

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2424 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/father, challenging the order, dated 10.10.2019 passed in I.A.No.1533 of 2019 in F.C.O.P.No.1016 of 2017 passed by the Principal Judge, Family Court-cum-Additional Chief Judge at Hyderabad, whereby, the petition filed by the respondent/mother under Section 26 of the Hindu Marriage Act, 1955 read with Section 151 of CPC, requesting to grant custody of her minor daughter by name P.Janashree Reddy (hereinafter called as 'minor daughter') pending disposal of the F.C.O.P.No.1016 of 2017, was partly allowed and the respondent/ father was granted visiting rights on specific occasions.

2. Heard the learned counsel for the petitioner/father, learned counsel for the respondent/mother and perused the record.

3. Learned counsel for the petitioner/father would submit that the best interest of the minor daughter would be served if she is allowed to continue with the petitioner/father. The minor daughter was not forcibly taken and she voluntarily joined the petitioner on 05.07.2019 and continuing to stay with him. The Court below ought to have considered the will and wish of the minor daughter while passing the impugned order. Furthermore, the welfare of the child lies with the father. There is also one minor son by name Janavardhan Reddy (hereinafter called as 'minor son'), who is with

the respondent/mother and the petitioner/ father is not seeking his custody. When the Court below interacted with the minor daughter on 30.09.2019, she expressed that she wanted to stay with her father. Without taking the same into consideration, the Court below erroneously passed the impugned order. Learned counsel for the petitioner/father relied upon the decision of Hon'ble Apex Court reported in *Rajesh K.Gupta Vs. Ram Gopal Agarwala*¹ and contended that interest and welfare of the child has to be given principal consideration, but the Court below did not advert to this and ultimately prayed to set aside the impugned order by allowing the revision petition.

4. On the other hand, learned counsel for the respondent/mother would contend that welfare of the minor daughter lies with the custody of the respondent/mother. When the minor daughter was with the respondent/mother, her attendance in school was noted 100% but when she was with the petitioner/father from 05.07.2017, it declined to 37.5%. It is further contended that the petitioner/father is not properly taking care of the minor daughter and son. Ex.P.1 photographs clearly shows that with the assistance of the petitioner/father, the minor daughter and son were found handling loaded rifle, which is detrimental to the interests of the wards. It is also contended that since the petitioner/father did not sign the application form of the minor son for admission in school, he was forced to seek admission in a different school. There is no female person in the house of the petitioner/father to take care of the minor girl, aged 10 years. The Court below, having examined

¹ AIR 2005 SC 2426

all these aspects, rightly passed the impugned order and ultimately prayed to dismiss the revision petition.

5. In view of the submissions made by both sides, the point for determination is:

“Whether the impugned order dated 10.10.2019 passed in I.A.No.1533 of 2019 in F.C.O.P.No.1016 of 2017 by the Principal Judge, Family Court-cum-Additional Chief Judge at Hyderabad, is liable to be set aside?”

6. POINT: On a perusal of the impugned order as well as the material placed on record, it shows that as per Ex.P.1- photographs (7) two minor children were handling loaded rifle with the active assistance of the petitioner/father, which is hazardous and dangerous. This is not contradicted by the petitioner/father. Further when the minor daughter was staying with her father, Ex.P.2-Calendar and Ex.P.3-attendance sheet, shows that her attendance was declined to 37.5% from 100% and furthermore, there is also specific mention in the affidavit filed by the respondent/mother that when she requested the petitioner/ father to sign in the application form for admission in school of their minor son, the petitioner/father did not sign, due to which the minor son was forced to join in a different school. On 30.09.2019, when the minor daughter was examined by the Court below, she stated that food is cooked by a servant and there was no other female member in the house of the petitioner/father. Admittedly, as the minor daughter is of 10 years age, she needs a female attendant. Her bald statement that she intends to stay with her

father was made, immediately after her production before the Court below and before meeting her mother.

7. Thus the above facts of encouraging children to handle deadly weapons, cause decline in the attendance percentage, refusing to sign admission form, are absolutely detrimental to the interest and welfare of the minors. In Rajesh K.Gupta's case (supra) also, the Hon'ble Apex Court held that in case of dispute between the mother and father regarding the custody of their child, the paramount consideration is welfare of the child and not the legal right of either of the parties. The said aspects were also elaborately dealt with and answered by the Court below in favour of the respondent/mother. Hence, the above referred decision is not helpful to the case of the petitioner/father.

7. In the given circumstances, this Court is of the view that the interest of the minor daughters lies in the hands of the respondent/mother than the revision petitioner/father. The impugned order does not suffer from any infirmity. There is nothing to take a different view. The Civil Revision Petition is devoid of merits and is liable to be dismissed.

8. In the result, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending in this Revision, shall stand closed.

27th November, 2019
Vvr

Dr. SHAMEEM AKTHER, J