

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

FCA.No.86 of 2015

-

Between:

Ponnekanti Sri Venkata Ram Krishna Prasad

...Appellant

and

Usha Anantha Padmanabhan and another

...Respondents

DATE OF JUDGMENT PRONOUNCED: 05.08.2015

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE R.SUBHASH REDDY
and
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA**

-

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? Yes/No

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY
and
THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

FCA.No.86 of 2015

-
JUDGMENT: (per RSR, J)

This appeal is filed under Section 19 of the Family Courts Act, 1984 by the petitioner in F.C.O.P.No.654 of 2012, aggrieved of the order and decree, dated 14.09.2014 passed by the learned Judge, Family Court, Secunderabad.

The appellant and the first respondent herein were married in the year 2000 and they were blessed with a daughter, named as, Shreya Ponnekanti, on 01.02.2002. They were residing in USA for some time. Thereafter, the appellant came back to India and the first respondent along with the child continued to remain in USA. It is stated that the first respondent also obtained divorce in American Court.

The appellant herein filed F.C.O.P.No.654 of 2012 before the Family Court, Secunderabad, seeking to declare him as natural guardian of the minor child and to restore her custody. The Court below dismissed the said F.C.O.P. by the impugned order and decree mainly on the

ground that the appellant herein was absent when the matter was called and that the minor child is staying with the first respondent in America.

As there was delay in filing the appeal, the appellant has filed FCA.MP.No.486 of 2014, in which, notice sent to the first respondent was returned with an endorsement 'unclaimed' and further notice sent through E-Mail was served. There was no appearance for the first respondent. Subsequently, delay was condoned and the appeal is numbered. Even in the appeal, the appellant served the notice on the first respondent by E-Mail and further notices sent through courier service were returned. It appears, the first respondent is not interested to pursue the matter.

From a perusal of the impugned order, it appears that F.C.O.P. was dismissed mainly on the ground that the appellant herein was absent when the matter was called and that the child is staying with the first respondent in America.

It is the case of the appellant that subsequent to divorce obtained by the first respondent, she has married the second respondent and he apprehends that the respondents may not take care of the child properly. When the appellant claims custody of the minor child, who is undisputedly residing in America, it is a matter to be examined on merits but the F.C.O.P. cannot be dismissed merely on the ground that the child is staying with the first

respondent in America. As the Court below has not gone into the merits of the claim of the appellant and further, the appellant herein was absent when the matter was called, we deem it appropriate that it is a fit case to give further opportunity to the appellant.

Accordingly, F.C.A. is allowed and the impugned order is set aside. The matter is remanded to the Family Court, Secunderabad, with a direction to it to consider the matter afresh after issuing further notice to the respondents.

Miscellaneous Petitions, if any pending in this appeal, stand closed.

R.SUBHASH REDDY, J

5th AUGUST, 2015.

A.SHANKAR NARAYANA, J

kvni