

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

C.R.P.No.3939 of 2015

ORDER:

Heard Smt.B.Rachana, learned counsel for the petitioner. None appears for the respondent.

2. This Revision Petition is filed challenging the order dt.20-07-2015 in I.A.No.276 of 2014 in I.A.No.494 of 2013 in O.P.No.28 of 2013 of the Judge, Family Court, Hyderabad.

3. Petitioner herein is the wife of the respondent. The petitioner had filed the said O.P. against the respondent for dissolution of their marriage on various grounds and the said O.P. is still pending on the file of the Family Court, Hyderabad.

4. Petitioner has filed I.A.No.494 of 2013 before the said Court seeking payment of interim maintenance under Section 24 of the Hindu Marriage Act. The said application is still pending.

5. In the meantime, according to the petitioner, she was diagnosed with breast cancer stage-II and she underwent certain treatment for the same in Yasoda Hospital. Claiming that she is incurring considerable expenditure for her treatment for breast cancer, she filed I.A.No.276 of 2014 seeking a direction to the respondent

to pay a sum of Rs.5.00 lakhs towards her medical, nutritional, and other expenditure. She also claimed that she was unemployed.

6. The respondent filed a counter affidavit stating that he had also left his employment on 21-07-2013 on health grounds but in spite of knowing this, the petitioner is still showing him as a Chartered Accountant. He stated that he is borrowing money from others for the education of his children and he has not been earning for almost a year. He pointed out that the petitioner is doing translation work from English to French and French to English and also giving tuitions and she is earning at least Rs.70,000/- per month. He alleged that she is staying in a posh area at Raj Bhavan Road, Somajiguda, Hyderabad, maintaining car and other amenities and that he was staying in a rented house in Marredpally and due to financial constraints, he was forced to shift Mehdiapatnam. He also contended that he has to look after his old mother, aged 82 years, who is not keeping well apart from staying in rented accommodation paying Rs.10,000/- per month as rent. He contended that when he asked the petitioner to bear half of the educational expenditure of the two children since the petitioner is also earning an income, the petitioner did not respond. He stated that there is no life threat to the petitioner from the said disease and she can undergo treatment for a period of two years which would cost not more than Rs.2.00 lakhs. He also

stated that he had taken Family Health Insurance for a sum of Rs.1.00 lakh per year per person starting from July 2013 to June 2014, that the petitioner is also beneficiary of the same and the petitioner is entitled to claim a sum of Rs.1.00 lakh per year from the insurer under the said policy. He stated that if the petitioner handed over the original receipts regarding her treatment and hospitalization and cooperates to monitor and realize the insurance amount, she would have no problem to claim the insurance amount. He therefore sought a direction to the petitioner to handover all the original documents along with medical reports so that he could submit the same to the insurance company to claim the insurance amount. He reiterated that his financial position is weak, that he has no source of income at hand and he is indebted to several persons for meeting the expenditure of education of the children. He however contended that the insurance policy cannot be transferred to the petitioner since it is for the entire family of which the petitioner is only shown as a member.

7. Before the Court below, the petitioner marked Ex.P-1 medical bills etc. and the respondent marked Exs.R-1 to R-8

8. By order dt.20-07-2015, the Court below partly allowed the I.A. and directed the respondent to cooperate with the petitioner in processing the health

insurance claim of Rs.2.00 lakhs after giving a finding that under Ex.R-3 health policy, the petitioner had been insured for a sum of Rs.2.00 lakhs per year. The Court below also did not accept the contention of the petitioner that she had become totally incapacitated to earn any income since Ex.R-2 , her profile, showed that she is working as an Institution Building Consultant in the Department of Higher Education, Government of Andhra Pradesh and also as a trustee of Plus-trust. It also noted that the respondent himself was suffering from interstitial lung disease which impacted his professional life, that his earning capacity was seriously affected and that he was shouldering the responsibility of meeting the educational expenses of their two sons.

9. Challenging the same, this Revision Petition is filed.

10. Although the learned counsel for the petitioner contended that petitioner should be paid a sum of Rs.5.00 lakhs by the respondent towards her medical expenses and nutrition expenses, since the application for interim maintenance i.e I.A.No.494 of 2013 is still pending, the question whether the petitioner is gainfully employed and in a position to earn income to sustain herself, and what is the financial capacity of the respondent to maintain himself, his aged mother and his two children, are matters to be gone into in the said application.

11. Having regard to the fact that the claim of the petitioner is seriously contested by the respondent and since the respondent has come forward with the offer to cooperate with the petitioner in processing the health insurance claim under the family health insurance policy taken by him, which also covers her, I am of the opinion that the Court below has rightly accepted the plea of the respondent that he would cooperate with the petitioner in processing the health insurance claim of Rs.2.00 lakhs.

12. Therefore, I do not find any merit in this Civil Revision Petition and the same is accordingly dismissed. However, the Family Court, Hyderabad is directed to decide I.A.No.494 of 2013 in O.P.No.28 of 2013 on its file within a period of eight weeks from the date of receipt of a copy of this order.

13. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-10-2015

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