

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRP NOs.9 & 262 of 2015

COMMON ORDER:

1 Since these two Civil Revision Petitions arise out of the very same order dated 05.12.2014 passed in I.A.No.1548 of 2014 in FCOP No.22 of 2014 on the file of Judge, Family Court-cum-Additional District & Sessions Court, Vizianagaram, they are being disposed of by this common order.

2 For the sake of convenience, parties will hereinafter be referred to as they are arrayed before the trial Court.

3 The facts leading to filing of the present revisions, briefly, are as follows:

4 The marriage of the petitioner was performed with the respondent on 08.02.2012 at Kshatriya Kalyana Mantapam, Stadium road, Vizianagaram as per the caste customs and the marriage was consummated at the house of the petitioner. On 11.02.2012, the petitioner was taken to the house of the respondent. The respondent disowned the petitioner since October 2012. The petitioner has been residing separately at the house of her parents. The respondent has been working as technician in Naval Dockyard, Visakhapatnam and drawing salary of Rs.40,000/- p.m. Before filing of the FCOP by the petitioner, the respondent got issued a legal notice to the petitioner on 07.02.2014. Having no other alternative, the petitioner filed the FCOP No.22 of 2014 under Section 9 of the Hindu Marriage Act. The petitioner also filed I.A.No.1548 of 2014 seeking interim maintenance at the rate of Rs.10,000/- p.m. and Rs.25,000/- towards legal expenses.

5 The respondent filed counter inter alia contending that the petitioner used to wake up at 9.00 a.m. even though she had the knowledge that the respondent has to start at his house by 7.30 a.m. to attend his duty. The petitioner insisted the respondent to put up separate residence away from his parents. The petitioner used to threaten the respondent that she will commit suicide and that the members of Mahila Sangham will do dharna in front of his house and thereby all the family members of the respondent will be sent to jail. The parents of the petitioner are also suspecting the attitude of the petitioner. During the short period of stay of the petitioner at his house, gold ornaments

were found missing. The petitioner left the matrimonial home on 09.10.2012 and did not turn up. At the time of marriage, the parents of the petitioner informed that the petitioner completed her B.Tech and she is in search of suitable job. Therefore, this respondent married her without taking any dowry or without there being any customary presentations. Hence the petition may be dismissed.

6 After hearing both parties and having perused the entire material available on record, the trial Court allowed the petition filed by the petitioner partly by awarding Rs.5,000/- p.m. as maintenance to the petitioner and Rs.10,000/- towards legal expenses. Being not satisfied with the amount of maintenance awarded by the trial Court, the petitioner preferred CRP No.9 of 2015 and feeling aggrieved by the order of the trial Court, the respondent preferred CRP No.262 of 2015.

7 Heard Sri Rayaprolu Srikanth the learned counsel for the petitioner and Smt. T.V. Sridevi the learned counsel for the respondent.

8 The contention of the learned counsel for the petitioner is that the trial Court failed to consider that the respondent is drawing monthly salary of Rs.40,000/- and hence the amount of maintenance awarded by the trial Court is not justifiable. He further submitted that the petitioner has been facing much difficulty for her maintenance.

9 *Per contra*, the learned counsel for the respondent submitted that the respondent is ready and willing to take back the petitioner to the matrimonial home and hence the present petition is liable to be dismissed. She further submitted that the trial Court without taking into consideration the family background of the respondent, awarded the maintenance of Rs.5,000/- p.m. to the petitioner which is on higher side.

10 Now the point for consideration is “Whether the order of the trial Court is legally sustainable or not?”

Point:

11 The admitted and undisputed facts which can be culled out from the record are that the marriage of the petitioner was performed with the respondent on

08.02.2012 as per Hindu rites and the customs prevailing in their caste. The petitioner and the respondent lived together happily for a short period. Unfortunately bad weather prevailed in the family life of the parties which ultimately led them to live separately. Legal notices were exchanged between the parties prior to filing of FCOP No.22 of 2014 on the file of Judge, Family Court-cum-Additional District & Sessions Court, Vizianagaram under Section 9 of the Hindu Marriage Act, by the petitioner, for restitution of conjugal rights. The respondent filed counter in that O.P. During the pendency of the said O.P, the petitioner filed I.A.No.1548 of 2014 seeking interim maintenance at the rate of Rs.10,000/- p.m. The fact remains that the petitioner has been residing separately at her parents' house since October 2012. The petitioner is not an employee to maintain herself. The respondent did not deny the factum of his employment as Technician in Naval Dockyard, Visakhapatnam and drawing salary of Rs.40,000/- p.m.

12 The learned counsel for the respondent submitted that the respondent is ready and willing to take back the petitioner to lead marital life and this aspect was not considered by the trial Court and allowed the petition on erroneous and untenable grounds. This is not the stage to go into the merits of the main case. Who is at fault has to be decided during the course of trial in the main O.P. The Court should not express any opinion which ultimately the effect the rights of the parties in the main case while deciding the interlocutory applications more particularly in matrimonial cases. Hence I am not inclined to express any opinion touching the merits of the main case in view of pendency of the FCOP No.22 of 2014.

13 There is no bar for granting of interim maintenance during the pendency of the main O.P filed under the Hindu Marriage Act. The trial Court allowed the petition on the ground that the petitioner has no source of income whatsoever to maintain herself. It is the duty of the husband to provide maintenance to the wife during the pendency of the litigation. In these days an amount of Rs.5,000/- is hardly sufficient for sustenance of one person. The Court has to award either permanent alimony or interim maintenance taking into consideration the financial status and the responsibilities of the respondent / husband. By taking into consideration the facts and circumstances of the case, I am of the considered view that the petitioner is entitled for interim

maintenance at the rate of Rs.7,500/- during the pendency of the O.P. Hence this Court feels that it is a fit case to modify the order passed by the trial Court.

14 Accordingly, CRP No.9 of 2015 is allowed at the admission stage by partly enhancing the interim maintenance of Rs.5,000/- p.m, as awarded by the trial Court, to Rs.7,500/- p.m. Consequently CRP No.262 of 2015 filed by the respondent is hereby dismissed. However, in view of the age of the parties to the litigation, the trial Court is hereby directed to dispose of the FCOP No.22 of 2014 as expeditiously as possible. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in these CRPs shall stand closed.

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T.SUNIL CHOWDARY, J.

Date: 7th April, 2015.

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