

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.4578 of 2015

and

Contempt Case No.2256 of 2015

COMMON ORDER :

Heard both sides.

Civil Revision Petition No.4578 of 2015

2. The Civil Revision Petition is filed by petitioners assailing the order dt.28.09.2015 passed in I.A.No.691 of 2015 in O.P.No.1022 of 2013 on the file of the Additional Family Court, at Hyderabad.
3. The petitioners had filed the said O.P. against respondent under Section 13 of the Hindu Minority and Guardian Act and Guardians and Wards Act to appoint 1st petitioner as the legal guardian of the 2nd petitioner.
4. The respondent is husband of 1st petitioner.
5. In the said O.P., it is alleged that marriage between 1st petitioner and respondent took place on 25.08.2004, and 2nd petitioner was born on 01.08.2005 in the United States of America. Thereafter, the parties had moved to Canada in 2011, where the petitioners were harassed by respondent; and so, they left respondent on 18.04.2013, and reached India. It is stated that the child had been admitted by the 1st petitioner in Bharatiya Vidya Bhavan, Jubilee Hills, Hyderabad and since the respondent was ill-treating 2nd petitioner and attempted to take away

2nd petitioner behind the back of 1st petitioner from the School, the 1st petitioner ought to be appointed as the legal guardian of the 2nd petitioner.

6. Pending the O.P., petitioners filed I.A.No.691 of 2015 before the Additional Family Court, Hyderabad for a direction to the respondent to send copy of his I.D. and Consent Statement in Form-DS-3053 for issuance of Passport in favour of 2nd petitioner and also to send the original copy of consent of presentation on the date of the interview since these are the legal requirements for renewal of Passport of 2nd petitioner before the expiry of 2nd petitioner's Passport.

7. Though the respondent did not file any counter, he filed a Memo enclosing copy of correspondence dt.18.09.2015, and also copy of the application submitted for renewal of the Passport of the 2nd petitioner.

8. The Court below accepted the same and observed that the respondent had already complied with the legal requirements for renewal of Passport of 2nd petitioner, and no direction need be given to the respondent to do anything further.

9. Assailing the same, the present Civil Revision Petition is filed.

10. In the Revision Petition, the counsel for petitioner contended that the petitioners had filed application on 27.08.2015 in the Court below seeking the respondent's consent for renewal of 2nd petitioner's Passport which is due to expire on 03.10.2015; that the respondent in

order to create confusion, applied for permission on 18.09.2015 to the United States Consulate for renewing 2nd petitioner's passport; thereafter, the 2nd petitioner's Passport expired; and the application made by petitioners before the United States Consulate for extension of Passport of the 2nd petitioner was rejected on the ground that there were no signatures of respondent on the proper forms.

11. The petitioners also filed I.A.No.1 of 2015 (CRP.M.P.No.6048 of 2015), for a direction to respondent to send copy of his I.D. and United States of America (U.S.A.) notarized Consent Statement in Form-DS-3053, indicating his agreement to the issuance of 2nd petitioner's Passport which expires on 03.10.2015, and furnish the original copy of the Consent to 1st petitioner for presentation on the date of interview before the United States Consulate, at Hyderabad. In the said I.A., it was stated that 2nd petitioner had now become an illegal emigrant as his Passport expired and the Person of Indian card origin i.e., P.I.O. Card kept without a Passport would be invalid. It was explained that as per legal requirements, for renewal of United States of America (U.S.A.) passport, both parents of minor child should be present or if one of the parents is unable to attend for special circumstances, he or she must send a copy of the I.D. and a statement indicating their agreement with the issuance of Passport (Statement Consent must be presented in Form-DS-3053) to a minor child under the age of sixteen (16); that the statement must be notarized by a United States of America (U.S.A.) Notary; and the

original copy of consent must be presented at the time of interview at the Consulate.

12. On 13.11.2015, the Civil Revision Petition was posted to 17.11.2015 and Sri G. Ravi Mohan, Advocate, who appeared for respondent, was asked to give appropriate directions to respondent.

13. In Civil Revision Petition No.4578 of 2015 on 17.11.2015, this Court passed the following order :

“It is represented that appointment has been obtained by the petitioners with the American Consulate on 19.11.2015. As the respondent is currently residing in Canada, he can send the required documents for the purpose of renewing the passport of the 2nd petitioner by e-mail to the 1st petitioner.

Hence, there shall be a direction to the respondent to send the required documents immediately by e-mail to the 1st petitioner so as to enable her to seek renewal of passport of the 2nd petitioner. Apart from sending the copies of the documents by e-mail, respondent is also directed to send hard copies of the documents by e-mail, respondent is also directed to send hard copies of the documents to the 1st petitioner by courier within three days from today.”

14. Alleging that this order was not complied with by respondent, petitioners filed Contempt Case No.2256 of 2015 to punish respondent for Contempt of Court.

15. On 21.01.2016, Sri G. Ravi Mohan, Advocate, filed *Vakalat* for respondent in the Civil Revision Petition.

16. Notice was issued in the Contempt Case on 27.11.2015, and Sri G. Ravi Mohan, appeared for respondent and represented before the

Court on 22.01.2016 that such material was already sent to the authorities concerned, but there was no evidence placed before this Court. He then sought time to produce such material before the Court.

17. The Contempt Case was next listed on 01.07.2016 when the said Counsel sought time to file *Vakalat* for the respondent, but he has not filed such *Vakalat* till date.

18. However, counter-affidavit was filed in Civil Revision Petition No.4578 of 2015 by respondent stating that there were certain proceedings pending before the Courts in Canada; that on 09.10.2014 he had filed a case vide Court File No.FS-14-2918-00 in Canada, before the Ontario Court of Justice for granting sole custody of 2nd petitioner and the said Court had granted him such custody; but 1st petitioner did not obey the orders of the Canadian Court though she was aware of the same; and he had therefore initiated action against the 1st petitioner through Bureau of Consular Affairs, U.S. Department, Washington D.C., U.S.A. for removal of the child from his habitual and natural residence, since it is a cognizable offence punishable as per Canadian Law. He stated that in view of the order of the Superior Court of Justice, Ontario, Canada, the respondent being a permanent resident of Canada, cannot send the relevant documents to 1st petitioner, as it would attract contempt proceedings of the said Superior Court of Justice, Ontario, Canada, since he was granted sole custody by the said Court.

19. He stated that he appointed his father on 29.12.2015 to renew the United States Passport of 2nd petitioner by executing a Special Power of Attorney in his favour, that his father had submitted the required documents directly to the United States Consulate, at Hyderabad on the scheduled date of appointment on 29.12.2015 for renewal of the United States Passport of 2nd petitioner; that the Office of the United States Consulate directed his father to physically produce the minor child for verification; the Consulate stated that they would send a letter to the 1st petitioner or 1st petitioner could herself make a request for appointment for producing the child for renewal of the child's passport; and though the same was informed to 1st petitioner, she did not do anything. He contended that since the child was not produced before the United States Consulate for renewal of passport, the respondent himself came to Hyderabad, took appointment with the United States Consulate on 19.07.2016 for producing his son before the said Consulate for renewal of Passport. He therefore sought grant of custody of 2nd petitioner on that day, i.e., 19.07.2016, for renewal of Passport.

20. Thereafter, reply-affidavit was filed by 1st petitioner denying the said allegations. It was contended that the order dt.17.11.2015 was passed in the presence of respondent's counsel, and the respondent directly addressed a *Fax* dt.19.11.2015 to the Assistant Registrar of this Court that he had taken appointment on 10.11.2015 with the United States Consulate for renewal of Passport, and that he

had re-scheduled the same to 29.12.2015, but he never came to India on those dates, and he had deliberately mislead the Court.

21. It was further pointed out that the respondent had addressed a letter dt.10.11.2015 to the Sub-Inspector of Police, Women Police Station, D.D., C.C.S., Hyderabad stating that he would not be in a position to appear before them for investigation for a minimum of two months since he cannot apply for leave as he is handling a new project. It was therefore contended that respondent is making false allegations that the 1st petitioner did not co-operate with him.

22. The 1st petitioner also denied that she had any knowledge about the Power of Attorney executed in favour of the respondent's father by the respondent. She stated that though the respondent took a plea that he took appointment with United States Consulate on 19.07.2016 for making appearance of the 2nd petitioner before the United States Consulate, the respondent had left India on 16.07.2016 itself, and he never informed the 1st petitioner about taking such an appointment or about his trip to India. It was stated that during the entire trip of the respondent in India, the respondent did not meet the 2nd petitioner or evince any interest to meet him, leave alone getting his Passport renewed. It was denied that giving a consent form for renewal of the 2nd petitioner's United States Passport would amount to violation of any order passed by the Superior Court of Justice, Ontario, Canada.

23. This matter had appeared before this Court on 05.03.2019, the counsel for respondent was absent.

24. The matter was then adjourned to 06.03.2019 in the 'Motion List'.

25. The cases did not reach on 06.03.2019, and they reached to-day, i.e., on 07.03.2019.

26. In the morning session, the matters were passed over to afternoon session to enable the counsel for respondent to appear and make submissions. But, in the afternoon session also he did not turn up, and it is therefore, construed that he has no submissions to make on behalf of the respondent.

27. The counsel for petitioner submitted that a final order had also been passed on 01.03.2018 by the Court of Justice, Ontario, but an appeal was preferred against the said order by the 1st petitioner, and the Court of Appeal for Ontario allowed the said appeal on 10.09.2018 and set aside the order of the Court of Justice, Ontario dt.01.03.2018; and though the respondent sought to file an appeal before the Supreme Court of Canada, leave was refused to the respondent on 10.01.2019. These documents were filed along with I.A.No.1 of 2019.

28. There is no answer to these documents by respondent or his counsel who are both absent.

29. Since the only impediment stated in the counter-affidavit filed by the respondent to complying with the interim order passed by this Court is the interim order passed by the Court of Justice, Ontario on 09.10.2014 which merged with the final order passed therein on 01.03.2018, and since it was admittedly set aside on 10.09.2018 by the Court of Appeal for Ontario, there cannot be any impediment for the respondent to comply with the direction granted by this Court on 17.11.2015.

30. That apart, as pointed out by the counsel for petitioner, the Court below could not have simply accepted the Memo filed by respondent and closed the I.A.No.691 of 2015 and it ought to have ensured that respondent co-operated for renewal of 2nd petitioner's United States Passport by giving the requisite documents, or otherwise 2nd petitioner would lose his status as a legal emigrant.

31. Therefore, the order dt.28.09.2015 passed in I.A.No.691 of 2015 in O.P.No.1022 of 2013 on the file of the Additional Family Court, at Hyderabad, is set aside. The Civil Revision Petition is allowed, and the respondent is directed to send the documents required by petitioners for getting the passport of 2nd petitioner renewed, both by way of e-mail and by hard copies through courier within one (01) week from the date of receipt of a copy of this order.

32. Accordingly, the Civil Revision Petition is allowed as above.
No order as to costs.

C.C.No.2256 of 2015 :

33. Coming to the Contempt Case, since petitioners have alleged that there is a willful disobedience of the order dt.17.11.2015 passed in Civil Revision Petition No.4578 of 2015 by respondent, and no counter-affidavit has been filed in the Contempt Case denying the said allegations, and the conduct of respondent, as referred to supra, suggests that he had no intention to comply with the said interim order and the excuse given by him for not complying with it, i.e., pending litigation in the Canadian Courts, cannot be any defence once all those proceedings have been closed, the Contempt Case is allowed.

34. The respondent is held to have willfully and deliberately disobeyed the order dt.17.11.2015 passed in Civil Revision Petition No.4578 of 2015 and is sentenced to pay a fine of Rs.2,000/- within four (04) weeks from the date of receipt of copy of this order, and in default, he shall suffer simple imprisonment for one (01) month.

35. As a sequel, miscellaneous petitions pending if any in Civil Revision Petition and Contempt Case, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 07.03.2019

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