IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE TWENTY EIGHTH DAY OF DECEMBER TWO THOUSAND AND TWENTY

PRESENT
THE HONOURABLE JUSTICE G SRI DEVI

CIVIL REVISION PETITION NO: 233 OF 2020

Petition under Article 227 of Constitution of India, aggrieved by the Order dated 18/12/2019 in IA No.270/2019 in GWOP No.03/2019 on the file of the Court of the Judge, Family Court at L.B.Nagr, Ranga Reddy District.

Between:

1. Bhavana Jawhare, W/o Siddharth Jawhare,
2. Satish Kumar Nilangekar,
3. Rupa Nilangekar, W/o Satish Kumar Nilangekar,

...REVISION PETITIONERS/ DEFENDANTS NO.1 TO 3

AND

Siddharth Jawhare, S/o Lakashman Rao Jawhare,

...RESPONDENT/ PLAINTIFF

IA NO: 1 OF 2020

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to grant interim suspension of the order passed in I.A.No. 270/2019 in GWOP No. 03 of 2019 dated 18/12/2019 on the file of Hon'ble Judge, Family Court at L.B.Nagar, Ranga Reddy District.

IA NO: 2 OF 2020

Petition under Section 151 of CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to fix an early date of hearing to dispose of the matter in dispute in the present Civil Revision Petition.

For the Petitioners : M/s. SAGARIKA LOYA, Advocate

For the Respondent : SRI SURESH SHIV SAGAR, Advocate

The Court made the following: ORDER

THE HONOURABLE JUSTICE G. SRI DEVI

CIVIL REVISION PETITION No. 233 of 2020

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order, dated 18.12.2019 passed in I.A.No.270 of 2019 in G.W.O.P.No.03 of 2019 on the file of the Judge, Family Court at L.B.Nagar, Ranga Reddy District, wherein and whereunder the application filed by the respondent herein seeking custody of his minor female child was allowed.

The facts in nutshell are as under:

The 1st petitioner is the wife of the respondent, whereas petitioners 2 and 3 are the parents of the 1st petitioner. The respondent filed G.W.O.P.No.3 of 2019 seeking a direction to the petitioners to handover custody of Riddhima, who is the daughter of the respondent and the 1st petitioner, aged about 4 years to the respondent herein. During pendency of the said G.W.O.P., the respondent herein filed I.A.No.270 of 2019, seeking a direction to the petitioners herein to permit him to take his daughter Riddhima from the house of the petitioners to his house for three hours on every Saturday and Sunday from 5.00 P.M. to 8.00 P.M. The contents of the affidavit filed in support of the petition, would show that the 1st petitioner is the legally wedded wife of the respondent and their marriage was performed on 17.03.2012 as per Hindu Rites and Customs at R.T.C. Kalyana Mandapam, Musheerabad, Hyderabad;

that the said marriage was consummated and out of wedlock they blessed with a female child by name Riddhima on 23.01.2014. It was also stated that for few months, both the 1st petitioner and the respondent led cordial conjugal life and subsequently minor differences cropped up between them and the elders of the community tried to settle the same amicably and that to a great extent they lived harmoniously except some minor issues. It was further stated that while things stood thus, in April, 2017, the 1st petitioner left the matrimonial company of the respondent herein to her parents house, along with the minor child; that though the elders of the community on many occasions tried to bring the 1st petitioner and the minor child to the matrimonial house of the respondent, but of no avail. It was also stated that in April, 2018, the respondent visited the house of petitioners 2 and 3, where the 1st petitioner was residing along with his daughter and took his daughter with him in spite of protest from the petitioners. The 1st petitioner along with petitioners 2 and 3 lodged a police complaint against the respondent and created huge hue and cry, due to which he agreed to send his daughter to the petitioners' place on the assurance of the petitioners that they will soon allow him to take his daughter to his house; that the petitioners, however, did not keep up their promise and many times, the respondent visited Pallavi Aware International School, Saroornagar, Hyderabad, in which his daughter was admitted in U.K.G. to see her and to ascertain her progress in studies, but the

school authorities at the instance of the petitioners have refused to disclose any information and denied permission to meet his daughter and that on 18.08.2018, the respondent knocked the door of police, but in vain and that he came to know that in the month of July, 2018 the 1st petitioner had left to Canada purportedly for higher studies without his knowledge and that the respondent tried to talk the 1st petitioner through cell phone, but she changed her phone number. It was further stated that a girl of four years must need love, affection and care of both the parents, however, the 1st petitioner left her in the custody of petitioners 2 and 3, who are aged about 60 years and that 2nd petitioner is a diabetic patient and also suffers from high blood pressure and, therefore, the environment is not conducive for upbringing of his daughter. It was further stated that in the absence of the 1st petitioner, the respondent being a father is the best person to look after the welfare of his daughter and, therefore, prayed to issue a direction to the petitioners to permit him to take his daughter Riddhima from the house of the petitioners for three hours on every Saturday and Sunday from 5.00 P.M. to 8.00 P.M.

2nd Petitioner herein, who is the father of the 1st petitioner, filed a counter-affidavit, *inter alia*, contending that the respondent herein did not have any job at the time of marriage and even after the marriage, he did not make any attempts to secure job and he is dependent on his parents; that the mother of the respondent is in the

habit of making quarrels for every small and petty issues and it leads to lengthy arguments among their family members and his daughter (1st petitioner) suffered lot of mental agony and hardship due to their non-cooperative behaviour; that the parents of the respondent did not have love and affection towards Riddhima for the reason of being female child and that the respondent also did not have natural love and affection towards the child and failed to provide necessary medical care; that the respondent manhandled the 1st petitioner publicly on 01.04.2018 in front of his residence and he grabbed his granddaughter from the hands of the 1st petitioner, abused and slapped the 1st petitioner and fled away along with his granddaughter; that the 1st petitioner filed a counselling petition in Bhagat Singh Nagar Women Police station and after counselling, the 1st petitioner asked the respondent to pay his daughter's school fee, but the respondent did not pay the same and did not evince any interest to take Riddhima outside every week; that after coming to know that the 1st petitioner had gone to Canada, the respondent started harassing the 1st petitioner through e-mails asking her to sponsor his Visa to Canada; that despite going through all the harassment and torture from the respondent, the 1st petitioner keeping in mind her child's welfare offered to sponsor Visa to the respondent as a dependent to her to Canada, along with their child Riddhima; that the respondent put an unreasonable condition that the child should live with him and his parents in his residence at

Hyderabad for few months; that the child is not in a position to stay with the respondent as she is petrified at the sight of her father; that without considering the request of the 1st petitioner to furnish necessary papers, again the respondent wanted the kid to join with him before coming to Canada; that the mail correspondence between the respondent and the 1st respondent clearly indicates the immature and illogical thinking of the respondent, whose main aim is to harass the 1st petitioner under the guise of the custody of the child and that therefore, the petition is not maintainable and the same is liable to be dismissed with exemplary costs.

After considering the rival submissions, the Court below allowed the said petition. Challenging the same, the present Civil Revision Petition is filed by the petitioners, who are wife and in-laws of the respondent.

Heard Ms. Sagarika Mundra, learned Counsel for the petitioners, Sri Suresh Shiv Sagar, learned Counsel for the respondent and perused the record.

It has been submitted by the learned Counsel for the petitioners that the order, dated 18.12.2019 passed in I.A.No.270 of 2019 in G.W.O.P.No.3 of 2019 on the file of the Judge, Family Court at L.B.Nagar, Ranga Reddy District, is illegal and contrary to law; that the Court below erred in allowing the I.A.No.270 of 2019 basing on the wrong conclusions; that the Court below has gone beyond the

scope and allowed the petition for a prayer which was not made in the petition; that the petition was filed for visitation rights on particular days, however, the Court below has erroneously granted the custody of the child to the father; that the Court below failed to consider the oral and documentary evidence produced by the petitioners; that the Court below failed to appreciate the fact that the 1st petitioner has gone to Canada for higher studies so that she can get better career prospects and in turn, providing better life to the child; that ever since the separation of the 1st petitioner and respondent, it is only the parents of the 1st petitioner who have been taken care of all the finances of the 1st petitioner and her child except for some minor expenses, which has been incurred by the respondent. It is also submitted that it is not out of place to mention that all the educational expenses of the 1st petitioner and her child have been incurred by her father; that the contention of the respondent that the 2nd petitioner is a diabetic patient and has undergone a surgery is simply a sheer misuse of the facts; that the sugar levels and blood pressure of the 2nd petitioner have been constantly at the normal phase and the same can be verified with the medical reports of the 2nd petitioner; that the 2nd petitioner has undergone a surgery for knee replacement, which has gone absolutely successful and has actually enhanced his ability to walk and the same can be certified by the doctor and that the 3rd petitioner is even though aged, however, she is absolutely healthy

and she does not suffer from any illness whatsoever; that the parents of the respondent are more aged than the parents of the 1st petitioner and they themselves expressed their unwillingness to keep the custody of girl child when requested by the 1st petitioner and that the child will be actually staying with the paternal grandparents instead of maternal grandparents as was the case before the custody was granted and that the respondent will be available only on the weekends for which visitation rights would suffice the purpose. In support of her contentions, she relied on the judgment of the Apex Court in ***Nil Ratan Kundu and another v. Abhijit Kundu***[1].

Learned counsel for the respondent would submit that as the father is the natural guardian under Section 6 of the Hindu Minority and Guardianship Act, (32 of 1956) and as the mother of the child is at Canada for her higher studies, the Court below has rightly passed the impugned order and that there are no grounds warranting interference of this Court. He further submits that the Court below has given liberty to the mother of the child i.e., 1st petitioner to file a petition for the custody of the minor child or for the visitation of the child, if she returns to India and intends to have the custody of the child.

The only point that arises for consideration in this Civil Revision Petition is whether the Court below has right in granting custody of the minor child in favour of the respondent/father?

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[1] (2008) 9 SCC 413

Whenever a question arises before Court pertaining to the custody of a minor child, the matter is to be decided not on considerations of the legal rights of parties, but on the sole and predominant criterion of what would best serve the interest and welfare of the minor.

It is the objective of the Guardian and Wards Act that every trial is only to ensure paramount welfare and interest of the children. The guardianship Court is not a platform where litigating parties can be permitted to vent their grudges and feelings against each other and that matters and relevant is as to what would be done to secure the welfare and interest of the minors since in all the guardianship cases it is the minors only who are the victims even though they have no role to play in the failed marriages of their parents.

It is not in dispute that the 1st petitioner and respondent are wife and husband and their marriage was performed on 17.03.2012. The minor child was born to the 1st petitioner and respondent during their wedlock. Admittedly, due to the differences between the 1st petitioner and respondent, the minor child was carried along with the 1st petitioner to her parents' house. However, the 1st petitioner being the mother of the child left the custody of the child with her parents and went abroad for her higher studies in the month of July, 2018. Admittedly, in the case on hand, the conflict is

between the mother and father regarding custody of minor, in such case, it is the duty of the court to take into consideration, the welfare of the minor which is the paramount consideration. Under Sections 7 and 10 of Guardian and Wards Act, the golden principle eloquent as the luminous pole star in the entire gamut of the enactment in the matter of any adjudication relating to guardianship of the Ward is the rule that the welfare of the children is the paramount consideration, not the rights of the parents.

The Courts time and again held that the paramount consideration for custody of minor children or for appointment of guardian for the minors is the welfare of the minors. It is well settled that in matter concerning a minor has to be considered and decided only from the point of view of the welfare and interest of the minor. In dealing with a matter concerning a minor, the Court has a special responsibility and it is the duty of the Court to consider the welfare of the minor and to protect the minor's interest. In considering the question of custody of a minor, the Court has to be guided by only consideration of the welfare of the minor. Thus, the father's fitness cannot override the consideration of the welfare of the child. In case, where the minor has another settled home, the fundamental question is whether the minor should be uprooted from the said settled home. In doing so the Court is not to pass a mechanical order. The court is always to see the parents, consult the wishes of the minor, keeping in view that the happiness of a child

depends upon her playmates i.e., associates, her work, her school and finally at her home where she gets all the love and affection which a child needs for her proper growth.

While considering the provisions of the Guardian and Wards Act, the Apex Court in the case of ***Jitender Arora v. Sukriti Arora***[2] held as under:

> "15. We also had interaction with Vaishali in the chambers earlier. On the date of hearing also, Vaishali was present in the Court and in front of her parents, she unequivocally expressed that she was happy with her father and wanted to continue in his company and did not want to go with her mother, much less to UK. From the interaction, it is clearly discernible that she is a mature girl who is in a position to weigh the pros and cons of two alternatives and to decide as to which course of action is more suited to her. She has developed her personality and formed her opinion after considering all the attendant circumstances. Her intellectual characteristics are adequately developed. She is able to solve problems, think about her future and understands the long-term effects of the decision which she has taken. We also find that she has been brought up in a conducive atmosphere. It, thus, becomes apparent that in the instant case, we are dealing with the custody of a child who is 15 years of age and has achieved sufficient level of maturity. Further, in spite of giving ample chances to the respondent by giving temporary custody of Vaishali to her, the respondent has not been able to win over the confidence of Vaishali. We, therefore, feel that her welfare lies in the continued company of her father which appears to be in her best interest.

[2] (2017) 3 SCC 726

17. On the facts of the present case, we are convinced that custody of the child needs to be with the father. She is already 15 years of age and within 3 years, she would be major and all this custody battle between her parents would come to an end. She would have complete freedom to decide the course of action she would like to adopt in her life. We, thus, allow this appeal and set aside the judgment of the High Court. No costs."

In ***Nil Ratan Kundu v. Abhijit Kundu*** (1 supra), which was relied upon by the learned Counsel for the petitioners, the Apex Court held as under:

"52. In our judgment, the law relating to custody of a child is fairly well settled and it is this: in deciding a difficult and complex question as to the custody of a minor, a court of law should keep in mind the relevant statutes and the rights flowing there from. But such cases cannot be decided solely by interpreting legal provisions. It is a human problem and is required to be solved with human touch. A court while dealing with custody cases, is neither bound by statutes nor by strict rules of evidence or procedure nor by precedents. In selecting proper guardian of a minor, the paramount consideration should be the welfare and well-being of the child. In selecting a guardian, the court is exercising parents patriae jurisdiction and is expected, nay bound, to give due weight to a child's ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored. They are equally, or we may say, even more important, essential and indispensable considerations. If the minor is old enough to form an intelligent preference or judgment, the

> court must consider such preference as well, though the final decision should rest with the court as to what is conducive to the welfare of the minor."

In the aforesaid case, the boy was nine years old and he was matured enough and he appeared to be quite intelligent. When the Court asked him whether he wanted to go to his father and to stay with him, he unequivocally refused to go with him or to stay with him. He also stated that he was very happy with his maternal grandparents and would like to continue to stay with them.

In the present case the minor girl is aged about four years. It is the contention of the petitioners that the minor girl is afraid of the respondent and is not in a position to stay with him even for few hours and that she is petrified at the sight of her father or either of his parents. At this stage, it is relevant to refer to the reasoning given by the Court below at paragraph No.10 of the impugned order, dated 18.12.2019, which reads as under:

> "On production, the baby used to start crying to the notice of the Court when the case was called. It is noticed that no tears were coming from the eyes of the baby and it was only the voice of cry that was coming from the mouth of the baby." Having felt that the baby was tutored to cry on seeing the father, this Court initiated measures to make the baby sit comfortable along with her grandparents and the father in the Chamber of the Officer under the supervision of one of the staff members and a woman Home Guard. After one or two sittings, it is noticed that the baby was comfortable with the father in the absence of grandparents as such it could be said that it was not out of fear or for any

> other reason the baby was crying on seeing her father but for the instructions and the signals given by the grand parents she resorted to act and to cry when this petition was taken up in the public Court. In the said circumstances, I am of the impression and belief that the girl will be comfortable in the company of her father, who is making her to play, to convince, to entertain and to attend on her in the absence of the petitioners herein."

On careful perusal of the impugned order, it clearly depicts that the reasoning given by the Court below at paragraph No.10 of the impugned order is consistent. Therefore, the citation relied upon by the learned Counsel for the petitioner is not at all helpful to the petitioners.

Apart from that, the 1st petitioner, who is the mother of the minor child, left the custody of the girl child with her parents and went to Canada way back in the month of July, 2018 and the maternal grandparents of the minor child are aged persons. Further, the Court below while granting custody of the minor child to the respondent, has given a categorical finding that if the 1st petitioner, who is the mother of the minor child, returns to India and intends to have the custody of the minor child or for visitation of the child, she is at liberty to file a petition for the said relief and thereafter the Court below may consider the same and pass orders, on merits. Under the Guardians and Wards Act, 1890, the father is the guardian of the minor child until he is found unfit to be the guardian of the minor child. At the time of enquiry, no evidence

whatsoever has been placed before the Court below. There is nothing on record to show that the respondent is not a fit person to be a guardian to his minor daughter and that no allegations against his abnormal behaviour have been made. Therefore, taking into consideration the facts and circumstances of the case, I see no illegality or material irregularity has been committed by the Court below in granting interim custody of the minor child to the respondent and that there is no ground to interfere with the order passed by the Court below.

Accordingly, the Civil Revision Petition is dismissed. However, if the 1st petitioner/mother returns to India from abroad, she is at liberty to file a petition seeking custody of the minor child or for the visitation of the minor child, as observed by the Court below, and on such petition being filed, the Court below shall consider the same and pass appropriate orders on merits, keeping in view the prevailing circumstances of the case.

As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

Sd/-K.AMMAJI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Judge, Family Court at L.B.Nagar, Ranga Reddy District.
2. One CC to M/s. Sagarika Loya, Advocate (OPUC)
3. One CC to Sri Suresh Shiv Sagar, Advocate (OPUC)
4. Two CD Copies

Kj.

HIGH COURT

DATED:28/12/2020



ORDER

CRP.No.233 of 2020

Dismissing the CRP.

3SV
5 copies
Dt 30/12/2020