

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF SEPTEMBER 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

WRIT PETITION NO.34503 OF 2018 (GM-FC)

Between:

Shaista Sultana
W/o Shakeel Pasha
Aged about 24 years
No.16, 5th Main
S.K. Garden
Benson Town
Bengaluru – 560 046

... Petitioner

(By Smt. R. Rashmi, Advocate)

And:

Shakeel Pasha
S/o Mahaboob Pasha
Aged about 34 years
35, 2nd Floor, 1st Cross
Ajappa Block, Dinnur
R T Nagar Post
Bengaluru – 560 032

... Respondent

(By Sri. Anees Alik Khan, Advocate)

This Writ Petition is filed under Article 227 of the Constitution of India, praying to quash/set aside the impugned order dated 05.04.2018 passed on I.A.No.7 rejecting her application for hospital/delivery and medical expenses sought against her husband/respondent under Section 151

of CPC in O.S.No.82/2017 pending on the file of II Additional Family Court Judge, Bengaluru at Annexure-A and etc.

This Writ Petition coming on for Preliminary Hearing in 'B' Group, this day, the Court made the following:-

ORDER

Smt. R. Rashmi Sagar, learned counsel for the petitioner.

Sri. Anees Ali Khan, learned counsel for the respondent.

The petition is admitted for hearing. With the consent of learned counsel for the parties, the same is heard finally.

2. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 26.04.2018 by which the application filed by the petitioner claiming a sum of ₹1,50,000/- towards delivery expenses of the son born to the parties has been rejected by the Family

Court on the ground that since it is the first delivery, it is the duty of the parents to bear the expenses as per customs in all communities.

3. Learned counsel for the petitioner submitted that the impugned order is cryptic, arbitrary and suffers from vice of non application of mind.

4. On the other hand, learned counsel for the respondent has supported the order passed by the Family Court.

5. I have considered the submissions made by learned counsel for the parties. The Hon'ble Supreme Court in the case of '**S.N.MUKHERJEE V. UNION OF INDIA**', (1990) 4 SCC 594 has held that people must have confidence in the judicial or quasi judicial authorities. While emphasizing the need for assigning reasons, it was held that giving of reasons minimizes the chances of arbitrariness

and hence, it is an essential requirement of the rule of law. In '**SECRETARY AND CURATOR, VICTORIA MEMORIAL HALL V. HOWRAH GANATANTRIK NAGRIK SAMITY AND OTHERS**', (2010) 3 SCC 732, it has been held by the Supreme Court that reason is the heartbeat of every conclusion. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. It has further been held that recording of reasons is a principle of natural justice. It ensures transparency and fairness in decision making.

6. In view of the aforesaid well settled legal position, the relevant extract of the impugned order on the basis of which the application has been rejected reads as under:

*"Admittedly, it is her first delivery,
so it is the duty of the parents to bear*

the expenses of first delivery as per customs in all communities.”

7. Thus, from the above narration of facts that the family Court has not recorded any cogent reasons for rejecting the application filed by the petitioner but has only recorded the conclusions seems to be based on personal knowledge of the Presiding Officer of the Family Court. The impugned order is cryptic and suffers from vice of non application of mind. Therefore, it cannot be sustained in the eye of law and accordingly, the impugned order dated 26.04.2018 is quashed insofar as it pertains to rejection of the application of the petitioner, namely, I.A.No.7.

8. The family Court is directed to decide I.A.No.7 within a period of three weeks from the date of receipt of certified copy of the order passed today by a speaking order after affording an opportunity of hearing to the parties.

9. Needless to state that the parties to the proceedings shall not seek any unnecessary adjournments and shall co-operate with the Family Court for decision of the application within the time limit as specified by this Court.

With the aforesaid directions, the petition is disposed of.

**Sd/-
JUDGE**

Mds/-