

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

Civil Revision Petition No. 4492 of 2014

Order:

This Revision is filed challenging the order dt. 01st October 2014 passed in IA No.1180 of 2014 in FCOP No.103 of 2013 by the Judge, Family Court-cum-Additional District and Sessions Judge, Vizianagaram.

2. The petitioner herein filed the said FCOP against the first respondent for dissolution of their marriage. They have a female child aged about 2 years, the second respondent herein.

3. The respondents filed IA No.1180 of 2014 in FCOP No.103 of 2013, under Section 24 of the Hindu Marriage Act, 1955, seeking payment of interim maintenance at the rate of Rs.20,000/- per month to the first respondent and Rs.20,000/- per month to the second respondent, apart from a sum of Rs.1,00,000/- towards legal expenses.

4 . In the affidavit filed in support of the said application, the respondents have specifically alleged that the petitioner is gainfully employed as a Project Manager in a software company and earning a salary of Rs.1,50,000/- per month and he has movable and immovable properties worth Crores of rupees and had the capacity to pay maintenance to the respondents.

5. Although counter affidavit was filed by the petitioner to the said

application, except a mere denial of the allegation of the respondents, no evidence about his employment or salary was placed before the Court below. It was no doubt contended that the first respondent was working as a Teacher on temporary basis from 24.07.2012 onwards on a monthly salary of Rs.7,000/- in a private school by name Ravindra Bharathi School, Rama Colony, Salur, Vizianagaram District, and this fact was suppressed by the first respondent.

6. During the course of hearing of the said IA, the counsel for the petitioner produced a Xerox copy of letter allegedly obtained under Right to Information Act, 2005, indicating that the first respondent was employed as Assistant Teacher on temporary basis in the above School. The said letter also indicates that the services of the first respondent had been terminated with effect from 26.04.2014.

7. The Court below held that, since the petitioner was employed as a Software Engineer, it is reasonable to grant interim maintenance of Rs.15,000/- per month to the first respondent and Rs.10,000/- per month to the second respondent from the date of filing of the application. It also directed payment of Rs.50,000/- towards legal expenses.

8. Challenging the same, this Revision is filed.

9. Counsel for the petitioner contended that the amounts of interim maintenance granted to the respondents by the Court below are exorbitant and that the Court below also erred in granting a sum of Rs.50,000/- towards legal expenses to the respondents. He reiterated that the first respondent is gainfully employed and contended that, therefore, she does not deserve for any maintenance.

10. Counsel for the respondents, however, supported the order passed by the Court below.

11. It is the specific case of the respondents that the petitioner is employed as a Software Engineer in Bangalore and he is earning a salary of Rs.1,50,000/- per month. The petitioner has simply denied the said allegation without producing any material to prove the nature of his employment or the income he is earning therefrom. The best evidence to prove his income is available with the petitioner, but by not disclosing it, the petitioner has invited an adverse inference that if such evidence is produced, it would disprove his plea. Considering the nature of employment of the petitioner, the quantum of interim maintenance granted to the respondents by the Court below does not appear to be high.

12. As regards the plea of the petitioner that the first respondent is employed as a Teacher in a private School is concerned, the petitioner is not entitled to rely upon the Xerox copy of letter obtained under the Right to Information Act, 2005, in support of his plea because it is doubtful if Right to Information Act, 2005 applies to private institutions at all. That apart, the Xerox copy would not be admissible unless the petitioner explains as to what had happened to the original. Even the said letter filed by the petitioner indicates that the services of the first respondent had been terminated with effect from 26.04.2014. In this view of the matter, it cannot be said that the respondents should be deprived of interim maintenance by the petitioner.

13. However, coming to the award of Rs.50,000/- towards legal expenses to the respondents, the said amount appears to be very high. Therefore, the said amount is reduced to Rs.20,000/-.

14. Accordingly, the CRP is partly allowed and the order dt. 01st October 2014 passed in IA No.1180 of 2014 in FCOP No.103 of 2013 by the Judge, Family Court-cum-Additional District and Sessions Judge, Vizianagaram, is modified only to the extent that the said Court had awarded a sum of Rs.50,000/- towards legal expenses to the respondents and it is clarified that only Rs.20,000/- is payable to the respondents towards legal expenses. There shall be no order as to costs.

15. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S. RAMACHANDRA RAO, J.

Date: 16.09.2015

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