

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITIN Nos.4548 and 4559 of 2015

COMMON ORDER :

These two Revisions arise between the same parties and out of the same O.P. Therefore, they are being disposed of by this common order.

2. The petitioner herein is the husband of the respondent. He filed FCOP.No.8 of 2013 on the file of Judge, Family Court-cum-III Additional District Judge, Warangal for grant of divorce against the respondent, who is his wife.

3. The respondent had filed I.A.No.74 of 2013 under Section 24 of Hindu Marriage Act, 1955 seeking maintenance @ Rs.15,000/- per month pending the O.P. and also Rs.20,000/- towards litigation expenses.

4. Since the petitioner did not appear before the Court below on 20.03.2014, the Court below passed an ex parte order in I.A.No.74 of 2013 directing the petitioner to pay a sum of Rs.5,000/- per month towards interim maintenance from the date of O.P. and Rs.10,000/- towards litigation expenses. On the same day, it later dismissed the O.P. also for default, since the petitioner was not present and there was no representation on his behalf.

5. The petitioner had filed I.A.No.109 of 2015 on 27.04.2014 to condone the delay of 372 days in filing the petition to set aside the order dt.20.03.2014 dismissing the O.P. and also filed I.A.No.70 of 2014 to set aside the said order. Petitioner also claims to have filed another application to set aside the order directing the maintenance

to be paid to the respondent in I.A.No.74 of 2013.

6. By separate orders dt.29.09.2015, the Court below allowed both I.A.No.109 of 2015 and I.A.No.70 of 2014 on condition that the petitioner pays all the arrears of interim maintenance and litigation expenses by 29.10.2015, and in default directed that both I.As. to be dismissed.

7. Challenging the said orders, these two Revisions are filed.

8. Counsel for the petitioner contends that the order of interim maintenance was passed ex parte without hearing him, that the condition imposed for setting aside the order dismissing the O.P. for default is onerous, and such onerous condition should not have been imposed by the Court below while setting aside the orders dismissing the O.P. He further contended that according to the petitioner, the respondent had murdered petitioner's mother and had also begotten a child with a third party and that a DNA report issued by the Centre for DNA Fingerprinting Diagnostics had given an opinion that the petitioner is not the biological father of the boy born to the respondent. Counsel for the petitioner further contended that the petitioner has lost his job and is presently unemployed.

9. Counsel for the respondent refuted the above contentions and stated that the petitioner is employed as a software engineer and that the allegations made by the petitioner against the respondents are false. He further contended that the respondent has no source of livelihood and that therefore, the condition imposed by the Court below for setting aside the order dt.20.03.2014 dismissing the O.P. for default cannot be said to be unreasonable.

10. I have noted the submissions of both sides.

11. Admittedly, the petition under Section 24 of the Hindu Marriage Act, 1955 had been filed in the year 2013. The order setting aside the dismissal of O.P. on 20.03.2014 with the condition to deposit entire arrears of maintenance @ Rs.5,000/- per month was passed on 29.09.2015. Therefore, if all arrears are taken into account, the amount to be deposited would be more than one lakh. In my considered opinion, such onerous condition cannot be imposed while setting aside the order dismissing the O.P. for default.

12. Therefore, both the Civil Revision Petitions are allowed. The impugned orders are set aside on condition of the petitioner depositing a sum of Rs.50,000/- to the credit of the O.P.No.8 of 2013 within six (06) weeks from today and in such an event, the order dt.20.03.2014 in I.A.No.109 of 2015 and I.A.No.70 of 2014 in O.P.No.8 of 2013 shall stand set aside; the said I.A.s stand allowed; and the O.P. shall stand restored to the file of the said Court. On such deposit, the respondent is permitted to withdraw the said amount subject to further orders in the I.A. filed by the petitioner to modify the order dt.20.03.2014 in I.A.No.74 of 2013. It is stated by the counsel for petitioner that the litigation expenses of Rs.10,000/- have already been paid to the respondent. It is made clear that this Court has not expressed any opinion on the merits of the rival contentions including financial capacity of both parties. In default of such deposit, the CRPs shall stand dismissed. There shall be no order as to costs.

13. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

02nd November, 2015.

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