

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION Nos.484 and 509 of 2021

COMMON ORDER:

Both these Revisions arise out of the common order dt.11-01-2021 in I.A.No.572 of 2020 in I.A.No.255 of 2018 in O.P.No.1365 of 2017 of the Judge, Additional Family Court at Hyderabad.

2. Parties are husband and wife by name T.Shashidhar and T.Divya.
3. The said O.P. had been filed under Section 25 of the Guardian and Wards Act r/w Section 7(C) of the Family Courts Act by T.Shashidhar/ the petitioner in C.R.P.No.484 of 2021/respondent in CRP.No.509 of 2021 against T.Divya / respondent in the said C.R.P.No. 484 of 2021/ petitioner in CRP. no.509 of 2021 for custody of the minor boy Master Tilkam Naga Devansh, born on 10-08-2011 and who is currently aged about 9 years.
4. Pending the said O.P., T.Shashidhar had filed I.A.No.255 of 2018 for visitation rights and the Court below granted visitation rights on every 2nd Sunday of the month between 11 a.m. to 3 p.m.
5. T.Shashidhar filed I.A.No.572 of 2020 to modify the said order on the ground that at the time when I.A.No.255 of 2018 was decided he was employed at Dehradun, but subsequently he has been transferred to Rajahmundry, East Godavari District in the State of Andhra Pradesh and is now in a position to have easier visitation facilities because of the lesser distance to Hyderabad, where the child and his mother T.Divya reside.

6. In I.A.No.572 of 2020, he wanted interim custody of the child on every second Saturday and Sunday of every month from 9 a.m. on Saturday to 5 p.m. on Sunday by permitting him to pick up the minor child from T.Divya and handing him back to her; and also to avail half the period of interim custody of minor child during Summer vacation, Dussera vacation, Deepavali festival, Christmas vacation, Sankranthi vacation and during the birthday of the minor child which falls on 10th August of every year.

7. T.Divya opposed the modification of the said order and alleged that because of Covid-19 pandemic, it is not desirable or safe to allow T.Shashidhar, the modifications in the visitation rights sought.

8. On 11-01-2021, the Court below partly allowed I.A.No.572 of 2020 as under:

“10. In the result, petition is partly allowed and the petitioner can have visitation rights of the child on every 2nd Sunday of the month between 11 a.m. to 5 p.m. till the minor boy attain majority. Petitioner can have interim custody of the minor boy for summer vacation for a period of one week with prior intimation to the respondent till the minor boy attain majority. Petitioner can visit minor boy on Diwali and Christmas festivals from 10 a.m. to 12 noon till the minor boy attain majority. Petitioner can visit minor boy between 5 p.m. to 6 p.m. on the birthdays of the child till he attain majority. Petitioner should follow strict guidelines of W.H.O. in respect of covid-19 and he further directed not to shift minor child from Hyderabad. Other reliefs prayed by the petitioner are dismissed.”

9. Smt.S.Vani, learned counsel appearing for T.Shashidhar contends that the Court below could not have passed orders for visitation *till the boy attains majority*, and at best can pass orders during the pendency of

the O.P.; and the Court below should have taken note of the change in his work place from Dehradun to Rajahmundry, East Godavari District in Andhra Pradesh, which is close-by to ensure that visitation takes place for a reasonable period.

10. Smt.S.Vani, learned counsel appearing for T.Shashidhar contends that the order passed by the Court below requires modification since the petitioner, who is father of the child, cannot be granted such limited rights as were granted by the Court below even during the vacations of the child.

11. Sri M.V.S.Suresh Kumar, learned Senior Counsel for Sri Srinivas Velagapudi, learned counsel for T.Divya contended that this Court as well as the Court below would have to ascertain the views of the minor boy while granting visitation rights. According to him, the minor boy requires constant attention of the mother and over night stay of the boy with his father is not desirable. Certain allegations against T.Shashidhar have also been made.

12. Smt.S.Vani, learned counsel for T.Shashidhar refuted these allegations and contended that T.Divya is not interested in T.Shashidhar developing any bond with the child and is unnecessarily stating that it would be risky to allow the child to stay overnight with him.

13. It is settled law that welfare of the child is paramount consideration even while granting temporary custody, and the Courts' duty is also to ensure that both the parents have an opportunity to bond with the child and one parent does not poison the mind of the child against the other non-custodial parent if circumstances exist in which visitation rights are

possible by ensuring that the health and safety of the child are not compromised in any manner.

14. Firstly, I am of the opinion that the Court below while passing orders in I.A.No.572 of 2020 modifying its earlier order passed in I.A.No.255 of 2018 ought not to have said that the arrangement being made by it in its order dt.11-01-2021 in I.A.No.572 of 2020 should hold *good till the minor boy attains majority*. Admittedly, the boy is not even 10 years old and it will take considerable time for him to attain majority and O.P. might not be pending till then.

15. Secondly, I am also of the opinion that the T.Shashidhar being the father of the child, cannot be deprived of company and affection of the child, and child also cannot be deprived of the company and affection of his father merely because T.Divya is worried about Covid-19 pandemic and possibility of the child getting infected and so does not wish to allow T.Shashidhar, the child visitation opportunities.

16. It is not in dispute that visitation rights had been granted earlier several times during weekends between 11 am and 3 pm even when T.Shashidhar was employed in Dehradun, Uttarakhand State.

17. Now, since T.Shashidhar is employed closer to Hyderabad at Rajahmundry, and Smt. S.Vani, learned Counsel appearing for T.Shashidhar states that his family has a house in Hyderabad as well, and since vacation of the child is going to start on 28-04-2021 till 12-06-2021, I am of the opinion that the interest of justice would be served in disposing of both the Revisions with the following directions:

(a) T.Shashidhar shall have temporary custody of the child Naga Devansh during summer vacation from 28-04-2021 to 12-06-2021 every alternative week i.e. for the period 02-05-2021 to 08-05-2021, 16-05-2021 to 22-05-2021 and 30-05-2021 to 05-06-2021 at Hyderabad by taking the child from the custody of T.Divya on 02-05-2021, 16-05-2021 and 30-05-2021 at 10 a.m. and handing back the child to her by 6 p.m. on 08-05-2021, 22-05-2021 and 05-06-2021 respectively;

(b) during this period, when the child is with T.Shashidhar, the child shall be allowed to communicate with T.Divya at least two times through a video phone call or WhatsApp call as desired by the child at times to be agreed between the parties;

(c) T.Shashidhar should, while the child is in his custody, strictly follow the guidelines of W.H.O. in respect of Covid-19 pandemic and should not shift the minor child from Hyderabad under any circumstances without permission of this Court;

(d) Any health issue with regard to the child, shall immediately be brought to the notice of T.Divya and immediate medical attention should be provided to the child, in case of such need;

(e) after 12-06-2021, petitioner shall have temporary custody at Hyderabad on every 2nd Sunday and 4th Sunday of each month between 11 a.m. to 5 p.m. He shall be given by T.Divya the custody of the child at 11 a.m. and he shall redeliver the child back to her at 5 p.m.; and

(f) In regard to Dusserah and Christmas vacations, for first half of the vacation, the child shall stay with T.Shashidhar at Hyderabad and for the other half of the said vacation, he would spend with T.Divya.

(g) It is open to both parties to approach this Court or the Judge, Family Court, Hyderabad for any modification of this order, in case any difficulty in implementing them.

(h) Counsel appearing for both parties shall ensure that this arrangement is implemented without any hitch by appropriately counselling their respective clients.

18. Both the Civil Revision Petitions are disposed of as above. No costs.

19. Consequently, miscellaneous petitions, pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 28-04-2021

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