

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.3125 and 3245 of 2018

COMMON ORDER:

In both these Revisions, the same order dt.08-05-2018 passed in I.A.No.365 of 2018 in O.P.No.266 of 2018 by the Additional Family Court at Hyderabad, is challenged.

2. The said O.P. was filed by Meghna Pradipak (hereinafter referred to as 'M') against C.Sanjay Reddy (hereinafter referred to as 'S') seeking dissolution of the marriage between them which took place on 26-05-2005, grant of permanent alimony of Rs.100.00 crores to her, granting permanent custody of their minor son Anikait (for short 'A') and for costs.

3. It is her contention that 'S' treated her with cruelty and several allegations are leveled against 'S' by her in the O.P.

4. Pending O.P., 'M' filed I.A.No.259 of 2018 to restrain 'S' from coming anywhere near her or their minor son 'A' either at her house or the child's school or anywhere else including forcibly taking the child from school or anywhere, pending disposal of the O.P.

5. 'S' filed I.A.No.365 of 2018 in the said O.P. seeking grant of interim custody of minor child 'A' to him on every alternative day of the week after School on all Mondays, Wednesday, Friday after noon to Sunday after noon, all holidays, vacations, Hindu festivals, functions of his family etc., pending disposal of the main O.P.

6. By a common order dt.08-05-2018, the Judge, Additional Family Court at Hyderabad dismissed I.A.No.259 of 2018, but partly allowed I.A.No.365 of 2018 granting interim custody of 'A' to 'S' from 4 p.m. of Saturday to 6 p.m. of Sunday of every week, for first half of Pongal holidays, Dasara holidays, Christmas holidays and summer vacation, and from 9 a.m. to 2 p.m. on the birthday of 'A' i.e. on 16th of May, pending disposal of the O.P. The Court below also permitted 'A' to speak to 'M' for half an hour a day through video chatting. It directed 'S' to attend parents meeting in the school of 'A'.

7. On 12-10-2018, this Court modified the order in the following manner:

"After interacting with the child last Friday, I met both the petitioner-husband and the respondent-wife in chambers today. I also interacted with Sri L.Ravichander, learned Senior Counsel appearing on behalf of the respondent, and Sri B.Vijaysen Reddy, learned counsel for the petitioner, today. On the overall view of the matter, the following order is passed.

During the ensuing Dasara Vacations, the respondent-mother of the child shall take the child to the petitioner-father's house every Saturday and Sunday at 11.00 am, The child shall be free to interact with his father and his grand-parents for a period of six hours till 5.00 p.m. each Saturday and Sunday during Dasara Vacations. For a period of four weeks after Dasara vacations, the child shall be brought to his father's house by his mother at 11.00 a.m, and shall be permitted to spend time with the father and grand-parents for a period of six hours till 5.00 p.m. During the period of six hours when the child is brought to his father's house, the child's mother shall be entitled to stay thereat during the entire duration of six hours from 11.00 a.m.

to 5.00 p.m. This arrangement shall continue till the third week of November, 2018. Post on 16.11.2018.”

8. On 28-12-2018, this Court directed that the same pattern as directed earlier would continue.

9. The matter was heard by this Court on 24-04-2019 and 25-04-2019, and on 29-04-2019 orders in the Revisions were reserved. But because summer vacation of the child was going, the following order was passed on 29-04-2019:

“Heard both sides in both the Civil Revision Petitions. Orders reserved in Civil Revision Petition Nos.3125 and 3245 of 2018.

Pending passing of final orders in both the Civil Revision Petitions, the petitioner is permitted to have custody of the minor child, viz., Anikait Reddy from 01.05.2019 to 15.05.2019; he shall then deliver the child to the respondent on 16.05.2019, and the respondent shall retain him till 23.05.2019. Again, the respondent shall handover the child to petitioner on 24.05.2019, and the petitioner can retain the child till 07.06.2019.

The respondent is also entitled to speak to the child at least once a day and to see the child every alternate day, at least for one hour, at a mutually agreed time to be arranged by the counsel on either side.

The parties are given liberty to move the Summer Vacation Court in case there is any problem in carrying out this arrangement.

The petitioner shall be entitled to participate in the Birthday Celebration / Parry of the Child on 16.05.2019 at whichever place the respondent intends to hold the said Birthday Party, and the same shall be informed by respondent to petitioner or by the counsel for respondent to the counsel for petitioner two (02) days in advance.”

10. Against this order passed on 29-04-2019, 'M' approached the Supreme Court by way of Special Leave to Appeal (Civil) Nos.11586-11587 of 2019.

11. On 13-05-2019, the following order was passed by the Supreme Court:

“The order impugned is modified to the extent that the petitioner may visit the child for one hour everyday, if she so chooses, while the child is in the interim custody of the father.

Needless to mention that this order will not prevent the petitioner from approaching the High Court if the occasion arises.

The special leave petition stands disposed of accordingly.”

12. The matter was listed under the caption 'For Being Mentioned' on 03-06-2019 by this Court to find out how the arrangement between the parties regarding visitation rights/temporary custody of the minor child worked out during the summer vacation of the child in May, 2019. Both parties reported that it went on smoothly except that custody of the child was given 4 days late. The orders were again reserved in the matter.

13. Before I deal with the contentions of the parties, it is necessary to refer to the reasoning of the Court below which passed the impugned order dt.08-05-2018 in I.A.No.365 of 2018.

The reasoning of the Court below in the impugned order

14. Before the Court below, though no oral evidence was adduced, Exs.P-1 to P-11 were marked by 'S' and Exs.R-1 to R-11 were marked by 'M'.

15. The Court below observed that parties had leveled several allegations and counter-allegations against each other and pleadings in the applications indicate that parties are at logger heads with any amount of hatred towards each other. It observed that it made efforts to make some arrangement of temporary custody in respect of the child with consent of the parties, but it could not convince them. It therefore considered to the extent necessary the allegations and counter-allegations made by the parties for the purpose of deciding I.A.Nos.365 and 259 of 2018.

16. It took note of the fact that Ex.P-1, a bunch of 37 photographs along a C.D. filed by 'S' showed that 'A' was comfortable and in joyful mood with him and his parents and some of the photographs also show that with the permission of 'M', 'A' was taken by 'S' on the occasion of marriage of nephew of 'S' from 23-02-2018 to 02-03-2018 and he was made 'Thodi Pellikoduku' (co-bridegroom as per custom in the community). It observed that since very recently prior to its passing of the order, 'A' had spent considerable time with 'S' and his family members happily by participating in the marriage function of nephew of 'S', it indicates that 'A' was very close and affectionate towards 'S' and his family members, and this was a

strong circumstance which goes in favour of 'S'. It also took note of Exs.P-7 to P-9 which show that for 2015, 2016 and till March, 2017 school fee of 'A' was paid by 'S' and Ex.R-2 certificate and 3 fee receipts show that 'M' paid fee for 'A' on 25-07-2017, 07-09-2017 and 08-03-2018; and that since the date of separation of the parties, 'M' had paid school fee of 'A'. It also referred to Ex.P-11, a C.D. containing video of 'A' and some photographs covered by Ex.P-5 which showed that the child was in a joyful mood in the company of both parties. It noted that Ex.P-6 showed that 'S' had taken the minor child to Hyderabad Polo and Riding Club and this material showed that he was very much attached to both parties.

17. Though allegations were leveled by 'M' against the family members including the parents of 'S' about their bad reputation in the O.P., in the counter filed by her in I.A.No.365 of 2018 and in the affidavit filed along with I.A.No.259 of 2018, the Court below recorded that some of the photographs covered by Ex.P-5 show that the father of 'S' was felicitated by Bulk Drug Manufacturers Association and the father of 'S' had participated in meetings along with ex-Vice President of India Sri K.R. Narayanan and Mother Teresa and he was present for inauguration of St.Anns Hostel for Women, said to have been constructed by him as a charity. The allegations of bankruptcy and cheating leveled against the parents of 'S' by 'M' were not accepted by the Court below stating that no *prima facie* material has been filed by her in that regard. It also recorded that Ex.P-10 shows that mother of 'S' occupied good position in Lions

Club of Hyderabad. It therefore concluded that the families of the parties have no bad reputation.

18. It referred to certain other photographs covered by Exs.R-9 and R-10, which showed that 'S' was smoking by keeping 'A' in his lap and a boy was found sitting in the chair in front of a counter with liquor bottles and that the face of the boy was not visible. It observed that in the said photograph, 'S' was not present. It noted that 'S' himself stated that he and 'M' used to consume alcohol for social drinking only and not for otherwise, and denied consuming alcohol or smoking in the presence of 'A'. More importantly, the Court below observed that in some of the photographs covered by Ex.P-5, 'M' was also taking alcohol and this indicate that she was also in the habit of taking alcohol and so the Court would not attach much importance to the said aspect.

19. The Court below also appreciated the free service being done by 'M' in teaching meditation to students and others and also her efforts to take care of the minor son in extra curricular activities. It however held that no conclusion can be drawn that 'S' had no concern towards the child.

20. The Court below also noted that 'M' had suffered chronic myeloid leukemia for the last 18 years and she is under medical treatment with good improvement, and on that count she cannot be said to be not capable of holding custody of the child.

21. The Judge of the Addl. Family Court also referred to the meeting he had with 'A' in his Chambers on 31-03-2018 and stated that the child was active and wanted to stay with the mother 'M', but he was mingling with 'S' also and was speaking good English. He stated that 'A' told about 'M' and 'S' fighting with each other in his presence and abusing each other and observed that they should not have fought in the presence of the child.

22. He held that since the child was staying with 'M', one cannot rule out the possibility of tutoring by her. He also noted that the child did not say anything adverse against 'S'. He observed that in the interest and welfare of the minor child, he should have love and affection of 'S' and vice-a-versa and he cannot be isolated and the Court has to strike a balance in that regard. He held that restraining 'S' from coming anywhere near 'M' or 'A' pending O.P. (as was sought in I.A.No.259 of 2018 by 'M') would result in depriving natural father of meeting his child, which cannot be permitted.

23. He noted that 'S' was not asking the Court to altogether to take away the custody of the child from 'M' and handover 'A' to him and thus made the interim arrangement as mentioned above.

The contentions of the parties

24. It is the contention of the learned counsel for 'M' that 'S' had ill-treated her, that he is addicted to alcohol and smoking by 'S' is harmful to the child and so the custody of the child even for a short time ought not to be granted to 'S'.

25. These allegations are refuted by 'S', who pointed out that the material filed before the trial Court indicated that even 'M' is used to consuming alcohol and merely because 'S' is in the habit of consuming alcohol on social occasions, he cannot be penalized by being deprived of the company of the child to satisfy the revengeful desire of 'M'. He also stated that he does not indulge in smoking in front of the child.

Consideration by the Court :

26. Incidentally there was another I.A. in the OP.No.266 of 2018 where interim maintenance of Rs.1.5 lakhs p.m. was granted by the Court below to 'M', which order had not been honoured by 'S'. In a Revision filed by 'S' challenging it, this Court directed had directed in April, 2019 'S' to give 'M' Bankers cheques for Rs.30.00 lakhs representing interim maintenance of 20 months and on the very next date, learned counsel for 'S' handed over Bankers Cheques for Rs.30.00 lakhs to the leaned counsel for 'M'. This covers the period of interim maintenance upto almost September, 2019 and the leaned counsel for 'S' assured that 'S' will honour the order of interim maintenance thereafter too during pendency of the O.P.

27. The material on record indicates that both parties 'S' and 'M' come from an affluent families and that 'M' is a qualified Doctor while 'S' is a graduate of Mechanical Engineering from Purdue University, USA. The father of 'M' is an Arjuna awardee and National Champion in Sailing and the father of 'S' is an Industrialist.

28. Though their marriage was solemnized on 25-06-2005 and the child was born on 16-05-2012, the parties had been living separately since 18-03-2017. The child was studying 1st Class in Shri Ram School, Jubilee Hills, Hyderabad and is stated to be now promoted to II Class.

29. Learned counsel on both sides stated that the parties are staying hardly 1 K.M. from each other's houses in Banjara Hills, Hyderabad.

30. It is also important to note that 'S' is staying with his parents and 'M' is staying with her parents.

31. *Prima facie* the material Exs.P-5 to P-10 filed by 'S' show that the parents of 'S' have considerable social standing and are not people of bad reputation involved in bankruptcy or cheating as is alleged by 'M'. In fact, no material regarding the poor financial status of the parents of 'S' has been filed. If they are really bankrupt, 'M' would not have claimed Rs.100.00 crores as maintenance from 'S'.

32. It is settled legal position that in deciding the issues of temporary custody or visitation, paramount consideration is welfare and interest of the child and the question of welfare of the minor child had to be considered in the back ground of relevant facts and circumstances. Children cannot be treated as mere chattels nor are they mere playthings for their parents and the Court 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.

33. It is also settled law that orders relating to custody of children are by their very nature not final but are interlocutory in nature and subject to modification at any future time upon proof of change of circumstances requiring change of custody, but such change in custody must be proved to be in the paramount interest of the child. (**Rosy Jacob Vs. Jacob A.Chakramakkal¹** and **Jai Prakash Khadria Vs. Shyam Sunder Agarwalla and another²**.)

34. As held in **R.V.Srinath Prasad Vs. Nandamuri Jayakrishna and others³**, custody of minor children is a sensitive issue. It is also a matter involving sentimental attachment. Such a matter is to be approached and tackled carefully. A balance has to be struck between the attachment and sentiment of the parties towards the minor children and the welfare of the minors which is of paramount importance.

35. In custody matters, particularly relating to minor children, when custody is with one of the parent, in this case 'M', usually the other parent would be extended the facility of visitation.

36. In the instant case, 'S' has not sought for permanent custody of the child but only temporary custody for short periods as can be seen from the prayer in I.A.No.365 of 2018.

37. The material in the form of photographs produced before the Court below, according to the Court below indicate that the child was in a joyful mood in the company of 'S' and his parents. The

¹ (1973) 1 SCC 840

² (2000) 6 SCC 598

³ (2001) 4 SCC 71

interaction of the Family Court Judge with 'A' also showed that 'A' liked both parents.

38. The material produced before the Court below indicate that not only 'S' but even 'M' is in the habit of taking alcohol. In this situation, *prima facie* 'M' cannot label 'S' as a drunkard unfit even to have temporary custody or access to the child.

39. Though learned counsel for 'M' wanted to rely on further material before this Court, since the O.P. is pending, this Court felt that it is not desirable to take any further evidence in this Court and expressing any opinion in either way on the merits of the claims of the parties.

40. Suffice it to say that the arrangement made by the Court below had continued during pendency of the Revisions, and for summer vacation, 2019 this Court had passed order on 29-04-2019, which both the parties had stated that the arrangement went on peacefully.

41. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference with the view of the Court below that 'S' should have interim custody of 'A' for certain period particularly since 'S' is a parent too, and whatever be the animosity with 'M' and 'S', the child should not be deprived of company of 'S' altogether and 'S' also should not be deprived of the company of 'A'. Therefore, I modify the interim custody order passed by the Court below as under :

42. Pending disposal of the O.P,

- (i) starting from the date of pronouncement of this order, the interim custody of 'A' should be given to 'S' by 'M' during weekends from 11 a.m. to 5 p.m;
- (ii) during ensuing Dasara vacations and Christmas/Pongal vacations henceforth, 'S' shall have custody of 'A' child for the first half and 'M' shall have custody of 'A' for the second half;
- (iii) during the summer vacations, 'S' is permitted to have custody of 'A' every alternate week commencing from the first Sunday to the following Saturday; he shall then deliver the child to 'M' on the evening of the said Saturday after 6 pm; and from the following Sunday she shall have custody of 'A' till the ensuing Saturday evening 6 pm ; and so on. 'M' is also entitled to visit the child for one hour everyday , if she so chooses, while the child is in the interim custody of 'S' at least for one hour, at a mutually agreed time to be arranged by the counsel on either side;
- (iv) 'S' shall be entitled to participate in the Birthday Celebration / Parry of the Child on 16/05 at whichever place 'M' intends to hold the said Birthday Party, and the same shall be informed by her to 'M' two (02) days in advance; and

(v) 'M' and 'A' are permitted to speak each other every alternate day at mutually agreed time to be arranged by the counsel on either side when he is in the interim custody of 'S'.

43. The Court below shall endeavour to dispose of the O.P. as expeditiously as possible uninfluenced by it's observations in the impugned order or observations/findings given in this order passed by this Court.

44. The Civil Revision Petitions are disposed of accordingly. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-06-2019
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