

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1383 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.25-01-2018 in I.A.No.991 of 2017 in F.C.O.P.No.2705 of 2017 of the Judge, Family Court at L.B. Nagar, Ranga Reddy District.

2. Petitioner had married the respondent on 20-06-2003 and later claimed to have pronounced divorce on 22-09-2016. The couple has two boys and a girl.

3. The petitioner filed O.P.No.2705 of 2017 before the Family Court, Ranga Reddy District at L.B. Nagar to declare that he is the guardian of minor children invoking the provisions of Section 7 to 10 of the Guardian and Wards Act, 1890 (for short “the Act”).

4. Petitioner contended in the O.P. that he joined the two boys in a residential school by name Vidya Niketan Residential School at Kamareddy and the daughter in a reputed residential school by name Challenger International School; that the children were under his custody, but later the respondent came to his house in his absence and forcibly took away the minor children to her house and she also refused to send his sons to Vidya Niketan Residential School. It was also alleged that respondent and her parents have no affection towards

the minor children and are also preventing the petitioner from meeting the minor children. He sought custody of the children.

5. Pending the O.P., petitioner filed I.A.No.991 of 2017 invoking Section 25 of the Act to direct the respondent to send the minor boys to Vidya Niketan Residential School, Kamareddy where they are studying, reiterating the contentions raised by him in the O.P.

6. The respondent filed a counter-affidavit denying the allegations of the petitioner. She alleged that petitioner is a habitual alcoholic, who would consume liquor, come to the house in late hours and beat the respondent and this would have an adverse impact on the minds of the innocent children. She alleged that children are now staying with their grand father and are studying in Telangana Minority Residential School at Khairatabad and Moghalpura. She also alleged that petitioner was doing his level best to get the children from her possession and also instigating the police to get involved in the matter.

7. By order dt.25-01-2018, the Court below dismissed the said application. The Court below noted in its order that it had met the minor children on 20-01-2018, who stated that they were all studying in Telangana Minority Residential School at Karmanghat and Moghalpura respectively and also in Little Flower School, Chintalmet, that Vidya Niketan School is far away 150 Kms away from Hyderabad and also from their mother's house. They also stated that they do not intend to go to their father as they are doing well in the school where they are admitted, that they are very much accustomed

to the present school and they do not want to change their school again. They also stated that their mother is looking after their welfare well with the assistance of their maternal uncle and their maternal aunt, who is his wife, is also working in their school and she is also assisting them in their education. The Court below observed that the children were pursuing their education well, that they are not interested to change the school, and they cannot be compelled to go back to Vidya Niketan School, in which petitioner had got them admitted.

8. Assailing the same, this Revision is filed.

9. Learned counsel for petitioner contended that the Court below erred in dismissing the said application.

10. Initially, this Court passed an interim order on 09-03-2018 directing the respondent to send the children to Vidya Niketan High School, Narrsanapally, Kamareddy. But later it appears that the said order was not obeyed and a report was called for from the Principal District Judge, Ranga Reddy District.

11. In the said report dt.21-06-2018, the Principal District Judge, Ranga Reddy District reported that one boy by name Mohd. Adeeb Akthar got admission in Telangana Minority Residential School, Bahadurpura, Hyderabad, Boys-II; that the admission of another boy Mohd.Aqueeb Aaneeq in Little Flower High School, Chintalmet, Rajendranagar was cancelled on petitioner's representation about

order from the High Court; and the daughter Aroosa Asmath continued to be studying in Telangana Minority Residential School at Yakutpura, Hyderabad.

12. Though objections to the said report have been filed by petitioner, I am of the opinion that the petitioner had sought for custody of minor children in F.C.O.P.No.2705 of 2017 and the said O.P. is still pending before the said Court; only if the petitioner succeeds in the O.P. after trial, he can have the choice of admitting the children in a school which he wants.

13. The petitioner had invoked Section 25 of the Act along with Section 151 C.P.C. by filing I.A.No.991 of 2017 to direct the respondent to send the minor children to Vidya Niketan Residential School, Kamareddy where they are studying and this prayer is outside the scope of Section 25 of the Act.

14. Even according to the petitioner, the respondent had taken away the custody of the children from him on 05-09-2017 prompting him to file the O.P. and since children wish to be closer to their mother instead of being in Vidya Niketan Residential School, Kama Reddy, which is 150 Kms away from Hyderabad and their mother's house, the order passed on 25-01-2018 in I.A.No.991 of 2017 does not warrant any interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India or under the Parens Patriae jurisdiction, particularly when the Court below had interacted with the minor children before deciding the said I.A.

15. The Civil Revision Petition accordingly fails and is dismissed.

The interim order granted earlier shall stand vacated.

16. However, the Court below is directed to decide the O.P. uninfluenced by the observations made by it in I.A.No.991 or 2017 or in this order. No costs.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-02-2019

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