IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE SIXTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE RENUKA YARA

CIVIL REVISION PETITION NO: 3164 OF 2024

Petition under Article 227 of the Constitution of India, Aggrieved by the orders dated 17/09/2024 in I.A. No.173 of 2024 in H.M.O.P. No. 39 of 2024 on the file of the Senior Civil Judge at Jagtial.

Between:

[redacted]

...Revision Petitioner/Respondent No.1

AND

1. [redacted]
2. [redacted]

...Respondents/Respondent

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 H.M.O.P. No. 39 of 2024 on the file of the Senior Civil Judge at Jagtial.

Counsel for the Petitioner: **M/s. ALLURI DIVAKAR REDDY, Advocate**
Counsel for the Respondent No.1: **Mr. Y. BALA MURALI, Advocate**
Counsel for the Respondent No.2: **NONE APPEARED**

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE RENUKA YARA

CIVIL REVISION PETITION No.3164 of 2024

ORDER:

Heard Sri Alluri Divakar Reddy, learned counsel for the revision petitioner and Sri Y. Bala Murali, learned counsel for respondent No.1. Perused the entire record.

2. This revision petition is filed by the revision petitioner aggrieved by the order of the learned Senior Civil Judge at Jagtial ('trial Court'), in I.A.No.173 of 2024 in H.M.O.P.No.39 of 2024, dated 17.09.2024, wherein a petition filed under Section 45 of the Indian Evidence Act, 1872, to direct respondent No.1 and baby girl by name [redacted] ('minor child') for DNA test to ascertain the paternity of the baby girl has been allowed with a direction for respondent No.1 and minor child to appear before the Director, Forensic Science Laboratory ('FSL') for DNA test within two weeks from the date of order and a direction to the Director, FSL, to conduct DNA test and submit a report to the Court.

3. The background of facts leading to filing of the present revision are that respondent No.1 filed H.M.O.P.No.39 of 2024 on the file of the trial Court under Section 13 (1) (i) (ia) of the Hindu Marriage Act, 1955, seeking dissolution of marriage between himself and the revision

petitioner. The H.M.O.P. is filed on the ground that the revision petitioner is having an extra marital relationship with respondent No.2 and that she is of quarrelsome nature continuously demanding to live separately from his parents apart from partitioning of the property with his parents. The revision petitioner allegedly never showed interest to live in the company of respondent No.1, but always went to her paternal house. Further, the revision petitioner was always having conversations over phone with respondent No.2 and used to hide the same. Finally, on 26.05.2022, the revision petitioner herein declared that the minor child is not daughter of respondent No.1, but is the daughter of respondent No.2 and respondent No.1 is father only for the society. The revision petitioner abused respondent No.1 in un-parliamentary language and sought divorce. In this backdrop, H.M.O.P. was filed seeking dissolution of marriage.

4. In said H.M.O.P., I.A. under revision is filed to collect DNA samples of respondent No.1 and minor child for DNA test to ascertain paternity of the minor child. The reason stated for obtaining such samples is that the revision petitioner declared that minor child is not daughter of respondent No.1, but daughter of respondent No.2.

5. Whereas, case of the revision petitioner is that respondent No.1 can manage the DNA laboratory and can get any report. It is alleged that

respondent No.1 does not like the revision petitioner and her minor child and is not interested to live with them, as such filed H.M.O.P. seeking dissolution of marriage. The case of the revision petitioner is that respondent No.1 collected the DNA samples and got DNA test done privately and got report in his favour and on the basis of the said report, respondent No.1 necked out the revision petitioner and minor child from his house. The revision petitioner opposed the collection of DNA samples.

6. Upon considering the case of both the parties by referring to the judgments of the Hon'ble Supreme Court of India in **Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik**[1], **Sharda v. Dharmpal**[2], **Goutam Kundu v. State of West Bengal**[3], **Dipanwita Roy v. Ronobroto Roy**[4] and **Aparna Ajinkya Firodia v. Ajinkya Arun Firodia**[5], the trial Court arrived at conclusion that though conducting of DNA test of minor child is a sensitive aspect the same has to be done where it is absolutely necessary. It is held that adultery is offence under both criminal and matrimonial laws and when the divorce petition is filed under the ground of adultery, it is necessary to prove the same and therefore, allowed the I.A. under revision.

[1] (2014) 2 SCC 576
[2] (2003) 4 SCC 493
[3] (1993) 3 SCC 418
[4] (2015) 1 SCC 365
[5] (2024) 7 SCC 773

7. Learned counsel for the revision petitioner referred to judgment of Hon'ble Supreme Court in **Aparna Ajinkya Firodia** (supra) and referred to Section 112 of the Indian Evidence Act, 1872 ('Evidence Act'), which is extracted and produced:

> **"Section 112 – Birth during marriage, conclusive proof of legitimacy:**
>
> The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."

8. On the basis of said principle of the Evidence Act, it is argued that it is not the case of respondent No.1 that he had no access to the revision petitioner during marriage for a period of eighteen months and as long as there was access, a presumption under section 112 of the Evidence Act is that a child born during continuance of a valid marriage between mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that she is the legitimate child of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when the child could have been begotten.

9. Learned counsel for respondent No.1 argued that the trial Court after considering all the aspects has passed the impugned order and there is no reason to interfere with the same.

10. It is a point to be noted that the Evidence Act was enacted in the year 1872 during British era, when the medical science was not at the advanced stage as it is in the present times. The science of DNA testing to prove paternity was not available in the 19th century. The only way of making interference was drawing presumption on the basis of access between man and woman during valid marriage. Subsequently, due to development of DNA testing, to prove paternity sometimes such a relief is granted in cases where it is necessary. While granting such relief, the Courts are extremely cautious about invading privacy of minor child. The welfare of the child is taken into consideration over and above all other circumstances. It is in this context that guidelines have been issued in **Aparna Ajinkya Firodia** (supra) case for conducting DNA tests. It is held by Hon'ble Supreme Court of India in the said case at paragraph No.43.2 as under:

> "43.2 DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-facie material to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access, in order to rebut the presumption under Section 112 of the Evidence Act. a DNA test may not be directed.

11. In the said case, it is held that if there is no pleading about non access during subsistence of marriage, the said presumption under Section 112 of the Evidence Act comes into play about legitimacy of the child. It is also held as follows:

> "**Whose rights, are to tilt the balance in the scales of justice?**
>
> 102. As rightly contended by Shri Huzefa Ahmadi, learned senior counsel for the appellant, the question as to whether a DNA test should be permitted on the child, is to be analysed through the prism of the child and not through the prism of the parents. The child cannot be used as a pawn to show that the mother of the child was living in adultery. It is always open to the respondent husband to prove by other evidence, the adulterous conduct of the wife, but the child's right to identity should not be allowed to be sacrificed.
>
> 103. It is contended by Mr. Kapil Sibal, learned senior counsel for the respondent that after all the endeavour of every Court should be to find the truth and that every party to a litigation is entitled to produce the best evidence. Enabling the party to produce the best of evidence, is part and parcel of right to fair trial. Therefore, it is contended by learned senior counsel that the refusal to subject the child to DNA test would infringe upon the respondent's right to fair trial. To buttress the contention that the right to privacy of an individual must yield to the right to fair trial of another, reliance is placed upon the decision of this Court in Sahara India Real Estate Corporation Limited vs SEBI {(2012) 10 SCC 603}.
>
> 104. Attractive as it may seem at first blush, the said argument does not carry any legal weight. The lis in these cases is between the parties to a marriage. The lis is not between one of the parties to the marriage and the child whose paternity is questioned. To enable one of the parties to the marriage to have the benefit of fair trial, the Court cannot sacrifice the rights and best interests of a third party to the lis, namely, the child.
>
> 105. Therefore, I concur wholeheartedly with my learned sister that the Family Court as well as the High Court were wrong in allowing the application of the respondent for subjecting the child to DNA test. Therefore, the appeal deserves to be allowed and

accordingly it is allowed. However, this shall not preclude the respondent-husband from leading any other evidence to establish the allegations made by him against the appellant in the petition for divorce.''

12. As per the legal ratio laid down in the above case, the need for conducting DNA test has to be seen from the prism of the child. The O.P. for dissolution of the marriage is filed between revision petitioner and respondent No.1 and the minor child is not a party to the O.P. Therefore, as per the legal ratio laid down in **Aparna Ajinkya Firodia** (supra), the child cannot be used as means to prove the adultery if any committed by the revision petitioner herein. Respondent No.1 is at liberty to adduce other evidence to prove his case of adultery against the revision petitioner. As such, the impugned order passed by the trial Court is liable to be set aside.

13. In the result, the Civil Revision Petition is **allowed** setting aside the impugned order dated 17.09.2024 in I.A.No.173 of 2024 in H.M.O.P.No.39 of 2014 on the file of the trial Court. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

SD/- G.JYOTHI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Senior Civil Judge at Jagtial.
2. One CC to M/s.. ALLURI DIVAKAR REDDY, Advocate [OPUC]

Gtd...

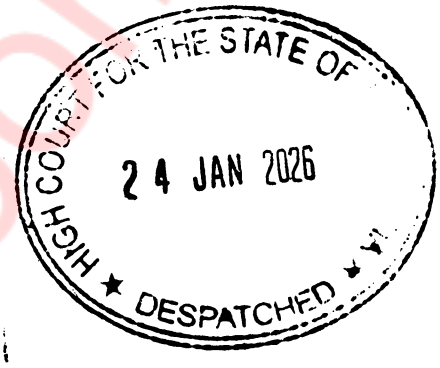
3. One CC to Mr. Y. BALA MURALI, Advocate [OPUC]
4. Two CD Copies

RC/PSL

JKS

HIGH COURT

DATED: 06/10/2025



ORDER

CRP.No.3164 of 2024

The Civil Revision Petition is Allowed.

6 JKS
6/1/26