

Karnataka High Court

Syed Rahamath Masood vs Sarvath Jabeen on 29 July, 2013

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 29th DAY OF JULY 2013

BEFORE

THE HON'BLE MR. JUSTICE A S BOPANNA

WRIT PETITION No.28449/2012 (GM-FC)

Between:

Syed Rahamath Masood  
S/o late Mir Kaleemullah  
Aged about 41 years  
R/o High Ground Floor  
Ramakrishna Residency  
L.R. Bandey, Bangalore-01 ...Petitioner

(By Sri E R Diwakar, Adv.)

And :

1. Sarvath Jabeen  
W/o Syed Rahamath Masood  
Aged about 33 years  
Occ- Working at School  
R/o No.19, 4th Cross Mohammedan  
Block, Malleswaram  
Bangalore - 560 000
2. Syeda Maseerah Fathma  
D/o Sarvath Jabeen  
Aged about 12 years
3. Syeda Nabeela Fathima  
D/o Sarvath Jabeen  
Aged about 7 years

Respondents 2 & 3 are  
rep. by their mother and  
Natural guardian  
Sarvath Jabeen the R1

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and r/at R/o No.19, 4th Cross  
Mohammedan Block  
Malleswaram

(By Sri S Chennaraya Reddy, Adv.)

This Writ Petition is filed under Articles 226 & 227 of the Constitution of India, with a prayer to quash the order passed on IA filed U/s 12 of Guardian & Ward Act & Section 19 (2) of Family Courts Act R/w Section 151 of the CPC., 1908 by the VI Addl. Prl. Judge, Family Court, at Bangalore in G & W.C.No.170/07 on 19th July 2012 directing the petitioner herein to pay amount of Rs.50,000.00, which is Ann-A, towards educational expenses within one month from the date of the order, if not made good, defense will be struck off.

This Writ Petition coming on for orders, this day, the Court made the following :

#### ORDER

The petitioner is before this Court assailing the order dated 19.7.2012 passed by the Court below on the application filed under Section 12 of the Guardian and Wards Act, 1890 r/w Section 19 (2) of the Family Courts Act, 1994.

2. The relationship between the parties is not in dispute inasmuch as the petitioner herein is the husband of the first respondent and father of respondents No.2 and

3. Due to certain marital discord between the petitioner and first respondent, they are litigating before the Court below. The instant petition emanates from the order passed in G & WC No.170/2007. By the application, the first respondent had sought for a direction to the petitioner herein to pay the educational expenses of respondents No.2 and 3. The Court below after considering the rival contentions has arrived at the conclusion that the petitioner being the father is duty bound to contribute at least 50% of the school expenses and as such has directed the petitioner to pay a sum of Rs.50,000/-.

3. Learned counsel for the petitioner strenuously and vehemently contended that the Court below was not justified. He would point out that the Court below in fact has arrived at the conclusion that the school documents indicate that the fees amounts to Rs.70,000/- and at least 50% of the same has to be contributed by the petitioner. It is pointed out that the ultimate conclusion of directing payment of Rs.50,000/- is not inconsonance with the same inasmuch as 50% would have been much lesser amount which has been indicated therein. It is his further case that the first respondent herself is an employee in the school where the respondents No.2 and 3 are studying and therefore should have made a clear disclosure with regard to the concession, if any, that is received by the first respondent and thereafter appropriate directions should have been sought. It is in that context, contended that the Court below was not justified. Learned counsel also refers to the decision of the Hon'ble Supreme Court in case of Chengalvaraya Naidu (Dead) by LRs vs. Jagannath (Dead) by Lrs & ors [1994 (1) SSC page 1] to contend that the first respondent has not approached the Court below

with clean hands and therefore should not be granted the relief.

4. Learned counsel for the respondent would however seek to justify the order passed by the Court below by contending that the Court below after taking note of the relevant circumstances has arrived at the conclusion. It is contended that the first respondent has not received any concession whatsoever and the document issued by the school authorities has been taken into consideration by the Court below and appropriate directions have been issued.

5. In the light of the rival contentions, firstly, it is to be noticed that the school expenses for which the first respondent had sought is in respect of both the children is not in dispute. In that context, the Court below on taking note of the materials that were available before it, has arrived at the conclusion that the fee in respect of two children would be in a sum of Rs.70,000/-. It is no doubt true that the Court below, before arriving at such conclusion, was of the view that the petitioner should at least contribute 50% of the educational expenses. Though the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court and has indicated the observations therein that a party who does not approach in a bonafide manner cannot be granted the relief, in my opinion, the said decision is not applicable to the instant facts of the case.

6. I am of the said opinion for the reason that when there is no dispute with regard to relationship between the parties and also there is no dispute with regard to the fact that the children are studying in the said school regarding which the documents have been produced, it is only the quantum of amount that is required to be paid which would be in issue. Notwithstanding the contention of the learned counsel for the petitioner that the documents produced before the Court below to indicate the educational expenses is not the correct position, the learned counsel in reply to the query made by this Court has relied upon the fee receipt of another student, who is studying in the 7th Standard to indicate the fee per month is at Rs.2,200/- per month in the previous year though it is presently Rs.2,400/- per month. Even if this admitted position is kept in view, the yearly fees in any event would be around Rs.25,000/- for each child and in the instant case, the fee sought is in respect of two children. Even otherwise, when the words 'educational expenses' is used, it cannot be confined to school fee that has been paid alone, but also other expenses that would be incurred by the children for attending their classes should be included.

7. Hence, if these aspects of the matter are kept in view, I am of the opinion that even if the amount of Rs.70,000/- was taken into consideration by the Court below as the school fees, including the other expenses, the Court below in any event was justified in ordering that a sum of Rs.50,000/- be contributed by the petitioner who is none other than the father of respondents No.2 and 3. In such event, considering the order passed by the Court below, I see no reason to interfere with the same.

Accordingly, the petition stands disposed of. No costs.

Sd/-

JUDGE akc/bms