The contention of petitioners is that the trial Court misread, misinterpreted, misconceived the facts, law, evidence and material available on record and erroneously awarded meagre amount as maintenance without taking into consideration the daily needs other than education and medication. It is further contended that the finding of the trial Court that if mother is a salaried employee, she is also equally liable for maintaining the children along with his father is contrary to law.

Per contra, the 1st respondent contended that the impugned order is an *ex parte* order. The respondent has to produce relevant material before the trial Court. According to the letter dated 6.2.2018 of the ICICI Bank, Madhapur Branch, there are no loans taken in the name of Mr.Venkateswara Rao Gunturu - 1st respondent herein.

3. All these facts have to be considered by giving opportunity to the 1st respondent. The record clearly goes to suggest that the petitioners herein are petitioners in M.C. No.113 of 2017 and

they being minors represented by their natural guardian and mother Smt.Challa Padmaja.

4. The para-3 of the impugned order reads as follows :

“The notice sent to the respondent through registered post and was returned as unclaimed and the court deemed it duly served. Since the respondent was called absent on the date of the adjournment, he was set *ex parte*. There upon the mother of the petitioners was called upon to adduce her evidence.”

5. After examining of Smt.Challa Padmaja, the natural guardian and mother of claimants, as P.W.1 and marking of Exs.P1 to P7, the trial Court allowed the maintenance petition awarding maintenance @ Rs.30,000/- per month for each of the petitioner and in total Rs.60,000/- per month. Admittedly, the impugned order is an *ex parte* order.

6. During the course of arguments, the counsel for the 1st respondent reported that the 1st respondent filed CrI.M.P. No.1178 of 2017 to set aside the *ex parte* order and the same is pending and the trial Court is hesitating to dispose of the said application because of the pendency of this revision.

7. In such circumstances, I am of the considered view that since it is an *ex parte* order passed, without giving an opportunity to the 1st respondent to put-forth his case, in the interest of justice, the matter may be remanded for fresh consideration.

8. Hence, the *ex parte* order dated 6.7.2017 in M.C. No.113 of 2017 on the file of the Additional Metropolitan Sessions Judge for the trial of JHCBBC-cum-Additional Family Court-cum-XXIII

Additional chief Judge, Hyderabad, is set aside and the matter is remanded to the trial Court with direction to the 1st respondent to appear before the trial court and file his counter and the trial Court shall dispose of the main M.C. as expeditiously as possible giving opportunity to both parties to adduce their evidence.

9. Accordingly, the Criminal Revision Case is allowed.

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

JUSTICE N.BALAYOGI

11th September, 2018

skmr

