

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2888 of 2015

ORDER:

This Revision petition is filed under Article 227 of Constitution of India (Constitution) against the order dated 15-06-2015 passed in I.A.No.132 of 2015 in O.P.No.53 of 2014 on the file of Senior Civil Judge, Nizamabad.

The Revision petitioner filed petition for dissolution of marriage between him and the respondent herein. The respondent herein was the petitioner before the trial Court and filed petition under Section 24 of Hindu Marriage Act (for short "the Act") in the said O.P. for grant of maintenance at the rate of Rs.10,000/- per month alleging that the revision petitioner filed a petition for dissolution of marriage and that she is only a house wife, having no source of income to maintain herself and to bear the medical expenses. She further contended that the respondent is having sufficient means and earning Rs.50,000/- per month. Hence, she claimed Rs.10,000/- towards interim maintenance besides legal expenses of Rs.20,000/-.

The revision petitioner filed counter denying the material allegations of petition, while admitting filing of the petition for dissolution of marriage. It is specifically contended that the respondent herein filed petition to harass the revision petitioner taking undue advantage of provision of law and that he is an educated unemployed depending on the meager pension of his father. It is further contended that the respondent herein is engaged in private employment and earning Rs.15,000/- per month besides earning Rs.9,000/- per month by imparting tuitions to the students of locality. It is further contended that the revision petitioner never refused and neglected to maintain the petitioner and the respondent herein deserted the revision petitioner about two years ago and therefore, he has no obligation to pay interim maintenance during pendency of petition and prayed for dismissal of

the petition.

During enquiry, no documents were marked and no witnesses were examined.

After hearing argument of both the counsel, the trial Court awarded maintenance of Rs.3,000/-per month to the respondent herein besides awarding Rs.3,000/- as legal expenses to defend herself in the petition.

Aggrieved by the order passed by the trial Court, the present Revision is filed challenging the order on various grounds, mainly contended that the order of the trial Court is bereft of any reason for arriving at Rs.3,000/- towards monthly maintenance and the trial Court also did not consider the income of the respondent herein from different sources, which is inclusive of private employment and imparting tuitions and further the revision petitioner is only a dependant on his father, who is a pensioner. When the trial Court did not consider the material on record including the specific pleas raised before the trial Court, this Court while exercising jurisdiction under Article 227 of Constitution can set aside the order passed by the trial Court under challenge.

At the stage of admission, the learned counsel for the revision petitioner would contend that the trial Court did not consider specifically as to the income of the respondent herein, so also independent source of income of the revision petitioner while passing the order under challenge. Non-consideration of contentions raised by the counsel for the revision petitioner before the trial Court is a ground to call for interference of this Court and apart from that, the maintenance awarded by the trial Court is excessive and prayed to set aside the order passed by the trial Court.

In view of the specific contentions raised by the counsel for the revision petitioner, the point that arises for consideration is,

“Whether grant of maintenance during pendency of petition at the rate of Rs.3,000/- per month and Rs.3,000/- towards legal expenses is just and reasonable, if not, liable to be set aside?”

POINT:

-

Undisputedly, the revision petitioner filed petition for grant of divorce dissolving the marriage between himself and the respondent under Section 13 of the Act and it is pending. During pendency of petition for divorce, the respondent herein who is the wife of the revision petitioner filed petition for grant of maintenance @ Rs.10,000/- per month while claiming Rs.20,000/- towards legal expenses raising several contentions about the independent source of income of the revision petitioner, and lack of income from any source for her maintenance.

Section 24 of Hindu Marriage Act deals with grant of maintenance *pendent lite* and expenses of proceedings, it reads as under:

“Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable”.

In view of Section 24 of the Act, the trial Court is competent to grant maintenance *pendent lite* besides legal expenses to defend the proceedings before the trial Court. What are the parameters for fixing maintenance are well settled, while passing an order under Section 24 of the Act, the Court has to take into consideration the status and financial status of wife and husband, the income of both wife and husband, the property own and possessed by both wife and husband. Here, the respondent is only a housewife. The revision petitioner

contended that respondent is earning Rs.15,000/- on private employment and Rs.9,000/- by imparting tuitions, but this contention is not substantiated by any evidence. Similarly, the respondent herein contended that the revision petitioner is earning Rs.50,000/- per month, but this fact is not substantiated by any evidence. Therefore, both the parties failed to establish the income of each other by producing any documentary evidence. Then what remains on record is the allegations made in the petition and counter.

The revision petitioner is aged 33 years, but his occupation was shown as 'nil' in the cause title of divorce O.P.53 of 2014. Similarly, the occupation of respondent herein was shown as 'house-wife'. The revision petitioner is an able bodied man and any person who is engaged in daily labour work can earn not less than Rs.350/- per day even minimum wage by doing labour work. If it is taken into consideration, the income of labourer or cooli will be more than Rs.10,500/- per month. Here the revision petitioner is an educated unemployed but contending that he is dependant on his father, who is a pensioner. However, this provision is intended to avoid vagrancy of wife and children during pendency of the petition. Therefore, the trial Court in para No.7.03 of the order basing on the minimum wage expected to earn by a labourer or cooli at Rs.350/- or Rs.400/-fixed monthly income of the petitioner at Rs.10,000/- approximately and awarded maintenance of Rs.3,000/- per month.

Normally while awarding maintenance, the court will take into consideration, the status of the parties and the property they possessed, when both the petitioner and respondent are literates but unemployed, father of the revision petitioner is a retired employee and even then he is supposed to maintain minimum standard in life and wife is also expected to lead some standard of life. Considering the facts and circumstances of the case, I find that awarding of Rs.3,000/-

towards maintenance per month during pendency of H.M.O.P. No.53 of 2014, besides legal expenses of Rs.3,000/- is not on higher side and is just and reasonable when taken into consideration of the present price index. It is not the case of the revision petitioner that the respondent own and possessed any property of her own and even to obtain a premises on lease for her shelter, she has to incur minimum expenditure besides meeting the necessary medical expenses, clothing etc., including food. Therefore, the amount awarded by the trial Court at Rs.3,000/- is just and reasonable and does not call for interference by this Court.

The powers of this Court under Article 227 of Constitution are limited, such supervisory power can be exercised only in exceptional cases, where the subordinate Courts or tribunals failed to exercise their discretion where the Courts are competent to exercise such discretion and where the Courts exercise discretion erroneously in excess of power conferred on them. I find no excessive exercise of jurisdiction in awarding maintenance to the petitioner and therefore, by exercising power under Article 227 of Constitution, I am not inclined to interfere with the order under challenge.

Accordingly, the order, dated 15-06-2015, passed by the Senior Civil Judge, Nizamabad in I.A.No.132 of 2015 in O.P.No.53 of 2014 is hereby confirmed holding this point in favour of the respondent against the revision petitioner at the stage of admission.

In the result, the Civil Revision Petition is dismissed but without costs. In consequence, Miscellaneous Petitions, if any, pending in this Revision shall stand dismissed.

M. SATYANARAYANA MURTHY, J

28-07-2015
nvl

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



C.C.C.A.No. 165 of 1997

Date. 23-01-2015

-
nvl