

Court No. - 29

Case :- CRIMINAL REVISION No. - 1269 of 2022

Revisionist :- Surendra Kumar

Opposite Party :- Ram Simiran

Counsel for Revisionist :- Ashok Kumar Bhatnagar

Counsel for Opposite Party :- Rakesh Kumar, Anuj Pratap Singh, Poonam Paul

Hon'ble Mrs. Renu Agarwal, J.

1. The present revision under Section 19 (4) of Family Court Act read with Sections 397 and 401 Cr.P.C has been filed against the order dated 11.11.2022 passed by the Additional Principal Judge-I, Family Court, Lucknow in Case No. 794 of 2021 (Surendra Kumar Vs. Ram Sumiran.) by which the applicant filed by the revisionist for interim maintenance was rejected.

2. It is submitted by the learned counsel for the revisionist that the revisionist is 60% disable person as certified by competent board of doctors as such he moved an application under Section 125(1) (c) before the Family Court for maintenance against his father respondent in the instant revision. It is also submitted that the opposite party ousted the mother of the revisionist from his house when the revisionist two to three years old. The mother of the revisionist left with no option except to seek shelter in her parents house. Due to financial crises he could not get admission in any school and he worked as cleaner of taxi and also started selling flowers. In the year 2014 the revisionist got

married and in the year 2017 the revisionist met with an accident and got 60% disability in his hand. In the year 2020 the revisionist was blessed with a female child and now it is very difficult for the revisionist to earn his livelihood. The father of the revisionist, opposite party in this case, was a government employee and worked as Mali in AMC Centre. The father of the applicant is a pensioner. It is further submitted that the learned family court has erred in allowing the application for interim maintenance, hence, the impugned order is liable to be set aside.

3. It is an admitted fact that there were matrimonial dispute between the parents of the revisionist and the mother of the revisionist went to her parental house. Learned counsel for the revisionist submitted that opposite party ousted the mother of the revisionist from his house, however, it transpires from the judgment that the mother of revisionist left her matrimonial house and remarried another person in Raebareilly. It was submitted by learned counsel for the opposite party that the opposite party was unemployed at the time of marriage, therefore, the wife of opposite party (mother of present revisionist) left him. It is further submitted by the learned counsel for the opposite party that the parents of the revisionist entered into compromise for divorce with consent and thereafter the mother of the revisionist got remarried.

4. Learned counsel for the opposite party further argued that the present revision is not maintainable against an interlocutory order by which the application for interim maintenance is rejected by the Court.

5. The question has repeatedly popped up in the judgments of various High Courts including the present judgment reported by Single Bench judgment of Madhya Pradesh High Court in ***M.CrC No 60364 of 2022 titled Rajesh Kumar Vs. Smt. Rukmani Bisen*** wherein the Hon'ble High Court observed that petitioner could prefer a revision petition against an order of interim maintenance made by family court under Section 125 Cr.P.C. At first look the issue seems hardly controversial but in practice many a courts allowed and rejected the revision against the said order.

6. The Criminal Procedure Code or any other procedural statute fails to pay any definition for interlocutory order. The Apex Court tried to give an idea about what qualifies as interlocutory order. In ***Amarnath and others Vs. State of Haryana*** reported at ***1977 AIR 2185***, the Court by majority of opinion that "*the term interlocutory order in Section 397(2) has been used in restricted sense and not in any broad and artistic sense. It merely denotes an order of a purely interim or temporary nature which do not decide or touch the important rights or*

liabilities of the parties. Any order which substantially affects the rights of accused, or decides the certain rights of parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the Code"

7. In ***Madhu Limaye Vs. State of Maharashtra*** reported at **1978 AIR 47** the Apex Court rejected the commonly understood meaning of interlocutory order as converse to final order. The Court concluded that there may be order passed during the proceedings that may not fall in either of water tight compartments of final order or interlocutory order. Hon'ble Apex Court made an important observation in the judgment that *"A judgment or order may be final for one purpose and interlocutory for another or final as to the part and interlocutory as to a part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required..... An interlocutory order though not conclusive of the main dispute may be conclusive as to the subordinate matter with which it deals."*

8. In ***V.C.Shukla Vs. State through CBI*** reported at **1980 AIR 962**, Hon'ble Apex Court held that

"the natural meaning of interlocutory order has to be understood i.e. in contradistinction to the final order. So far as the order fixing maintenance pendente lite under Section 24 of the Hindu Marriage Act and orders under Section 23 of the Domestic Violence Act are concerned they are like judgments as they have separate proceedings and the conclusions depends upon the rights of the parties. So far as interim maintenance in the provisions of Section 125 Cr.P.C is concerned it is a preventive remedy rather than being remedial or punitive. The order therein can be modified or cancelled at any stage. The interim maintenance provided in Section 125 Cr.P.C is the provisional arrangement and they do not decide the final determination of the status and personal rights of the parties. The word "interim" meaning in the meantime or in the meanwhile, the word that interim maintenance cannot be said to be final in its essence."

9. In the present dispute the revisionist is the son of the opposite party and moved an application for interim maintenance till the disposal of the application moved by him under Section 125 Cr.P.C. Rejection of interim maintenance does not inspire that the court has decided the rights of the parties to the full and final. The impugned order does not decide the rights of parties conclusively. hence, the revision is legally not maintainable against interlocutory order.

10. So far as the factual matrix of the case is concerned, revisionist is admittedly major persons married in the year 2014. He was driving taxi and was earning his livelihood. In the year 2017 the revisionist met with an accident and suffered muscular dystrophy in his hand. Medical report is not on record that it has to be decided during trial. Opposite party claims that the revisionist is doing work of cleaning taxi that too has to be decided on merits. Opposite party is also a pensioner.

11. From the perusal of the impugned order, there is no illegality or irregularity which cause miscarriage of justice to any of the parties as the case is to be decided on merits after evidence. Moreover, the revisionist has moved this revision against an interlocutory order which is not maintainable. On the basis of observation made above, the present revision is liable to be dismissed and is accordingly dismissed.

12. The revision is dismissed.

12. However, learned family court is directed to proceed with the matter and decide the same on merits within a period of one year from the date of receipt of a certified copy of this order.

(Renu Agarwal,J.)

Order Date :- 31.10.2023/Nadeem