IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 225 of 2019

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VIJAYSINH RAMKISHORSINH RATHOD
Versus
JYOTI VIJAYSINH RAJPUT

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Appearance:
MR. DIVYANG A RAMANI(7180) for the Applicant(s) No. 1,2
MR ADIL R MIRZA(2488) for the Opponent(s) No. 1

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CORAM: **HONOURABLE DR.JUSTICE A. P. THAKER**

Date : 30/09/2019

ORAL ORDER

1. The applicants – original opponents have preferred this civil revision application under Section 115 of the Code of Civil Procedure, 1908 (hereinafter be referred to as "the CPC") against the judgment and order dated 18.03.2019 passed by the learned 14th Additional Sessions Judge, Bardoli, whereby, the learned Additional Sessions Judge has allowed the application being Civil Misc. Application No.34 of 2016 filed by the respondent – original applicant - wife.

2. Heard Mr.Divyang Ramani, learned advocate for the applicants and Mr.Adil Mirza, learned advocate for the respondent. Perused the materials placed on record.

3. Learned advocate for the applicants has submitted that the age of the son is now 7 years and above and he is studying in the school. He has submitted that the case was filed against the applicants by the respondent and the respondent – wife has no source of income and she is depending on the order of maintenance

and hence, the financial condition of the present respondent is sound and he can properly take care of his son and now, the son is with the respondent – wife since 2016 and the Trial Court has not properly appreciated the facts and has committed serious error of law and facts in passing the impugned judgment and order directing the applicants herein to handover the custody of the son to the present respondent. He has submitted that the welfare and future of the child is with the father and not with the mother. He has prayed to allow the present application.

4. Per contra, learned advocate for the respondent has vehemently submitted that out of the wedlock, one son and one daughter were born and there is no dispute regarding that fact. He has submitted that son Suryapratapsinh has born on 24.09.2013 and daughter Riya has born on 22.06.2015. While referring to the original petition, he has submitted that the son was with respondent – wife and parents and present applicant - husband have snatched away custody of the son under the guise of meeting with the child and, therefore, the wife has filed police complaint and the police did not take any action and, therefore, she has to move such application for search warrant. Against which, the present applicants have moved quashing petition being Criminal Misc. Application No.30442 of 2016 which is still pending and as per the direction of the Court, the respondent has filed an application under the Guardians and Wards Act before the Trial Court, and proper opportunity was given to the applicants herein for leading their evidence, but none has appeared before the Trial Court to cross-examine the witness of the wife. Ultimately, after perusing the evidence, the impugned order has been passed by the Trial Court in consonance with the facts and law. He has submitted that the payment of maintenance to the wife and children is legal duty of the applicant. He has submitted that the applicant – husband has sought for the custody and possession of the son and he has not

tried to get the custody of the daughter. He has submitted that the Trial Court has not committed any error of law and facts and this being a civil revision application, the powers of this Court may not be exercised and the application may be dismissed with cost.

5. It is well settled principle by catena of decisions that the High Court, while considering the matter in exercise of its jurisdiction in civil revision application would not reverse the finding of fact as recorded by the Courts below. But it is not an absolute proposition. In a case where the finding is recorded without any legal evidence on the record, or on misreading of evidence or suffers from any legal infirmity, which materially prejudices the case of one of the parties or the finding is perverse, it would be open for the High Court to set aside such a finding and to take a different view. The exercise of the revisional power is broadly subject to the following conditions;

(1) That the decision must be of a court subordinate to the High Court;
(2) That there must be a case decided by a subordinate court;
(3) No appeal must lie either to the High Court or to any lower appellate court against the decision;
(4) In deciding the case, the subordinate court must appear to have – (a) exercised a jurisdiction not vested in it by law, or (b) failed to exercise a jurisdiction vested in it by law, or (c) acted in the exercise of its jurisdiction illegally or with material irregularity. The High Court in exercising the revisional powers is in its very nature is a truncated power. The width of the powers of the revisional court cannot be equated with the powers of the appellate court. In exercising the legality and the propriety of the order under challenge, what is required to be seen by the High Court is whether it is in violation of any statutory provision or a binding precedent or suffers from misreading of the evidence or omission to consider

relevant clinching evidence or where the inference drawn from the facts proved is such that no reasonable person could arrive at or the like. It is only in such situations that interference by the High Court in revision in a finding of fact will be justified. Mere possibility of a different view is no ground to interfere in exercise of revisional power.

6. It appears from the impugned order that the Trial Court has taken into consideration the fact that the wife has admitted the facts and has submitted that out of the wedlock, one son and one daughter were born namely Suryapratapsinh and Riya and due to mental harassment, she has to stay with her parental home with two children. She has submitted that her husband is addicted of taking liquor and has caused mental torture to her. She has stated that when she was at her parental home, the applicants' relative visited the house and snatched away the custody of minor son and they flee away with minor son Suryapratapsinh in the car. She has narrated the fact that the applicants informed that they have no custody of the child. She has narrated that the respondent's father has lodged the complaint before Bardoli Police Station but no legal action has been taken by the police and, therefore, she has filed an application for search warrant under Section 97 of the Criminal Procedure Code against the present applicants. Against which, the applicants have filed quashing petition being Criminal Misc. Application No.30442 of 2016 which is still pending and during the quashing petition, this Court has passed the order that the order shall not preclude the respondent No.2 i.e. wife from initiating appropriate proceeding under the Guardianship and Wards Act in accordance with law. She has narrated that therefore, she has approached the Trial Court and at that time, the age of the minor son was three and half years.

7. It appears from the impugned order that same was resisted by

the respondents i.e. present applicants. It also appears that during the pendency of that petition, the evidence in the form of affidavit was produced by the applicant – wife therein and the respondents therein have not appeared before the Trial Court for cross-examination of the applicant and her witnesses nor have produced any documentary evidence and ultimately, the Trial Court has closed the rights of the respondents therein for cross-examination of the witnesses. After perusing the evidence on record, the Trial Court passed the order directing the respondents therein to handover the custody of minor son Suryapratapsinh to the applicant therein i.e. wife on or before 31.05.2019 with liberty to the respondent No.1 father to meet his son on every Sunday between 1.00 A.M. to 06.00 P.M.

8. It appears from the record that in the present application, the applicants have produced such documents to show that the son is studying. But these papers are produced in the present matter for the first time and there was an opportunity to the husband to produce such documents before the Trial Court and he has not chosen to do so. This being a revision application, the scope of interference by the Revisional Court is very much limited unless and until, it appears that the Trial Court has committed serious error of jurisdiction or not considered the factual aspects of the matter, the Revisional Court cannot interfere in such order. On perusal of the impugned order, it is clearly found that under the provisions of the Guardians and Wards Act, the Trial Court has passed the impugned order with a liberty to the father to meet his son on every Sunday between 1.00 A.M. to 06.00 P.M. At this stage, it is pertinent to note that against the order dated 19.03.2019, there is no stay granted. Otherwise also, on perusal of the impugned order, it is found that the Trial Court has not exceeded its jurisdiction and has not committed any serious error of law and facts and the impugned order cannot be said to be perverse in the facts and circumstances

of the case.

9. In view of the above, the present Civil Revision Application is is devoid of merits and is liable to be dismissed. Accordingly, it is dismissed. Notice is discharged. No order as to cost.

(A. P. THAKER, J)

FURTHER ORDER

At this stage, Mr.Divyang Ramani, learned advocate for the applicants requests to stay the operation of this order for four weeks.

Considering the facts of the case, the request is declined.

(A. P. THAKER, J)

V.R. PANCHAL