

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**TUESDAY, THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 1266 OF 2024

Petition under Article 227 of the Constitution of India aggrieved by the Order dated 02-01-2024 made in I.A.No.781 of 2023 in G.W.O.P.No.11 of 2023 on the file of the Court of the Principal Family Court at Secunderabad.

Between:

Pattan Arshiya, W/o. Shaik Vaseem Akram, Aged about 30 years, Occ. Service, R/o.Flat No.405, 5th floor, Guruhalaxmi Towers, P and T Colony, Dilshuknagar, Hyderabad

...Revision Petitioner / Petitioner / Respondent

AND

Shaik Vaseem Akram, S/o Shaik Saleem, Aged about 33 years, Occ. Pvt. Service, R/o. Flat No.106, Opp. Ranganadha Kalyana, Srikala Enclave Apts., Nellore, Presently residing at Plot No.7, Sy.No.100, Silver Spring Cold, Lalbazar, Secunderabad, T.S.

...Respondent No 1 / Respondent / Petitioner

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in G.W.O.P.No.11 of 2023 on the file of Principal Family Court, at Secunderabad pending disposal of the above revision Petition.

Counsel for the Petitioner : Sri K Pradeep Reddy

Counsel for the Respondent : Sri Syed Ahmed Ali

The Court made the following Order :

THE HONOURABLE SMT. JUSTICE K. SUJANA

CIVIL REVISION PETITION No.1266 of 2024

ORDER:

Challenging the order dated 02.01.2024 passed in I.A.No.781 of 2023 in G.W.O.P.No.11 of 2023 by the learned Judge, Principal Family Court, Secunderabad, the present Civil Revision Petition is filed.

2. The brief facts of the case are that the petitioner is the mother of minor son by name Nihaaz Ain Shaik, filed a petition under the Guardians and Wards Act seeking ad-interim custody of her child, alleging that she was subjected to harassment, mental agony, and dowry demands by her husband and his family. She claimed that despite her efforts to lead a happy marital life, her husband and in-laws continued to torment her, forcing her to leave the marital home and seek refuge with her parents. However, the respondent-husband countered these allegations, asserting that the marriage was arranged and dowry-free. He claimed that the petitioner was disobedient, frequently picked quarrels, and made unacceptable demands, causing him and

his family immense distress. Despite his efforts to reconcile and persuade her to return home, the petitioner refused and instead filed a false dowry harassment case against him. The trial court after hearing both sides, vide order dated 02.01.2024, observed that the minor child was happy and well-cared for in the custody of the respondent. The trial Court noted that the petitioner had not demonstrated sufficient good faith or taken earlier steps to regain custody of her child. Consequently, the court dismissed the plea of the petitioner for interim custody, allowing her visitation rights with the child every second Saturday and Sunday instead. Aggrieved by the said order, the present civil revision petition is filed.

3. Heard Sri K. Pradeep Reddy, learned counsel appearing on behalf of the petitioner as well as Sri Syed Ahmed Ali, learned counsel appearing on behalf of the respondent.

4. Learned counsel for the petitioner submitted that the impugned order dated 02.01.2024 passed by the trial Court is bad in law and vitiated by material irregularities and that the petitioner, being the mother of the minor child Master Nihaaz Ain Shaik, aged 3 years and 10 months, is entitled to the child's custody. It is further submitted that the respondent-

husband took custody of the child forcefully, and despite the complaints of the petitioner, the authorities failed to take action. The trial Court failed to appreciate the facts on record and ignored the respondent's admission of taking the child away forcefully.

5. Learned counsel for the petitioner contended that the medical records of the petitioner, which were not placed before the trial court, clearly show that she had undergone abortions due to health issues, contrary to the claims of the respondent. He further contended that the petitioner, as the natural guardian, is entitled to the child's custody, and the actions of the respondent are driven by ill intentions. The petitioner is willing and able to provide love, care, and affection to the minor child with the support of her parents. Therefore, she prayed the Court to set aside the order of the trial Court by allowing this Civil Revision Petition.

6. *Per contra*, learned counsel for the respondent submitted that the minor child is unwilling to go with the mother, as he is scared of her. The counsel pointed out that the petitioner had voluntarily left the company of the respondent and has been living separately, while the

respondent has been taking care of the child. The child has been attending a nearby school and has shown no interest in visiting his mother, even during the two designated visitation days. The counsel argued that granting custody to the petitioner would not be in the child's best interests and prayed for the dismissal of the civil revision petition.

7. Considering the submissions made by both the learned counsel and the a perusal of the material available on record, the trial court granted the mother visitation rights every second Saturday and Sunday in an interim application i.e., I.A.No.781 of 2023 filed in the ongoing Guardianship and Wards Proceedings (GWOP) initiated by the husband. Notably, the petitioner did not file any petition for visitation rights or guardianship of the minor child before filing the GWOP. Since 26.03.2023, the minor child has been in the custody of the father. The primary contention of the petitioner is that, as the age of the child is three years and ten months, the mother should be the guardian, as per the Mohammed case law. The Hon'ble Supreme Court in Mohammed vs. Nisha held that in cases where the child is below 7 years old, the mother is the natural guardian, and her custody is in the

best interest of the child. However, the trial Court dismissed the petition without considering the judgment, granted only visitation rights for two days. The main GWOP is still pending, and the trial court will decide the guardianship issue. This petition sought interim custody, but the trial court granted visitation rights instead, considering the age of the child and the need for gradual adjustment. In light of the submissions made by the petitioner, the visitation rights are modified to every Saturday from 2 pm to 5 pm at the previously designated venue.

8. Accordingly, this Civil Revision Petition is allowed setting aside the order dated 02.01.2024 passed in I.A.No.781 of 2023 in G.W.O.P.No.11 of 2023 by the learned Judge, Principal Family Court, Secunderabad. There shall be no order as to costs.

Miscellaneous applications, if any pending, shall stand closed.

Sd/- P. CH. NAGABHUSHAMBA
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Judge, Principal Family Court, Secunderabad
2. One CC to Sri K Pradeep Reddy, Advocate [OPUC]
3. One CC to Sri Syed Ahmed Ali, Advocate [OPUC]
4. Two CD Copies

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HIGH COURT

DATED:04/02/2025

ORDER

CRP.No.1266 of 2024



ALLOWING THE CRP

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19/02/25
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