

***THE HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY**

+ Civil Revision Petition No.1064 of 2026

Between:

... Petitioner

AND

... Respondent

ORDER PRONOUNCED ON : 22.06.2026

SUBMITTED FOR APPROVAL:

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

VAKITI RAMAKRISHNA REDDY, J

THE HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

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! Counsel for the Petitioners : Sri M. Ramakanth,
learned counsel appearing
for the petitioner

^ Counsel for Respondents : Sri Bommera Rahul
Kumar, learned counsel
appearing for the
respondent

< GIST :

> HEAD NOTE:

? Cases referred:

1. AIR 1954 SC 215
2. (2010) 8 SCC 329
3. (2015) 5 SCC 423
4. (2022) 4 SCC 181
5. AIR 2020 SC 577
6. (2008) 9 SCC 413
7. (2006) 1 SCC 380
8. (1982) 2 SCC 463
9. (1999) 4 SCC 396
10. (2001) 8 SCC 97

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

THE HON'BLE SRI JUSTICE VAKITI RAMAKRISHNA REDDY

CIVIL REVISION PETITION No.1064 of 2026

Date: 22.06.2026

Between:

.... Petitioner

AND

.... Respondent

ORDER:

This Civil Revision Petition is directed against the order dated 25.02.2026 passed in I.A. No.71 of 2026 in G.W.O.P. No.8 of 2024 (for short, "the Impugned Order") on the file of the learned Judge, Family Court-cum-III Additional District and Sessions Judge, Nizamabad (for short, "the learned Trial Court"), whereby interim custody of the minor child was granted to the respondent-father subject to certain conditions.

I. FACTS IN BRIEF:

2. The petitioner and the respondent are the parents of
a minor child aged about 11 years.
Matrimonial disputes are pending between the parties and several proceedings are stated to have been instituted by each side. It is not in dispute that prior to passing of the Impugned Order, the minor child was residing with the petitioner-mother at Nizamabad.

3. The respondent-father instituted G.W.O.P. No.8 of 2024 under Section 7 of the Guardians and Wards Act, 1890 seeking guardianship and custody of the minor child. During pendency of the said proceedings, the respondent filed I.A. No.71 of 2026 under Section 12 of the Guardians and Wards Act, 1890 seeking interim custody of the minor child pending disposal of the G.W.O.P. The petitioner opposed the said application by filing a detailed counter affidavit disputing the allegations levelled by the respondent and asserting that the welfare of the child required continuation of custody with her.

4. The petitioner relies upon the earlier orders passed in the proceedings and contends that interim custody had not been granted to the respondent on earlier occasions and that there was no substantial change of circumstances warranting a different view.

II. IMPUGNED ORDER:

5. By the Impugned Order dated 25.02.2026, the learned Trial Court allowed I.A. No.71 of 2026 filed under Section 12 of the Guardians and Wards Act, 1890 and granted interim custody of the minor child to the respondent-father pending disposal of G.W.O.P. No.8 of 2024. The Impugned Order further provided visitation rights to the petitioner-mother on alternate weekends

from Saturday 10:00 a.m. to Sunday 5:00 p.m., daily telephonic and video access, restrictions regarding relocation of the child and change of school without prior permission of the Court, and other conditions intended to safeguard the welfare of the child pending disposal of the main G.W.O.P.

6. A perusal of the Impugned Order further discloses that while granting interim custody to the respondent-father, the learned Trial Court recorded that it had personally interacted with the minor child and also recorded observations regarding the child's wishes, demeanour, emotional responses, spontaneity and preference to stay with the respondent-father.

7. The aforesaid observations form a substantial part of the reasoning contained in the Impugned Order and appear to have weighed significantly with the learned Trial Court while arriving at the conclusion that interim custody should be granted to the respondent-father.

III. SUBMISSIONS OF THE PARTIES:

A. Submissions on behalf of the Petitioner:

8. Learned counsel for the petitioner contended that the Impugned Order suffers from a fundamental and incurable defect inasmuch as the learned Trial Court proceeded on the basis that a

personal interaction had taken place with the minor child and recorded findings allegedly arising therefrom, though no such interaction was ever conducted.

9. Learned counsel submitted that copies of the docket proceedings maintained by the learned Trial Court on the relevant dates have been placed before this Court and none of the docket entries disclose either the presence of the child before the Court or any interaction having been conducted. According to the learned counsel, the observations recorded in the Impugned Order concerning the wishes, demeanour, emotional responses and preference of the child are wholly unsupported by the record.

10. Learned counsel argued that the alleged interaction forms the very foundation of the Impugned Order and once it is demonstrated that no such interaction took place, the entire decision-making process stands vitiated, rendering the Impugned Order unsustainable in law.

11. Learned counsel further submitted that the learned Trial Court failed to properly consider the effect of the earlier orders passed in the proceedings and failed to appreciate that there was no substantial change of circumstances warranting grant of interim custody to the respondent.

12. Learned counsel additionally contended that even the conditions incorporated in the Impugned Order were not adhered to by the respondent. According to the petitioner, though visitation rights were granted in her favour, the same were not effectively implemented. It is further contended that despite the restrictions imposed by the learned Trial Court relating to relocation of the child and change of school without prior permission of the Court, the respondent proceeded in a manner inconsistent with the spirit of the directions issued by the learned Trial Court. Learned counsel also submitted that the direction relating to educational continuity of the child was not adhered to in its true spirit.

13. Learned counsel therefore contended that the Impugned Order is wholly unsustainable in law and liable to be set aside. Learned counsel further submitted that, as a consequence thereof, custody of the minor child ought to be handed over to the petitioner-mother by restoring the position that existed prior to passing of the Impugned Order.

B. Submissions on behalf of the Respondent:

14. Per contra, learned counsel appearing for the respondent opposed the revision petition and supported the Impugned Order. Learned counsel submitted that the scope of interference under Article 227 of the Constitution of India is extremely limited and

that this Court cannot act as an appellate Court to re-appreciate the factual findings recorded by the learned Trial Court.

15. In support of the said contention, learned counsel placed reliance upon the decisions of the Hon'ble Supreme Court in *Waryam Singh and another v. Amarnath and another*¹, *Shalini Shyam Shetty and another v. Rajendra Shankar Patil*², *Radhey Shyam and another v. Chhabi Nath and others*³, *Garment Craft v. Prakash Chand Goel*⁴, *Yashita Sahu v. State of Rajasthan and others*⁵ and *Nil Ratan Kundu v. Abhijit Kundu*⁶, and contended that supervisory jurisdiction under Article 227 is intended to ensure that subordinate Courts act within the bounds of their authority and not to correct every error of fact or law. Learned counsel further submitted that in custody matters the paramount consideration is the welfare and best interests of the child and not the competing legal rights of the parents.

16. Learned counsel further submitted that the respondent has a strong case on merits and that the welfare of the child requires continuation of custody with the respondent-father. It is submitted that the child is presently residing with the respondent, pursuing

¹ AIR 1954 SC 215

² (2010) 8 SCC 329

³ (2015) 5 SCC 423

⁴ (2022) 4 SCC 181

⁵ AIR 2020 SC 577

⁶ (2008) 9 SCC 413

his education at Hyderabad and has settled into the present environment.

17. In reply to the allegations regarding violation of the conditions contained in the Impugned Order, learned counsel submitted that the petitioner never approached the respondent for implementation of visitation rights. It is further submitted that the respondent has already filed appropriate applications before the learned Trial Court seeking permission for relocation of the child to Hyderabad and for change of school, since the respondent is ordinarily residing at Hyderabad. According to the learned counsel, no violation of the conditions imposed under the Impugned Order can therefore be attributed to the respondent. Learned counsel accordingly prayed for dismissal of the revision petition.

IV. POINT FOR DETERMINATION:

18. In the light of the rival submissions, the following point arises for determination:

“Whether the Impugned Order passed by the learned Trial Court under Section 12 of the Guardians and Wards Act, 1890 granting interim custody of the minor child suffers from patent illegality, material irregularity and procedural impropriety on account of being founded upon an alleged personal interaction with the minor child, thereby warranting interference under

Article 227 of the Constitution of India and, if so, to what relief?”

V. ANALYSIS AND FINDINGS:

19. Before examining the controversy on merits, it is necessary to bear in mind the well-settled principles governing the exercise of supervisory jurisdiction under Article 227 of the Constitution of India. This Court does not sit in appeal over orders passed by subordinate Courts. Re-appreciation of evidence or substitution of one possible view by another ordinarily falls outside the ambit of such jurisdiction. However, where the order under challenge suffers from patent illegality, manifest impropriety, material irregularity or a defect affecting the very decision-making process, interference becomes not only permissible but necessary to keep the subordinate Courts within the bounds of law.

20. The learned counsel for the respondent relied upon various decisions of the Hon'ble Supreme Court concerning the limited scope of interference under Article 227 and the paramount consideration of welfare of the child in custody matters. There can be no dispute regarding the principles laid down therein. Equally, it is beyond controversy that while deciding custody disputes, the welfare of the child remains the supreme consideration. Nevertheless, the issue arising in the present case is not whether the learned Trial Court could have taken a different view on the

material available before it. The issue is whether the process by which the Impugned Order came to be passed is legally sustainable.

21. The principal grievance of the petitioner is that the learned Trial Court proceeded to grant interim custody to the respondent-father on the basis of a purported personal interaction with the minor child and further recorded detailed observations regarding the wishes, emotional responses, spontaneity, body language, demeanour and preference of the child, though admittedly no such interaction ever took place.

22. In support of the said contention, the petitioner has placed before this Court copies of the docket proceedings maintained by the learned Trial Court on the relevant dates. According to the petitioner, none of the docket entries disclose either the production of the child before the Court or any interaction having been conducted with the child.

23. During the course of hearing, this Court specifically enquired with the learned counsel for the respondent regarding the alleged personal interaction referred to in the Impugned Order. Upon obtaining instructions, learned counsel for the respondent fairly submitted that no such interaction had taken place. Learned

counsel, however, explained that on the relevant date the learned Trial Court had conducted interactions with children in several other matters and therefore the reference contained in the Impugned Order might have been inadvertently incorporated.

24. The aforesaid statement assumes considerable significance. The alleged interaction is not referred to incidentally or in passing. The Impugned Order contains specific observations purportedly arising from such interaction. The learned Trial Court recorded findings regarding the child's wishes, body language, spontaneity, emotional responses and preference to reside with the respondent-father. The reasoning adopted in the Impugned Order clearly demonstrates that the alleged interaction constituted a material circumstance which weighed with the learned Trial Court while granting interim custody to the respondent-father.

25. In view of the statement made by the learned counsel for the respondent upon instructions, this Court proceeds on the factual premise that no personal interaction had in fact taken place between the learned Trial Court and the minor child. Consequently, the observations recorded in the Impugned Order as having emanated from such interaction stand unsupported by any event which actually transpired before the Court.

26. It is true that a Court dealing with a custody dispute is entitled to ascertain the wishes of a child, particularly where the child has attained sufficient age and maturity to express an intelligent preference. Equally, the Court is entitled to take into consideration its observations gathered during such interaction. However, such findings necessarily presuppose that an interaction had actually taken place. Findings attributed to an event which admittedly never occurred cannot furnish a valid basis for exercise of judicial discretion.

27. The Court is equally conscious that the respondent may ultimately succeed or fail on the merits of his claim for custody. However, the merits of the rival claims are entirely distinct from the legality of the process by which the Impugned Order came to be passed. A judicial determination derives legitimacy not merely from the conclusion ultimately reached but also from the process through which such conclusion is arrived at.

28. The Hon'ble Supreme Court in *U.P. State Road Transport Corporation v. Imtiaz Hussain*⁷, while dealing with the maxim *Actus Curiae Neminem Gravabit*, observed that the basis of the principle is that an act of the Court shall prejudice no man. The Supreme Court further held that an unintentional mistake of the Court

⁷ (2006) 1 SCC 380

which may prejudice the cause of any party must necessarily be rectified and that mistakes attributable to the Court are liable to be corrected. The principle underlying the said decision is that no litigant should suffer because of an inadvertent act, omission or mistake attributable to the Court.

29. Applying the aforesaid principle to the present case, this Court is of the considered opinion that once it stands admitted that no interaction had taken place with the minor child, any finding purportedly flowing from such interaction cannot be permitted to influence the adjudicatory process. The prejudice caused by reliance upon a circumstance which admittedly never existed can be remedied only by setting aside the order founded thereon and directing a fresh consideration of the matter.

30. This aspect assumes even greater significance in custody matters. Whenever a Court records that it personally interacted with a child and thereafter proceeds to record impressions concerning the child's wishes, emotional responses or preferences, such observations ordinarily carry considerable weight in the ultimate adjudication. It is therefore imperative that such observations are founded upon an interaction which actually took place. The greater the evidentiary value attached to such

interaction, the greater is the obligation to ensure the accuracy of the record.

31. The Hon'ble Supreme Court in *State of Maharashtra v. Ramdas Shrinivas Nayak*⁸, held that statements recorded in judicial proceedings regarding what transpired before the Court are matters of absolute verity and ordinarily cannot be contradicted by affidavits or other material. The principle underlying the said decision is that judicial records must faithfully reflect events that actually occurred before the Court and that certainty and sanctity of judicial proceedings depend upon the correctness of such records.

32. In the present case, however, the issue is not one of disputing a judicial record by way of collateral evidence. Rather, the respondent himself, through learned counsel and upon instructions, has fairly stated before this Court that no interaction whatsoever had taken place. Thus, the very factual foundation on which the observations regarding the wishes and preference of the child were recorded is admitted to be non-existent.

33. The significance of the aforesaid admission cannot be understated. The Court is not concerned with a minor discrepancy

⁸ (1982) 2 SCC 463

or an inconsequential factual error. The learned Trial Court recorded findings concerning the child's preference, demeanour and emotional responses and thereafter relied upon such findings while granting interim custody. Once it stands admitted that the event from which such findings were purportedly derived never occurred, the foundation of the exercise of discretion itself becomes vulnerable.

34. The Hon'ble Supreme Court in *Budhia Swain v. Gopinath Deb*⁹, explained that where a defect strikes at the very root of the proceeding and affects the basis on which judicial power is exercised, such defect cannot be treated as a mere procedural irregularity. The distinction between a curable irregularity and a defect going to the root of the matter assumes considerable significance in the facts of the present case.

35. Applying the aforesaid principle, this Court is of the considered opinion that the defect pointed out by the petitioner is neither technical nor trivial. It is not a mere clerical error or accidental omission having no bearing upon the decision. The learned Trial Court proceeded to exercise judicial discretion on the basis of observations purportedly gathered from an interaction

⁹ (1999) 4 SCC 396

which admittedly never took place. Such a defect goes to the root of the decision-making process itself.

36. Consequently, the findings attributed to the alleged interaction cannot be treated as surplusage or ignored as inconsequential. The observations regarding the child's preference formed part of the reasoning adopted by the learned Trial Court. Once the foundation is removed, the superstructure built thereon cannot be permitted to stand.

37. In *Estralla Rubber v. Dass Estate (P) Ltd.*¹⁰, and subsequently in *Garment Craft's case (supra)*, the Hon'ble Supreme Court reiterated that though the power under Article 227 is supervisory and not appellate, interference is justified where the order of the subordinate Court suffers from patent illegality, perversity, manifest procedural impropriety or a fundamental infirmity affecting the decision-making process.

38. The present case squarely falls within the aforesaid parameters. The Impugned Order is founded, at least in part, upon a material factual premise which admittedly never existed. The defect affects the very foundation of the exercise of judicial discretion. This Court is therefore satisfied that the Impugned

¹⁰ (2001) 8 SCC 97

Order suffers from patent illegality, manifest impropriety and material irregularity warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

39. Having arrived at the aforesaid conclusion, the next question that arises is the nature of relief to be granted. Ordinarily, once the foundation of an order is found to be legally unsustainable, restoration of the position obtaining prior to such order may merit consideration. However, the present proceedings concern interim custody of a minor child and therefore the Court cannot be guided solely by the legal infirmity found in the Impugned Order.

40. This Court is equally conscious that the present proceedings arise out of a dispute concerning custody of a minor child. The welfare and best interests of the child constitute the paramount consideration and transcend the competing claims of either parent. Therefore, while the Court is obliged to correct the legal infirmity affecting the Impugned Order, the corrective measure itself must be fashioned in a manner that does not prejudice the welfare of the child.

41. Learned counsel for the petitioner sought restoration of the custody arrangement that existed prior to passing of the Impugned

Order and consequently prayed that custody of the minor child be handed over to the petitioner-mother. Though the submission merits consideration, this Court is not inclined to grant such relief at this stage. The material placed before this Court indicates that pursuant to the Impugned Order the child has been residing with the respondent-father and educational arrangements have already been put in place. Any immediate reversal of the existing arrangement, before a fresh determination by the learned Trial Court, may itself result in avoidable disruption affecting the welfare, stability and educational continuity of the child.

42. In the considered opinion of this Court, the interests of justice would therefore be adequately served by setting aside the Impugned Order and remitting the matter to the learned Trial Court for fresh consideration, while preserving an appropriate interim arrangement till fresh orders are passed. Such a course would balance the need to rectify the manifest defect affecting the Impugned Order and the equally important obligation to safeguard the welfare and best interests of the minor child.

43. The petitioner has further contended that notwithstanding the conditions imposed in the Impugned Order, the respondent failed to honour the visitation arrangement and also relocated the child and altered the educational arrangements without obtaining

appropriate permission from the learned Trial Court. The respondent disputes the said allegations and contends that the petitioner never approached him for visitation and that applications seeking permission for relocation and change of school have already been filed before the learned Trial Court. Since these assertions involve disputed questions of fact, this Court refrains from recording any conclusive finding thereon. Nevertheless, compliance or otherwise with the conditions incorporated in the Impugned Order is a relevant circumstance having a bearing on the welfare of the child and the conduct of the parties. Accordingly, the learned Trial Court shall be at liberty to consider the said aspect while deciding the application afresh.

44. The petitioner has also contended that an earlier application seeking substantially similar relief had not been favourably considered by the learned Trial Court. Since the matter is being remanded for fresh consideration, this Court does not propose to express any final opinion on the said aspect. However, the learned Trial Court shall be at liberty to examine the effect, if any, of the earlier proceedings and orders, together with all other relevant circumstances, while undertaking a fresh adjudication.

45. Before parting with the matter, this Court considers it necessary to observe that proceedings concerning custody of minor

children demand a high degree of care, sensitivity and precision. Recording findings purportedly arising out of a personal interaction with a child, when it is subsequently brought to the notice of this Court that no such interaction had in fact taken place, is a matter of serious concern. Though this Court is not inclined to attribute any deliberate lapse to the learned Trial Judge, it expects that greater caution, diligence and accuracy shall be exercised in future while recording proceedings of such nature. Accuracy of judicial records is integral to the administration of justice and must be scrupulously maintained.

VI. CONCLUSION:

46. For all the aforesaid reasons, this Court is satisfied that the Impugned Order cannot be sustained. The learned Trial Court proceeded to record findings regarding the wishes, preference, demeanour and emotional responses of the minor child on the basis of a personal interaction which admittedly never took place. The defect is not a mere irregularity but goes to the very root of the decision-making process.

47. Consequently, the Impugned Order suffers from patent illegality, manifest impropriety and material irregularity warranting interference under Article 227 of the Constitution of India. However, having regard to the paramount welfare of the child and

the existing factual situation, the interests of justice would be adequately served by setting aside the Impugned Order and remitting the matter to the learned Trial Court for fresh consideration in accordance with law.

VII. RESULT AND DIRECTIONS:

48. Accordingly, the Civil Revision Petition is allowed.

49. The order dated 25.02.2026 passed in I.A. No.71 of 2026 in G.W.O.P. No.8 of 2024 by the learned Judge, Family Court-cum-III Additional District and Sessions Judge, Nizamabad, is hereby set aside.

50. Consequently, I.A. No.71 of 2026 shall stand restored to the file of the learned Trial Court for fresh consideration and disposal in accordance with law.

51. The learned Trial Court shall reconsider the application independently and on its own merits, uninfluenced by the findings recorded in the Impugned Order. While doing so, the learned Trial Court shall take into consideration all relevant circumstances having a bearing upon the welfare and best interests of the minor child, including the rival contentions of the parties, the effect of the earlier proceedings and orders, the issue relating to relocation and educational continuity, compliance or otherwise with the

conditions incorporated in the Impugned Order and all other relevant factors arising subsequent thereto.

52. If the learned Trial Court considers it necessary to ascertain the wishes of the minor child, it shall personally interact with the child and appropriately record such interaction in the proceedings.

53. Having regard to the nature of the controversy and considering that the matter pertains to interim custody of a minor child, the learned Trial Court shall dispose of I.A. No.71 of 2026 as expeditiously as possible and preferably within a period of two (02) weeks from the date of receipt of a copy of this order.

54. The statement made by the learned counsel for the respondent, upon instructions, that the respondent shall cooperate for expeditious disposal of the application and shall not seek any unnecessary adjournment, is placed on record.

55. Pending fresh consideration by the learned Trial Court, interim custody of the minor child shall continue with the respondent-father.

56. However, having regard to the fact that the schools have already commenced and considering the present educational

requirements of the child, the visitation arrangement requires suitable modification.

57. Accordingly, pending disposal of I.A.No.71 of 2026, the respondent-father shall bring the minor child to Nizamabad on every Saturday at 11:00 a.m. at a mutually convenient location and shall intimate the petitioner-mother sufficiently in advance regarding the place of handing over of the child.

58. Upon such intimation, the petitioner-mother shall be entitled to take custody of the child and spend time with him. The petitioner-mother shall return the child to the respondent-father at the same place on the very same day at 5:00 p.m. The parties shall ensure strict compliance with the aforesaid arrangement and shall not cause any inconvenience or emotional distress to the child.

59. The arrangement relating to telephonic and video interaction between the petitioner and the minor child, as provided under the Impugned Order, shall continue until fresh orders are passed by the learned Trial Court.

60. It is made clear that the above arrangement is purely temporary in nature and has been directed only to balance the competing interests of the parties while ensuring that the welfare,

schooling, stability and routine of the minor child are not adversely affected pending fresh consideration by the learned Trial Court.

61. It is further made clear that this Court has not expressed any opinion on the merits of the rival claims of the parties and all questions of fact and law are left open for consideration by the learned Trial Court.

62. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

VAKITI RAMAKRISHNA REDDY, J

Date: 22.06.2026
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Note:
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